



Scottish Information
Commissioner
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Decision Notice 179/2025

Identikit e-fits

Authority: Police Service of Scotland
Case Ref: 202401634

Summary

The Applicant asked the Authority for copies of identikit e-fits relating to a specific criminal investigation. The Authority provided the Applicant with one e-fit and notified the Applicant that it did not hold any other information captured by the request.

During the investigation, the Authority identified and disclosed one additional e-fit.

The Commissioner investigated and found that the Authority was wrong to notify the Applicant that it held no information regarding the additional e-fit that the Authority identified. The Commissioner also found that the Authority had failed to carry out specific and proportionate searches for the information requested.

Relevant statutory provisions

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

Background

1. On 22 August 2023, the Applicant made a request for information to the Authority. Referring to the investigation into the murder of Shamsuddin Mahmood at the Mumutaz Restaurant in Kirkwall on 2 June 1994, he asked for high resolution copies of;

- (i) the identikit e-fits that were made of two people who witnesses saw threatening Mr Mahmood on the evening of 31 May 1994,
 - (ii) identikit e-fits of a “man” seen acting suspiciously in Papdale Woods on 19 May 1994,
 - (iii) the identikit e-fit made of a man seen in the lane next to the Mumutaz Restaurant around 5.10 on 2 June 1994, and
 - (iv) any other e-fits which were created in connection with this case (along with a description of the sighting they represented).
2. The Authority responded on 31 October 2023. The Authority refused the request under section 12(1) of FOISA, arguing that compliance would exceed the £600 cost threshold set out in Act. The Authority explained that it would have to manually check every paper document within more than forty paper storage boxes, as there were no inventory lists to clearly identify what the boxes contained.
 3. On 9 November 2023, the Applicant wrote to the Authority, requesting a review of its decision. The Applicant highlighted his deep concerns that the Authority did not appear to have an inventory list to clearly identify the contents of each box, and he referred to the Authority’s obligations on record keeping under the [Scottish Ministers’ Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information \(Scotland\) Act 2002 and the Environmental Information \(Scotland\) Regulations 2004](#)¹.
 4. The Authority notified the Applicant of the outcome of its review on 14 January 2024, upholding its original response in full.
 5. On 4 December 2024 (and following an appeal to the Commissioner which resulted in the issue of [Decision 244/2024](#)) the Authority issued a second review outcome to the Applicant, withdrawing its reliance on section 12(1) of FOISA, and giving the Applicant notice, under section 17(1) of FOISA, that the information was not held. The Authority explained that exhaustive searches had now been carried out and it had found no information falling within scope of requests (i), (ii) and (iv). The Authority disclosed information in relation to request (iii).
 6. On 15 December 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied because he believed the Authority did hold the information he had requested, including additional information falling within scope of part (iii).

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 14 January 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application.

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

The Authority was invited to comment on this application and to answer specific questions. These related to how the Authority carried out searches for the information.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

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 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 by section 1(4). If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
13. 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 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.

Does the Authority hold the information?

Hard copy case files

14. The Authority explained that it had initially identified that material relevant to the request was held in Kirkwall Police Office, Orkney and that initial searches had been carried out by a detective officer there.
15. The material to be searched was held in 44 boxes. The Authority originally notified the Applicant that a detailed inventory of the boxes could not be found. It submitted that the storage of these boxes (and the material within) was not consistent with modern day practices. The Authority accepted that it could reasonably be expected that the remaining e-fits would be stored within the 44 boxes. However, given the passage of time since the police investigation and criminal appeal proceedings, the Authority was not able to confirm what material was placed into the boxes and what material may have been destroyed or otherwise misplaced. The Authority later confirmed that it had discovered "old inventories" of these boxes on which the e-fits were listed, but when the relevant locations were searched the e-fits were not found.
16. The Authority submitted that its officers in Kirkwall and Inverness had confirmed that no other case related material was stored in these locations. To the best of the Authority's knowledge, there were no other case related papers or boxes of materials stored in any other location.

17. The Authority explained that it had decided to transfer the hard copy material from Orkney, via Inverness, to longer term storage in Glasgow, and once there it planned to carry out a slow time exercise to inventory the material within.
18. In August 2024, at the time of the previous appeal to the Commissioner in relation to this request ([Decision 244/2024](#))², the Authority made a new inventory of the boxes. The Authority explained that this was not a page-by-page assessment of the entire content of each box but was intended to provide an overview of what was in each. This exercise had led to the discovery of the e-fit that was disclosed in the revised review outcome of 4 December 2024.
19. During the investigation, the Authority decided to expedite the slow time page-by-page assessment of the entire content of each box. By this time, due to degradation of some of the original cardboard boxes, the contents of those boxes had been transferred to other boxes; there were now 18 cardboard boxes and 13 large plastic storage boxes. The Authority submitted that four of its officers spent two full days (64 hours) carrying out the page-by-page assessment of 3 of the plastic boxes and 14 of the cardboard boxes. It stopped the exercise at that point.
20. The Authority located another of the e-fits during this process. This e-fit related to part (ii) of the request and was believed to be the e-fit with the reference number D53. The Authority submitted that this e-fit was found within a lever arch folder full of paper. It argued that there was no label or list on or within the folder relating to the e-fit (or e-fits in general) and no indication that it might be there. The Authority commented that it was complete chance this e-fit was located.
21. The Authority argued that, given the time already taken by its officers it was not proportionate to search every piece of paper within the remaining files. The Authority argued that it had been reluctant to move away from the application of section 12 of FOISA during the original appeal. It submitted that it still considered that section 12 of FOISA was an appropriate response to the request given the amount of hard copy information that had to be searched.

Digital case files

22. In his submissions, the Applicant cited five “D” reference numbers and five “X” reference numbers which he believed related to the information that he had requested. The Applicant considered that these reference numbers were related to information stored within the electronic filing system used by the Authority.
23. The Applicant had also cited specific statements which referenced the e-fits in his application, which he submitted, was further evidence of the existence of the e-fits.
24. The Authority explained that a detective officer within its Homicide Governance and Review (HGR) was identified to carry out searches of its Home Office Large Major Enquiry System (HOLMES). The officer was chosen due to their working knowledge of HOLMES, and use of the system being a function of their role within HGR.
25. The Authority confirmed that the “D” and “X” reference numbers cited by the Applicant did refer to the information he had requested. The Authority agreed that it must have held the information in the past; it did not dispute this.

² <https://www.foi.scot/decision-2442024>

26. The Authority submitted that it had searched HOLMES using a number of methods, including using the document (D) and exhibit (X) reference numbers that the Applicant cited in his application. Thereafter, a number of wildcard searches were also carried out to ensure that these electronic searches were comprehensive.
27. The Authority submitted that the information requested was registered on HOLMES, and this demonstrated that it was held by the Authority at some point. The Authority provided the Commissioner with screenshots from HOLMES which showed the D and X reference numbers had been located but, it submitted that there was no information attached to the HOLMES records.
28. The Authority explained that, at the time of the police investigation, documents were not scanned or uploaded into HOLMES; generally, case related information was registered on HOLMES but stored in hard copy within incident rooms. The Authority submitted that HOLMES was not capable of storing digital or electronic copies of all case related material until *circa* 2020; much later than the criminal investigation that is the subject of the request (1994 – 2008).

Information held by others

29. The Authority asked its Kirkwall productions store, the Scottish Courts and Tribunal Service, and the Police Investigation & Review Commissioner to carry out searches for the information.
30. The Authority submitted a nil return from these other locations and organisations.

Records management in legacy forces vs modern day practice

31. The Authority was unable to speak to the practices that existed within the legacy Northern Constabulary police force at the time of the criminal investigation, or the reinvestigation which led to conviction.
32. The Authority noted that the request related to a resolved homicide. The Authority submitted that in 2025, the process for the retention of documents and productions (exhibits) in relation to resolved cases was robust and could withstand scrutiny. It commented that these processes included the issuing of a Procurator Fiscal Release Note (PRN) before the consideration of any items being returned to owners, retained or destroyed.
33. The Authority submitted that, in modern homicide cases, a number of checks and balances were in place in relation to the movement and destruction of items. The process was digitally recorded, a long term record retained, and appeal checks undertaken.

The Applicant's comments on the information captured by his request

34. The Applicant submitted evidence to support his view that the e-fits existed and were held by the Authority. This included the D and X reference numbers and a link to paragraph 8 of the [appeal court judgment](https://vlex.co.uk/vid/ross-v-hm-advocate-806074029)³, which mentions one of the e-fits. The Applicant also provided details of specific statements taken by the Authority during the criminal investigation which he believed made reference to the information he had requested.
35. The Applicant argued that he found it highly unlikely that evidence from a murder case would be logged multiple times, only then to be lost.

³ <https://vlex.co.uk/vid/ross-v-hm-advocate-806074029>

He noted that it was clear, from media coverage alone, that the convicted person in the criminal case maintained his innocence and intended to challenge his conviction. He argued that the e-fits, that were the subject of his request, were examined and logged in 2006 as part of a cold case review (prior to trial in 2008) and he considered that, by that time, the Authority would have had rigorous procedures in place to safeguard evidence.

36. It was the Applicant's view that the Authority had failed to search all of its records from the murder case. The Applicant's understanding was that all of the e-fits were created in June 1994 and that at least one, possibly all, of those e-fits was created at the Authority's Identification Bureau in Inverness. The Applicant suggested that it was possible that original copies of these e-fits were kept among the Identification Bureau records rather than amongst the murder investigation files. The Applicant provided the Commissioner with the name of the e-fit operator who, he understood, had created at least one of the e-fits.
37. The Applicant speculated that the information could have been destroyed. He commented that, if this was the case, surely basic records management policy would have required that this destruction process itself be recorded with details of the date of destruction, who authorised destruction and the reason for destruction.

The Commissioner's view on whether the Authority holds the information

38. It is a matter of fact that the Authority identified one additional e-fit within scope of part (ii) of the request during its searches of hard copy files.
39. In these circumstances, the Commissioner must find that the Authority was not entitled to give notice under section 17(1) of FOISA that it did not hold any information relating to part (ii) of the request.
40. As the Authority failed to disclose information that fell within the scope of part (ii) of the Applicant's request following its review, the Commissioner must find that the Authority failed to comply with section 1(1) of FOISA, in its handling of this part of the request.
41. The Commissioner is satisfied that all of the hard copy information relating to the request has been collated by the Authority in Glasgow and that it resides in the plastic and cardboard boxes described by the Authority. The Commissioner notes the Applicant's comments about the e-fits being generated in Inverness and his concerns that the Inverness records should be searched for the e-fits. The Authority submitted that there was no current knowledge of how e-fits were created by legacy forces prior to Police Scotland, other than to say each legacy force had its own procedures for doing so. However, whilst acknowledging that the e-fits were created in Inverness, the Commissioner accepts the Authority's arguments that all of the hard copy case information was solely held in Kirkwall (not Inverness) and that it was moved to Glasgow, via Inverness to facilitate ease of searching.
42. The Commissioner has considered the submissions of both parties carefully and, as part of his investigation, he carried out a site visit to the Authority for the purposes of assessing the difficulties in searching for the information captured by the request. Given the specific reference numbers provided by the Applicant, the Commissioner was concerned that the Authority seemed unable to identify all of the e-fits and he wanted to better understand how the information was stored, and how searches could be maximised to locate the information.
43. During his site visit, the Commissioner observed the boxes of hard copy case files, which comprised 18 cardboard boxes and 13 large plastic storage boxes. He viewed the original inventory of one of the boxes and cross-referenced this with the contents of the specified box and it was clear that the e-fit listed on the inventory was not in the location listed.

It was evident then, that identifying the e-fits was not as simple as cross-referencing the inventories to each box. Thorough searches of each box would be required.

44. In principle, a search for e-fits should be quite different from a search for written information; an e-fit is an image of a person, generally the head and shoulders of a person. The Commissioner considers that an image, or images, should be readily identifiable in a quick search through hard copy information.
45. To this end, the Commissioner and two of his staff carried out a sample search during the site visit of two large plastic boxes; one contained a lot of paper files (house to house forms) (Box 10) and one contained and was labelled "Productions" (Box 13).
 - (i) A search of Box 10 took 3 persons (each) 22 minutes = a total of 66 minutes
 - (ii) A search of Box 13 took 3 persons (each) 12 minutes = a total of 36 minutes. However, this search was incomplete as there were some CD files and VHS tapes which were not reviewed as the technology to access these items was not readily available. One VHS tape was labelled "North Tonight" (presumably one or more news bulletins, which may have broadcast copies of the e-fits), and one CD was labelled "Operation Azure" (which may have held e-copies of key documentation, including e-fits).

Excluding the digital and tape material identified above, this sample search demonstrated that it was possible to search through the hard copy information in the boxes, in a reasonable timeframe.

46. The Commissioner noted that the ring binder in which the second e-fit was found appeared to be a folder of key evidence relating to the case. Authority staff were unable to determine its purpose. The folder wasn't externally labelled or marked and the documents were filed and indexed in a way that neatly summarised key elements of the case. The Commissioner considers that it is likely that the folder was made up of copies of documents as opposed to being original documents. The e-fit found was filed alongside the statement of the witness whose description resulted in the creation of that e-fit.

While the Authority is correct in stating that the original inventory did not indicate that a copy of the e-fit would have been contained within that folder, its location beside the witness statement, in that particular folder, was not wholly out of the ordinary, albeit it was not signposted.

47. The Commissioner also notes that a proper search strategy had not been followed. Some of the boxes seemed more likely to contain relevant information than others and, ordinarily, had the searches been focused solely on finding the e-fits, it may have been useful to search these boxes first. For example, the box he searched with door to door records (Box 10) was unlikely to contain an e-fit, whereas the box which contained Productions (Box 13) was more likely.
48. From the Authority's submissions, and from observations during the site visit, it is clear that the Authority was carrying out a time-consuming page by page assessment of the boxes for other operational reasons rather than specifically carrying out searches for the e-fits.

While this is clearly a worthwhile exercise for the Authority (and is welcomed by the Commissioner), a detailed page by page assessment and cataloguing of the information is not necessary to establish whether the remaining e-fits are held, or not. The Applicant should not be penalised by the time taken for the Authority to carry out this exercise.

49. In all these circumstances, the Commissioner is not persuaded that the Authority's searches for the e-fits were reasonable or proportionate. He notes that the Authority's searches were not restricted solely to locating the e-fits, instead they were focused on cataloguing the contents of each box.
50. Taking into account the two plastic boxes he has searched, along with the boxes already searched by the Authority, the Commissioner notes that there remains 4 cardboard boxes and 8 plastic storage boxes that have yet to be searched. As the Commissioner's team took 102 minutes (in total) to search two of the plastic storage boxes, the Commissioner is satisfied that a fingertip search of all the remaining boxes is reasonable and is required before the Authority can state, with any certainty, that it does not hold the information requested.
51. The Commissioner requires the Authority to carry out searches of all of the material, contained within the remaining boxes for the information captured by the Applicant's request.
52. The Commissioner must comment that he is unimpressed with the approach that the Authority has taken to searching in both Decision 244/2024 and in this one.
 - (i) Throughout this investigation he has been struck by a lack of effort in pursuing lines of broader inquiry. FOISA aside, he finds it extraordinary that the Authority is prepared to so readily accept that identification evidence in a murder case (albeit a solved one) is simply lost. Under FOISA, it is immaterial whether the Authority considers the criminal case to be closed or not, the simple fact is that the case records require to be searched in a thorough and proportionate manner.
 - (ii) The discovery of case productions in Box 13 by the Commissioner was clearly a surprise to staff, confirming to him that a proper search strategy had not been followed. The use of a specialist police search team, as suggested by the Commissioner earlier in the investigation, would have completed the task thoroughly within a few hours and under the cost threshold, yet was deemed by the Authority as "disproportionate".
 - (iii) The Commissioner finds it bewildering that digital media and briefing materials were not (and have not yet been) searched for "e-fits". The Commissioner acknowledges the Authority staff's position that video players and CD disk-drives are not commonplace in modern police offices. However, as the Authority often deals with case files of some age, he was disappointed that no attempt had been made to access these materials using the Authority's considerable digital evidence capabilities. He is also concerned that Authority staff seemed surprised by his expectation that these materials required to be viewed and searched. He would remind all authorities that recorded information includes information that may be held on older or obsolete storage media.

- (iv) The Commissioner questions the Authority's decision to blame one of its legacy forces for the poor cataloguing of papers, particularly when the integrity of the previous filing system had been destroyed by the re-boxing process. Furthermore, he notes that the Police Service of Scotland was established in 2013. He considers that if the Authority had concerns about the practices of its legacy forces prior to its formation, it has had 12 years to address them.

53. The Commissioner notes that this is the second time he has sent this request back to the Authority and as such would hope that the search task now be concluded as quickly as practicable.

Decision

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

Specifically, the Authority failed to comply with section 1(1) of FOISA by;

- failing to disclose information captured by part (ii) of the request, and
- failing to satisfy the Commissioner that it did not hold any other information relevant to the Applicant's request.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches of all material within the previously unsearched boxes (as of 28 May 2025) for any remaining information captured by the request, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **25 August 2025**.

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.

Enforcement

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

David Hamilton

Scottish Information Commissioner

10 July 2025