

# Decision Notice

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## **Decision 011/2018: Mr Keith Banks and the Chief Constable of the Police Service of Scotland**

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### **Whether information request was valid**

Reference No: 201701950

Decision Date: 31 January 2018



## Summary

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Mr Banks asked Police Scotland to provide any recorded information held which should have been “weeded” within a specified period. Police Scotland did not respond, instead asking Mr Banks to clarify what information he required. Mr Banks clarified that he was not seeking his own personal data and subsequently asked Police Scotland to review their decision not to provide him with a substantive response.

Police Scotland responded by stating that the request, and therefore the review requirement, was not valid. It was not satisfied that Mr Banks had described the information he was seeking. Mr Banks applied to the Commissioner as he believed he had made a valid request and review requirement.

Following an investigation, the Commissioner found that Police Scotland had failed to deal with Mr Banks’ request for information in accordance with Part 1 of FOISA, by incorrectly concluding that the request did not meet the requirements of a valid request and refusing to respond. Consequently, he required Police Scotland to review their handling of Mr Banks’ request and notify him of the outcome of that review.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (3) (General entitlement); 8(1) (Requesting information)

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

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1. On 1 October 2017, Mr Banks made a request for information to Police Scotland. The request was for:  
*“All recorded information that was held by legacy Northern Constabulary, and subsequently by Police Scotland, between February 2004 and 29 January 2013, that should have been weeded in line with the respective FRD/SOP, no later than March 2004.”*
2. Police Scotland wrote to Mr Banks on 2 October 2017, asking for clarification of exactly what recorded information he was seeking and whether he was looking for information concerning himself. On the same day, Mr Banks confirmed that he was not seeking information about himself.
3. On 3 October 2017, Police Scotland wrote to Mr Banks again, reiterating that they required him to be more specific as to the actual information he required. They referred to the need to consider the amount of time and resources expended in responding to a request, and to various FOISA provisions that could potentially apply in responding to the request.
4. After further correspondence, Mr Banks wrote to Police Scotland on 27 October 2017, requesting a review of their decision not to respond to his request and submitting that the request was capable of being understood without clarification.

5. On 3 November 2017, Police Scotland advised Mr Banks of their conclusion that his request for information was not valid in terms of section 8 of FOISA, as they did not know what specific information it related to.
6. Mr Banks wrote to the Commissioner on 6 November 2017. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He believed he had provided Police Scotland with sufficient information for his request to be understood without further clarification. The case was allocated to an investigating officer.

## Investigation

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7. On 6 December 2017, Police Scotland were notified in writing that an application had been received from Mr Banks. Police Scotland were invited to provide comments on the application, as required by section 49(3)(a) of FOISA. Given that Mr Banks' application appeared to be otherwise valid, Police Scotland were asked to comment on why they had concluded it did not comply with section 8(1) of FOISA.
8. Police Scotland responded with submissions on 19 December 2017.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Banks and Police Scotland and is satisfied that no matter of relevance has been overlooked.
10. Section 8(1) of FOISA sets down the basic requirements for a valid request for information in terms of section 1(1). Section 8(1)(c) specifies that a request must describe the information requested.

### Submissions from Police Scotland

11. Police Scotland confirmed their position to the Commissioner, restating their belief that Mr Banks' original request could not be understood without clarification as it did not sufficiently describe the information sought.
12. Police Scotland submitted that the request referred to information that was held and that FOISA covered only the provision of recorded information held by a public authority currently, i.e. on receipt of the request. Police Scotland stated that they could not determine what information had been held historically.
13. In addition, Police Scotland stated that the request referred to all recorded information and submitted that they held a substantial volume of information across an incredibly broad range of categories, including – but not limited to – incident and crime related information, information regarding vulnerable individuals, personnel and resourcing information, financial information, information regarding procurement/contracts, minutes of meetings and correspondence.
14. Police Scotland concluded that Mr Banks' request was not valid in terms of section 8 of FOISA, as they did not have sufficient information to progress the request as it stood.

## The Commissioner's conclusions

15. Previous Commissioners have dealt with questions of interpreting section 8(1)(c) before and have taken into consideration guidance on the validity of requests, produced in the light of the Court of Session decision in the *Glasgow City Council*<sup>1</sup> case. The Commissioner takes the view that the purpose of requiring a description of the information is to allow the public authority to identify and locate the information requested.
16. The terms of Mr Banks' request are set out above. The Commissioner has considered these carefully. He acknowledges that an information request under section 1(1) of FOISA cannot, by definition, be for information that was held at some point in the past (as opposed to information held at the time the request is received, as section 1(3) specifies). While the request could have been framed more clearly, it is reasonable to presume that Mr Banks was not seeking information no longer held by the authority at the time of his request – it would be irrational to do so. He must also understand that Police Scotland cannot be expected to provide information on what it held at a particular point in the past, unless it holds records on that particular question when the request is received.
17. Basically, Mr Banks' request relates to information held between specified dates which should have been "weeded" earlier. Police Scotland have presented no issues, in terms of understanding, with either the terminology of the request or the timeframe specified, except to note that the timeframe is in the past. Both in their submissions to the Commissioner and earlier, in responding to Mr Banks, they have presented arguments relating to the substantial amount of information they hold and the time and resources required to respond to the request. These things may be relevant to how a request should be responded to under FOISA, but it does not necessarily follow from the burden of responding that a request has failed to describe the information requested in terms that will allow it to be identified and located. In all the circumstances, the Commissioner is not satisfied that the difficulties in understanding the request faced by Police Scotland have been explained adequately.
18. Having considered the request, the Commissioner is satisfied that it is possible to arrive at a reasonably intelligible understanding of it, to the extent that Police Scotland could have considered whether they still held any information falling within the description and time parameters specified in the request. It is conceivable that doing so would have incurred the excessive cost provisions in section 12(1) of FOISA, or would have involved the exercise of such skill and judgement as to amount to the creation of new information (which would not be information held for the purposes of FOISA), but these are entirely different matters from being able to argue that the request does not describe the information adequately for the purposes of section 8(1)(c) of FOISA.
19. In this case, therefore, for the reasons set out above, the Commissioner is not satisfied (on the balance of probabilities, taking account of all relevant submissions received) that Police Scotland were justified in refusing to deal with Mr Banks' request as valid, on the basis that it failed to provide a description of the information meeting the requirements of section 8(1)(c) of FOISA.

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<sup>1</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=cc8f86a6-8980-69d2-b500-ff0000d74aa7>

20. Consequently, the Commissioner finds that Police Scotland were obliged to respond to the request in terms of Part 1 of FOISA. He requires Police Scotland to do so now, by carrying out a review in terms of section 21 of FOISA.
21. Should a review lead to a conclusion that section 12(1) of FOISA applies, the Commissioner would remind Police Scotland of their duty to provide applicants and potential applicants with advice and assistance, so that requests can be narrowed to bring them within the cost limit.

## Decision

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The Commissioner finds that the Chief Constable of Police Scotland (Police Scotland) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the request made by Mr Banks.

In the circumstances, the Commissioner has concluded that Mr Banks' request to Police Scotland met the requirements of section 8(1) of FOISA and so was a valid information request for the purposes of section 1(1). On this basis, Police Scotland were under an obligation to respond to the request.

The Commissioner therefore requires Police Scotland to conduct a review in relation to Mr Banks' request in accordance with section 21 of FOISA, on the basis that Mr Banks made a valid request for information, by 20 March 2018

## Appeal

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Should either Mr Banks or Police Scotland 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.

## Enforcement

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If Police Scotland fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Police Scotland has failed to comply. The Court has the right to inquire into the matter and may deal with Police Scotland as if it had committed a contempt of court.

**Margaret Keyse**  
**Head of Enforcement**

**31 January 2018**

### 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.

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- (3) If the authority—

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then, provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

#### 8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
- (a) is 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) states the name of the applicant and an address for correspondence; and
  - (c) describes the information requested.

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