



Decision Notice 022/2023

Information to tackle financial abuse

Applicant: The Applicant

Authority: Chief Constable of the Police Service of Scotland

Case Ref: 202200965

Summary

The Applicant asked the Authority for information to enable disabled people to identify, report and tackle financial crimes committed against them by registered charities that they may be using or otherwise have had contact with. The Authority told the Applicant that it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1), (2) and (6) (General entitlement); 15(1) (Advice and assistance); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 3 July 2022, the Applicant made a request for information to the Authority. They asked for all information held by the Authority for disabled people to identify, report to the Authority and to tackle financial abuse committed against them by registered charities they [disabled persons] may be using or otherwise have been in contact with.
2. The Authority responded on 21 July 2022 and told the Applicant that it did not hold any information that met “the highly specific scenario described in the request”. The Authority

provided a web link to [advice](#)¹ contained on its website on how to avoid becoming a victim of fraud and/or financial crime.

3. On 28 July 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because they believed the Authority may, or should, hold more information, particularly in regard to charities that are receiving or have received donations from disabled benefactors.
4. The Authority notified the Applicant of the outcome of its review on 29 August 2022. The Authority confirmed that its searches had produced no results for the highly specific request. The Authority directed the Applicant to its general advice and, in addition, provided a link to its [Fraud and Economic Crime Standard Operating Procedure \(SOP\)](#)². The Authority upheld its original response and concluded that section 17 of FOISA had been correctly applied by it to this request.
5. On 29 August 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review because they believed that the Authority should hold the information requested.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 4 October 2022 and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
8. The Authority provided its comments to the Commissioner on 9 November 2022.
9. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 17 - Notice that information is not held

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.

¹ <https://www.scotland.police.uk/advice-and-information/scams-and-frauds/>

² <https://www.scotland.police.uk/spa-media/elypa35o/fraud-and-economic-crime-sop.pdf>

13. The Commissioner notes the submission provided by the Applicant, in which they ask the Commissioner to verify the Authority's response. The Applicant explained why they believed information that fell within the scope of the request was held by the Authority.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
15. The Commissioner accepts that the Authority reasonably interpreted the Applicant's request i.e. the request sought information that could be classed as crime prevention/reporting information aimed at disabled people regarding financial abuse committed by registered charities.
16. Given the nature of the information requested, it would be reasonable – as was suggested by the Authority – that any recorded information the Authority held for the purpose of advising and assisting members of the public would be available to the public, most likely on the Authority's website. The Authority explained that it found nothing on its website that fell within the specific terms of the request.
17. The Authority also explained the further searches that it had conducted and the internal departments it had approached to ascertain if any recorded information falling within the scope of the request was held. The Authority commented that if it held any materials covering the scenario posed by the Applicant, either or both of these departments would have been involved. No information was found.
18. Having considered the Authority's submissions, the Commissioner is satisfied that the searches carried out by the Authority were reasonable and sufficient to determine whether the information requested was held. Given the explanations and submissions provided, the Commissioner is satisfied that the Authority does not (and did not, at the time of this request) hold the information requested by the Applicant. Therefore, the Commissioner concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it held no information.
19. Section 15 of FOISA provides that a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
20. Whilst the Authority did not hold information related to the specific request made by the Applicant, it provided them with advice in general terms on the steps that any person can take to try to avoid becoming a victim of fraud and/or financial crime. The Commissioner concludes that in the circumstances the Authority therefore provided reasonable advice and assistance to the Applicant and therefore that it complied with section 15 of FOISA.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement

20 March 2023

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
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- (6) This section is subject to sections 2, 9, 12 and 14.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- ...

17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information,it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
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47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).