

Decision Notice

Decision 066/2018: Ms K and the Chief Constable of the Police Service of Scotland

Staff vetting procedures

Reference No: 201702197
Decision Date: 9 May 2018



Summary

Police Scotland were asked for information regarding their vetting procedures for staff appointments and promotions. Police Scotland provided some explanation but did not identify any recorded information for disclosure, a position they upheld after review.

Following an investigation, the Commissioner found that Police Scotland had failed to identify and disclose all of the relevant information they held. Given that all of the information was disclosed during the investigation, the Commissioner did not require Police Scotland to take any further action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 12 October 2017, Ms K made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland):
 - (i) What is Police Scotland's current level of vetting regards historical criminal charges made against officers and applications for;
 - (a) Joining Police Scotland
 - (b) Attaining promotion within Police Scotland
 - (c) Attaining promotion to senior level roles within Police Scotland (i.e. Inspector, Chief Inspector, Superintendent and Chief Superintendent)
 - (d) Attaining promotion into the Police Scotland Executive rank roles, such as: Assistant Chief Constable, Deputy Chief Constable and Chief Constable
 - (ii) Would vetting ever be waived (especially for executive roles) as a discretionary measure, in that an officer or person may be promoted into the executive ranks with previous charges on their record by, say, a ministerial waiver?
 - (iii) Or, would any legacy charges prequel (and thus prevent) any such promotion even when the officer/person had accepted lesser charges?
 - (a) Would this ever apply to schedule 8(a) offences as detailed in the Scottish government consultation [web link provided]?
 - (b) Or would the recent decision in the Outer House, Court of Session of the Scottish Courts and Opinion of Lord Philip "*The overarching purpose of the (vetting) policy is to maintain the highest levels of honesty and integrity and to prevent corrupt, dishonest, unethical and unprofessional behaviour among police officers*" remain static in police vetting procedure?

2. Police Scotland responded on 3 November 2017. They described the vetting procedures that apply to the various positions mentioned by Ms K, including promotion within Police Scotland and promotion to the Executive ranks. Police Scotland explained that all vetting took place on a case by case basis and was in line with force procedures. Police Scotland told Ms K that there is no ministerial waiver process and, as schedule 8(a) offences are never protected, it follows that Police Scotland would always take them into consideration when undertaking the risk assessment.
3. On 9 November 2017, Ms K wrote to Police Scotland requesting a review of their decision on the basis that they had not answered her questions directly. She asked for further detail and for the vetting guidelines that were used.
4. Police Scotland notified Ms K of the outcome of their review on 7 December 2017. They stated that they were not sure why Ms K was dissatisfied with their previous response as no information had been withheld from her, and assumed that she was dissatisfied with the level of detail they had provided. Police Scotland provided some further comment on their vetting procedures but, in terms of section 21(4)(a) of FOISA, they upheld their original response without amendment.
5. On 7 December 2017, Ms K applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms K stated she was dissatisfied with the outcome of Police Scotland's review because they had refused to answer her questions. She explained why she thought it would be in the public interest for Police Scotland to do so.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Ms K made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 11 January 2018, Police Scotland were notified in writing that Ms K had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland was invited to comment on this application and answer specific questions, including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to him by both Ms K and Police Scotland. He is satisfied that no matter of relevance has been overlooked.

Information held by Police Scotland

10. 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.
11. Section 1(4) of FOISA provides that the information to be given to the applicant 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, although the applicant's reasons may be relevant to the investigation of what is actually held.

12. In their submissions to the Commissioner, Police Scotland stated that national security vetting is conducted externally and that Defence Business Services (DBS) conduct this on behalf of the Scottish Government Departmental Security Unit (SGDSU). Police Scotland explained that this framework is called the Cabinet Office Security Policy Framework, and they provided the Commissioner with a web link to the framework document.
13. Police Scotland explained that management vetting is carried out in-house and the relevant Standard Operating Procedure (SOP) is published online. Police Scotland provided the Commissioner with a web link to this document. Police Scotland also provided the Commissioner with a copy of the Third Party Risk Assessment process relating to the SOP.
14. Police Scotland were asked if they were content to disclose this information to Ms K and they did so on 15 February 2018. Police Scotland also provided the Commissioner with a copy of the email sent to Ms K. When asked if she was satisfied with the disclosure, Ms K indicated that Police Scotland had provided most of the information she had requested but that the web link to the Scottish Government Security Policy Framework was not working; she had asked Police Scotland to provide her with a working link. Ms K went on to explain that she had been experiencing technical difficulties with her phone.
15. Given the technical difficulties she was experiencing, the investigating officer sent Ms K an email with a working web link to the information available from Police Scotland, along with a hard copy version of the information (in case the technical difficulties she was experiencing prevented her from accessing the electronic version).
16. Ms K was asked if there were any outstanding issues of dissatisfaction for the Commissioner to investigate, regarding Police Scotland's handling of her request. Ms K responded to the Commissioner's email and commented on other issues in detail but she did not address this particular question.
17. The Commissioner has considered the terms of Ms K's request for information and he considers that the information that Police Scotland disclosed to Ms K during his investigation is information that should have been provided to her in the initial response to her request. The Commissioner considers that it is clear from the terms of her request that Ms K was seeking the procedures and policies relied on by Police Scotland when vetting staff for appointment or promotion. Furthermore, in her request for review, Ms K specifically asked for "...the guidelines used".
18. Given this, it is unclear why Police Scotland, in their review outcome, stated that they were not withholding any information from Ms K. The SOP on management vetting is recorded information which clearly falls within the scope of Ms K's request.
19. The Commissioner also notes that the SOP on vetting is available on Police Scotland's website. Again, it is unclear why Police Scotland did not refer Ms K to this document when responding to her request. Police Scotland have not provided any explanation as to why this information was not identified and disclosed sooner.
20. In the circumstances, the Commissioner finds that Police Scotland failed to comply with section 1(1) of FOISA when responding to Ms K's request.
21. The Commissioner is satisfied that Police Scotland have now provided Ms K with the information that fell within the scope of her request for information. Ms K has not indicated that she is dissatisfied in any other respect with Police Scotland's handling of her information request. The Commissioner therefore does not require Police Scotland to take any further action in response to this matter.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms K. Police Scotland provided Ms K with some information, but they failed to identify and provide all information covered by Ms K's request. In doing so, they failed to comply in full with section 1(1) of FOISA.

Given that Police Scotland have now disclosed the recorded information covered by Ms K's request, the Commissioner does not require them to take any further action in response to Ms K's application.

Appeal

Should either Ms K or the Chief Constable of the Police Service of 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.

Margaret Keyse
Head of Enforcement

9 May 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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

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