



Scottish Information
Commissioner
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Decision Notice 180/2025

Whether an individual had contacted the Authority prior to her death

Applicant: The Applicant

Authority: Chief Constable of the Police Service of Scotland

Case Ref: 202300844

Summary

The Applicant asked the Authority for information regarding whether his mother had contacted the Authority in the months leading up to her death. The Authority refused to confirm or deny whether the information existed or was held by it. The Commissioner accepted that it would not be in the public interest for the Authority to reveal whether the requested information existed or was held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 18(1) (Further provision as respects response to request); 35(1)(a) and (b) (Law enforcement) 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 15 March 2023, the Applicant made a request for information to the Authority. He explained that he was seeking information regarding whether his mother had contacted the Authority in the months leading up to her death in 2019 (and, if she had, on how many occasions). He said that he had evidence his mother had been harassed, and he was determined to find out if she had raised these concerns with the Authority.

2. The Authority responded on 28 March 2023. It refused to confirm or deny whether it held the requested information, or whether the information existed and it applied section 18(1) of FOISA, in conjunction with sections 34(1) and 35(1)(a) and (b) of FOISA.
3. On 5 May 2023, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the Authority's decision and he asked the Authority to undertake a review.
4. The Authority notified the Applicant of the outcome of its review on 25 May 2023, which fully upheld its original decision. However, it clarified it was applying section 18 of FOISA in conjunction with section 34(1)(b) specifically (in addition to the exemptions section 35(1)(a) and (b)).
5. On 4 July 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority's review because he had simply asked the Authority to clarify if his mother had contacted the Authority in the lead up to her death by suicide. He stressed that he had not asked the Authority for detailed information, but simply to know if his mother had contacted the Authority (and, if she had, on how many occasions).

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 19 July 2023, 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. The Authority provided its comments.
8. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

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

Section 18 of FOISA - "neither confirm nor deny"

10. Section 18 of FOISA allows Scottish public authorities to refuse to reveal whether they hold information (or whether it exists) in the following limited circumstances:
 - (i) a request has been made to the authority for information which may or may not be held by the authority;
 - (ii) if the information were held by the authority (and it need not be), the authority could give a refusal notice under section 16(1) of FOISA, on the basis that the information was exempt information by virtue of any of the exemptions in sections 28 to 35, 38, 39(1) or 41 of FOISA;
 - (iii) the authority considers that to reveal whether the information exists or is held would be contrary to the public interest.

11. Where a public authority has chosen to rely on section 18(1), the Commissioner must therefore establish whether the authority is justified in stating that to reveal whether the information exists or is held would be contrary to the public interest. He must also establish whether, if the information existed and was held by the public authority, the authority would be justified in refusing to disclose the information by virtue of any of the exemptions listed in section 18(1) and cited by the authority.
12. In any case where section 18(1) of FOISA is under consideration, the Commissioner must ensure that his decision does not confirm one way or the other whether the information requested exists or is held by the authority. This means he is unable to comment in any detail, in this case, on the Authority's reliance on any of the exemptions referred to, or on other matters that could have the effect of indicating whether the information existed or was held by the Authority.
13. It is not sufficient to claim that one or more of the relevant exemptions applies. Section 18(1) makes it clear that the authority must be able to give a refusal notice under section 16(1), on the basis that any relevant information, if held, would be exempt information under one or more of the listed exemptions.
14. In this case, the Authority submitted that, if it held any information falling within the scope of the request, it would be exempt from disclosure under section 34(1) and section 35(1)(a) and (b) of FOISA. The Commissioner will first consider the exemptions in section 35(1) of FOISA.

Section 35(1)(a) and (b) - Law enforcement

15. Section 35(1)(a) of FOISA exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. Section 35(1)(b) exempts information if its disclosure would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders. There is likely to be a considerable overlap between information relating to the apprehension or prosecution of offenders and that relating to the prevention or detection of crime.
16. These are qualified exemptions, which are subject to the public interest test in section 2(1)(b) of FOISA.
17. As the Commissioner's guidance on section 35(1)(a) indicates, the term "prevention or detection of crime" is wide-ranging, encompassing actions taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for committing a crime. This could mean activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and prevention.
18. In relation to section 35(1)(b), the Commissioner's guidance states that there is likely to be a considerable overlap between information relating to "the apprehension or prosecution of offenders" and that relating to "the prevention or detection of crime". He considers section 35(1)(b) relates to all aspects of the process of identifying, arresting or prosecuting those suspected of being responsible for criminal activity. Again, this term could refer to the apprehension or prosecution of specific offenders, or to more general techniques (such as the investigative processes used).
19. There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers that the authority would have to identify harm of real and demonstrable significance. The harm would also have to be at least likely, more than simply a remote possibility.

The Applicant's submissions

20. As part of his request, the Applicant said that he had twice tried to request information from the Authority on the contact his mother had made with the Authority in the months leading up to her death in 2019. He said that he should not be prevented from knowing if his mother had contacted the Authority (and, if she had, on how many occasions).
21. In his application to the Commissioner, the Applicant explained that he had simply asked the Authority to clarify if his mother had contacted the Authority in the lead up to her death. He stressed that he had not asked the Authority for detailed information, but simply to know if his mother had contacted the Authority (and, if she had, on how many occasions).

The Authority's submissions

22. The Authority submitted that to confirm publicly whether a named individual had made contact with the Authority - even if that individual was deceased - would significantly undermine the trust and confidence that the general public has in the Authority to process their personal data.
23. The Authority recognised how frustrating a response in terms of section 18 of FOISA would be to the Applicant. However, it considered that to confirm or deny whether the information requested existed or was held (even by exempting it from disclosure) would, in itself, cause significant harm both to individuals and to the role of the Authority.
24. The Authority argued that outside of the criminal justice process individuals have no "absolutely no expectation" that information passed to the Authority, or the fact they have even been in touch with the Authority, will be publicly disclosed. It considered that this expectation extended to individuals upon their death – and irrespective of the identity or motivations of the requester. (The Authority was clear that it was not casting doubt on the integrity or motivations of the Applicant.)
25. The Authority said that in responding to such information requests under FOISA, it had to be mindful not only of the potential prejudice that may arise as a result of disclosure of the particular information requested (if it existed and was held), but also of the wider considerations in terms of the message such a disclosure would send to the public generally.
26. The Authority concluded that disclosure of the information requested (if it existed and was held) would substantially prejudice its ability to detect crime and apprehend offenders as it would result in a loss of invaluable co-operation and provision of information.

The Commissioner's view

27. When considering whether a public authority has the right neither to confirm nor deny whether information exists or is held, the Commissioner must consider the information which could theoretically be held within the scope of the request.
28. In this case, the request is specific: it sought confirmation of contact with the Authority by the Applicant's mother in the months leading up to her death in 2019 (and, if she had, on how many occasions).
29. Having considered the terms of the request and submissions from both the Applicant and the Authority, the Commissioner is satisfied that any information held by the Authority and falling within the scope of the Applicant's request would (if it existed) be held for purposes relating to the prevention or detection of crime and/or the apprehension or prosecution of offenders and would therefore fall within the exemptions in section 35(1)(a) and (b) of FOISA.

30. In all the circumstances, the Commissioner is satisfied that disclosure of any relevant information (if it existed and was held) would carry with it sufficient risk of substantial prejudice for the exemptions to apply.
31. It is important to bear in mind that disclosure under FOISA is disclosure to the world at large and not just to the person who asks for the information. The Commissioner accepts that public disclosure of information of this nature would substantially prejudice the ability of the Authority to prevent and detect crime and apprehend offenders as it would result in a loss of invaluable co-operation/provision of information. Specifically, he considers that disclosure of the information requested (if it existed and was held) would erode the general principles of trust and confidentiality the public expect of the Authority in handling their personal data.
32. The Commissioner accepts, therefore, that (assuming the information requested by the Applicant existed and was held by it) the Authority would have been entitled to respond to the Applicant's request by applying either exemption (or both exemptions) in section 35(1)(a) and (b) of FOISA.
33. The Commissioner is now required to go on to consider the public interest test in section 2(1)(b) in relation to this set of information or whether, in terms of section 18(1) of FOISA, revealing whether the information exists or is held would be contrary to the public interest.

The public interest test – section 2(1)(b)

34. As the Commissioner has found that the exemptions in section 35(1)(a) and (b) would apply to the information covered by the request (if it existed and was held), he is required to consider the public interest test in section 2(1)(b) of FOISA. He has therefore considered whether, in all the circumstances of the case, the public interest in disclosing the information would be outweighed by the public interest in maintaining the exemptions in section 35(1)(a) and (b) of FOISA.
35. The "public interest" is not defined in FOISA but has been described as "something which is of serious concern and benefit to the public", not merely something of individual interest. The "public interest" does not mean "of interest to the public" but "in the interest of the public", i.e. disclosure must serve the interests of the public.
36. The Applicant said that his mother had died by suicide, and she had endured a period of acute suffering prior to her death. He explained that he believed that she had been harassed in the lead up to her death and he wanted to establish whether she had made a report of this nature to the Authority.
37. The Applicant submitted it was in the public interest for this information (if it existed and was held) to be disclosed because suicide and mental health issues were on the rise and the systems in place to deal with such issues were inadequate. He said that getting the complete picture of events in the lead up to the death of his mother would also be of benefit to the Authority and other institutions as society grappled with creating appropriate mechanisms to deal with these issues.
38. The Authority acknowledged that the Applicant had a genuine interest in the information requested. However, it said it had to balance this interest with the wider public interest considerations of protecting the statutory role of the Authority and preserving the relationship between the Authority and the public. As such, the Authority maintained that confirming whether the information requested existed or was held would be contrary to the public interest.

39. The Commissioner has considered carefully where the public interest might lie here. He accepts there is a clear public interest in ensuring the Authority can continue to investigate crime and protect the public. For it to do so requires a degree of trust and confidentiality, as suggested above.
40. The Commissioner accepts that there may be a degree of public interest in a person (in this case, the Applicant) knowing if his mother had contact with the Authority in respect of a concern about harassment, assuming any relevant information existed and was held by the Authority. It is less likely, however, that this could extend to the wider public, given the specific nature of the request. The Commissioner is also not persuaded that there would be no harm in disclosing the information requested (if it existed and was held) and is more inclined to accept the Authority's submissions as to harm, which would clearly not be in the public interest.
41. On balance, the Commissioner is satisfied that the Authority could have given a refusal notice under section 16(1) of FOISA here, on the basis that the information requested by the Applicant's (if it existed and was held) would have been exempt from disclosure under section 35(1)(a) and (b).
42. The Commissioner is not required, therefore, to go on to consider whether any relevant information would also be exempt from disclosure under section 34(1)(b) of FOISA. However, he must still consider whether revealing whether the information existed and was held would have been contrary to the public interest.

The public interest test – section 18(1)

43. Having accepted that the Authority could give a refusal notice under section 16(1) of FOISA, the Commissioner must go on to consider whether the Authority was entitled to conclude that it would be contrary to the public interest to reveal whether the information existed or was held.
44. The Commissioner has taken into account the public interest arguments made by the Applicant in paragraphs 35 and 36 above.
45. The Authority's public interest submissions are also integrally connected with those advanced on the application of the section 35 exemptions (above). Specifically, the Authority considered that:
- to confirm or deny whether the information requested existed or was held would, in itself, cause significant harm both to individuals and to the role of the Authority, particularly in terms of protecting the Authority's statutory role and preserving the relationship between the Authority and the public
 - outside of the criminal justice process, individuals have no "absolutely no expectation" that information passed to the Authority, or the fact they have even been in touch with the Authority, will be publicly disclosed.
46. For these reasons (and those previously stated), the Authority maintained its position that to confirm or deny whether the information requested existed or was held would be contrary to the public interest.
47. The Commissioner is satisfied that revealing (to the public, not solely to the Applicant) whether or not the Authority held the requested information, or whether it existed, would compromise the relationship between the Authority and the public, as discussed above.

48. In the circumstances, the Commissioner is satisfied that this would be contrary to the public interest. He accepts that there is a strong public interest in protecting the privacy of individuals in relation to their dealings with the Authority.
49. The Authority was therefore entitled to refuse to confirm or deny, in line with section 18(1) of FOISA, whether it held the information requested by the Applicant, or whether that information existed.

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.

David Hamilton

Scottish Information Commissioner

15 July 2025