

OFFICIAL



Scottish Information  
Commissioner  
*it's public knowledge*

Our Ref: 202101062

Your Ref: IM-FOI-2021-1635

Ms Sheena Brennan  
Information Manager (Disclosure)  
Police Service of Scotland  
(Sent by email to:

[REDACTED]  
c.c. [foi@scotland.pnn.police.uk](mailto:foi@scotland.pnn.police.uk))

21 March 2022

Dear Ms Brennan

**Application for Decision by the Scottish Information Commissioner**

**Applicant: Mr [REDACTED]**

I refer to previous correspondence between you and our Validation Officer in connection with Mr [REDACTED] request for information relating to documents marked as “not disclosable under FOISA”. I am the investigating officer for this case. If you have any queries during the investigation, please contact me on [amills@itspublicknowledge.info](mailto:amills@itspublicknowledge.info). Our office is currently closed and all staff are working remotely.

I would be grateful if you would now provide me with any comments you would like to make on Mr [REDACTED] application, and also provide the following information or answers to the questions below, to enable me to make progress with the investigation.

**Please let me have your response by 4 April 2022. If no substantive response (or notification of any reasons for delay in responding) is received by this date, it will be assumed that you have no submissions to make and the Commissioner may choose to decide the case accordingly. If you are unable to respond within this timescale because of the effects of the COVID-19 pandemic on your authority, let me know as soon as possible.**

If you wish to rely on arguments previously made, either in the initial response or in the review outcome, please let me know – they do not have to be restated.

Please provide me with any submissions you may wish to make in support of Police Scotland’s position. I note that Mr [REDACTED] believes that because the date parameters he is asking for are short, that he is of the view that Police Scotland should be able to conduct an electronic search based just around he dates. It would be helpful if you could explain in more detail why this would not be a feasible option (e.g. would physical searches of paper documents also be required/ what other search terms apart from the date period would need to be used etc.)

The Commissioner has issued guidance for Scottish Public Authorities on what to expect during an investigation carried out under FOISA or the EIRs. I strongly recommend that you read the guidance before responding to this letter if you have not already done so. The guidance is available on our website:

<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=8370&sID=105>.

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Please note, in particular, the section on exemptions and the standard of submissions required by the Commissioner.

**It is your responsibility as a public authority to justify your response to the applicant's information request and request for review. If your submissions fail to provide enough reasoning or evidence, the Commissioner may order you to release the information or to reconsider your response to the request.**

The Commissioner will never share any of the withheld information with the applicant. However, he may decide to share some of the information from your submission to allow the applicant to comment on relevant matters, where this is necessary to help him reach a decision on the case. Similarly, where the Commissioner considers it necessary, the contents of the submission may be referred to in his decision on the case.

If you consider that any part of the submission should not be shared in this way, please let me know, explaining your reasons (with reference to the exemptions in FOISA. While your views will be taken into account, the final decision on whether information will be disclosed (to the applicant or in the decision) will be the Commissioner's.

If any information relevant to the case comes to light during the investigation, it is your responsibility to let me know as soon as possible. This is particularly important if you discover information covered by the request.

Sometimes it is possible to resolve a case without requiring a decision from the Commissioner, if the applicant is willing to withdraw their application for a decision. I would be glad to hear any suggestions you might have for resolution. If changes in circumstances create an opportunity for the case to be resolved, or otherwise affect the need for a decision, please let me know as soon as possible.

I would be grateful if you could please quote the case reference number in any future correspondence.

Yours sincerely

**Avril Mills**  
**Freedom of Information Officer**

Daren Fitzhenry, Scottish Information Commissioner  
Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS  
T: 01334 464610 F: 01334 464611 E: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info) W: [itspublicknowledge.info](http://itspublicknowledge.info)

**OFFICIAL**

Date: 5 April 2022  
Our Ref: IM-FOI-2021-1635  
Your Ref: 202101062



Avril Mills  
Freedom of Information Officer  
[amills@itspublicknowledge.info](mailto:amills@itspublicknowledge.info)

Claire Sturrock  
Disclosure Manager

Dear Avril,

### FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 - OSIC APPEAL

I refer to your email of 21 March 2022 seeking submissions from Police Scotland in relation to the above referenced case.

I also refer to your subsequent email granting an extension to the deadline which was very much appreciated.

***Please provide me with any submissions you may wish to make in support of Police Scotland's position. I note that Mr [REDACTED] believes that because the date parameters he is asking for are short, that he is of the view that Police Scotland should be able to conduct an electronic search based just around the dates. It would be helpful if you could explain in more detail why this would not be a feasible option (e.g. would physical searches of paper documents also be required/ what other search terms apart from the date period would need to be used etc.)***

It's difficult to know where to begin in explaining the difficulties with Mr [REDACTED] request.

I would stress that as well as the request and review responses which have been shared with you, we also engaged with Mr [REDACTED] to suggest that he clarify what he meant by 'document' and whether he wanted to specify an exact phrase for any searches. He did not come back to us on either point.

As it stands, he requested 'every document' which met set criteria of being 'created' within a certain date range and 'marked as' (not further described) not disclosable under FOI.

In our responses to Mr [REDACTED] we focused on explaining the difficulties with electronic searches but to be frank, in its current format the request covers hard copy 'documents' and I doubt if even the hard copy documents within one full filing cabinet could be individually assessed against his criteria within the £600 limit.

On top of that, as was explained to him, we are a large organisation with more than 20,000 officers and staff, each of whom have an individual email account and a 'personal' drive.

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We also have a large number of shared email accounts and shared drive areas, the latter accounting for the bulk of our records.

I can provide the following information from a snapshot at the end of March to illustrate:

Shared Drives - 81.6 terabytes of data, 13,977,695 folders containing 115,526,524 individual files.

Personal Drives - 37.6 terabytes of data, 6,453,274 folders containing 55,600,193 individual files.

Of course, electronically held data can be searched electronically but what Mr [REDACTED] seems to have difficulty grasping is that even with a restricted 'creation date' range, the *entire IT estate* still requires to be searched.

It's not like documents held by Police Scotland are contained within folders according to the date on which they were created and we would only have to search one location.

In that sense, this request is no different from the other one he submitted with no date range which has not been the subject of an appeal.

Our IT colleagues did attempt a few searches which kept crashing our servers, necessitating smaller and smaller sections to be done one at a time.

They were down to dividing the shared drive estate into around 30 sections, with searches still crashing/ running overnight etc when we advised them to stop, bearing in mind the fact that the request invokes section 12 even when considering hard copy information alone.

Aside from those difficulties, email searches would have to be carried out on an account by account basis.

I can see absolutely no way in which Mr [REDACTED] request can be brought within the cost limit in its current format.

We have advised Mr [REDACTED] that there is no Police Scotland policy of marking documents in this way, there would be no 'standard' text that would appear on them and that even in the event a document was so marked, it would still be considered for disclosure in terms of FOI - and provided if no exemptions applied.

Please let us know if you require any further assistance.

**From:** [Brennan, Sheena](#)  
**To:** [Sturrock, Claire](#)  
**Subject:** FW: Notification of new application for decision by the Scottish Information Commissioner (our ref: 202101062) [OFFICIAL]  
**Date:** 07 October 2021 13:18:24  
**Attachments:** [Application\\_202101062.pdf](#)

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## OFFICIAL

This one again!

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**From:** Pauline Keith [mailto:pkeith@itspublicknowledge.info]  
**Sent:** 07 October 2021 12:37  
**To:** Brennan, Sheena [REDACTED]  
**Cc:** FOI <foi@scotland.pnn.police.uk>  
**Subject:** Notification of new application for decision by the Scottish Information Commissioner (our ref: 202101062)

Our Ref        202101062

Your Ref      IM-FOI-2021-1635

7 October 2021

Dear Sheena

### **Application for Decision by the Scottish Information Commissioner**

**Applicant: Mr** [REDACTED]

Mr [REDACTED] has applied for a decision from the Scottish Information Commissioner as he is dissatisfied with the way in which Police Service of Scotland (Police Scotland) handled his request for information.

The request was dated 8 July 2021 and asked for:

*“Every document held by Police Scotland with a creation date between July 1, 2021*

*and July 7, 2021, which is marked as not disclosable under FOISA.”*

The application (a copy of which is attached) appears to be valid for the purposes of section 47 of the Freedom of Information (Scotland) Act 2002. Therefore, the Commissioner is required to investigate your authority’s handling of the request.

The case will now be allocated to an investigating officer. The investigating officer will then contact you and seek your comments on the application. This will be your opportunity to provide detailed submissions on your authority’s handling of the request.

The Commissioner has issued guidance for Scottish Public Authorities on what to expect during an investigation carried out under FOISA or the EIRs. I strongly recommend that you read the guidance before responding to this letter if you have not already done so. The guidance is available on our website:

<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=8370&sID=105>

I can provide a printed copy if you prefer. Please note, in particular, the section on exemptions and the standard of submissions required by the Commissioner.

Yours sincerely

**Pauline Keith**

**Validation Officer**

**Attached:** Application

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**Scottish Information Commissioner**  
Kinburn Castle, Doubledykes Road  
St Andrews, KY16 9DS

Tel: 01334 464610  
Fax: 01334 464611  
Email: [pkeith@itspublicknowledge.info](mailto:pkeith@itspublicknowledge.info)  
Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)  
Twitter: [@FOIScotland](https://twitter.com/FOIScotland)

Scottish Information Commissioner   
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**From:** [Avril Mills](#)  
**To:** [Brennan, Sheena](#)  
**Cc:** [FOI](#)  
**Subject:** Application to the Commissioner ref. 202101062  
**Date:** 21 March 2022 13:51:53  
**Attachments:** [2022\\_03\\_21 Letter to Police Scotland.docx](#)

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Dear Sheena

Please find attached a letter in respect of the above appeal.

Kind regards

Avril

**Avril Mills**  
**Freedom of Information Officer**  
**Investigator**

-----  
The Office of the Scottish Information Commissioner  
Kinburn Castle,  
Doubledykes Road,  
St Andrews, KY16 9DS

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**From:** [Brennan, Sheena](#)  
**To:** [Avril Mills](#)  
**Cc:** [Sturrock, Claire](#)  
**Subject:** RE: Application to the Commissioner ref. 202101062 [OFFICIAL]  
**Date:** 28 March 2022 11:07:51

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## OFFICIAL

That's excellent Avril - really appreciated

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**From:** Avril Mills [mailto:[amills@itspublicknowledge.info](mailto:amills@itspublicknowledge.info)]  
**Sent:** 28 March 2022 10:16  
**To:** Brennan, Sheena [REDACTED]  
**Subject:** RE: Application to the Commissioner ref. 202101062 [OFFICIAL]

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Hi Sheena

I will extend the date for response to 11 April 2022. Please let me have your response by then.

Kind regards

Avril

**Avril Mills**  
**Freedom of Information Officer**  
**Investigator**

-----  
The Office of the Scottish Information Commissioner  
Kinburn Castle,  
Doubledykes Road,  
St Andrews, KY16 9DS

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**From:** Brennan, Sheena [REDACTED]  
**Sent:** 28 March 2022 09:46  
**To:** Avril Mills <[amills@itspublicknowledge.info](mailto:amills@itspublicknowledge.info)>  
**Cc:** FOI <[foi@scotland.police.uk](mailto:foi@scotland.police.uk)>; Sturrock, Claire [REDACTED]  
**Subject:** RE: Application to the Commissioner ref. 202101062 [OFFICIAL]

## OFFICIAL

Good morning Avril

I'm afraid I am just back from leave today – as is Claire who was also on leave last week. As such, I would be grateful if you could consider extending the response time for this request.

Many thanks

Sheena Brennan  
Information Manager (Disclosure)  
Police Scotland, Clyde Gateway  
2 French Street  
Dalmarnock  
Glasgow  
G40 4EH  
Mobile [REDACTED]

**Email:** [REDACTED]  
**Website:** [www.scotland.police.uk](http://www.scotland.police.uk)  
**Twitter:** @policescotland  
**Facebook:** [www.facebook.com/policescotland](http://www.facebook.com/policescotland)

\*\* Please note - I am working from home and not available on Fridays \*\*

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**From:** Avril Mills [<mailto:amills@itspublicknowledge.info>]

**Sent:** 21 March 2022 13:51

**To:** Brennan, Sheena [REDACTED]

**Cc:** FOI <[foi@scotland.police.uk](mailto:foi@scotland.police.uk)>

**Subject:** Application to the Commissioner ref. 202101062

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Dear Sheena

Please find attached a letter in respect of the above appeal.

Kind regards

Avril

**Avril Mills**  
**Freedom of Information Officer**  
**Investigator**

---

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Kinburn Castle,  
Doubledykes Road,  
St Andrews, KY16 9DS

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**From:** [Sturrock, Claire](#)  
**To:** [REDACTED]  
**Subject:** RE: Help with a FOI [OFFICIAL]  
**Date:** 05 April 2022 15:49:00

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**OFFICIAL**

Thanks so much [REDACTED] - that's ideal.

I've pretty much said we couldn't even search one filing cabinet of hard copies for £600 so that should be enough but just want to throw whatever I can at it!

Much appreciated.

Claire

**Claire Sturrock**  
**Disclosure Manager - North**  
**Information Management**

(Currently working from home Monday to Friday)

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**From:** [REDACTED]  
**Sent:** 05 April 2022 15:47  
**To:** Sturrock, Claire [REDACTED]  
**Subject:** RE: Help with a FOI [OFFICIAL]

**OFFICIAL**

Hi Claire

All good thanks, hope all is well with you.

Yes we've got this handy and the figures support your point. In reality the figures for shared drives will be even higher as there are specialist areas set up to support systems and other areas that are beyond the standard div/dept shared drive setup that the reporting tool doesn't have access to.

As of end of March 2022 figures for SPNet shared drives and personal drives are as follows (note that the 'users' for personal drives has been rounded to nearest 1,000)

**SPNet Shared Drives**

Size	Folders	Files
81.60 TB	13,977,695	115,526,524

**Personal Drives**

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Users	Size	Folders	Files
25,000.00	37.56 TB	6,453,274	55,600,193

Hope this assists

█

█

Information Assurance Officer  
Chief Data Office  
Police Scotland

**Mobile:** █

**Email:** █

**Team email:** [Information.Assurance@scotland.police.uk](mailto:Information.Assurance@scotland.police.uk)

**Records Management enquiries:** [Records.Management@scotland.police.uk](mailto:Records.Management@scotland.police.uk)

**Website:** <http://www.scotland.police.uk/>

**Twitter:** @policescotland

**Facebook:** [www.facebook.com/policescotland](http://www.facebook.com/policescotland)

---

**From:** Sturrock, Claire  
**Sent:** 05 April 2022 14:50  
**To:** █  
**Subject:** Help with a FOI [OFFICIAL]

## OFFICIAL

Hi █

Hope you're well.

I'm looking to see if you have any data to hand I could use to illustrate my point in an FOI appeal.

It's a no brainer but would maybe do with a bit of context in terms of either the size of our shared drive/ personal drive areas and/ or the volume of folders/ files.

We have an applicant who's asked for 'documents' which include a certain phrase and were created between 1&7 July 2021.

As is stands that includes hard copy documents, individual email accounts etc which is enough in itself to invoke excess cost but I'm just looking for some scary numbers to illustrate the scale of our ICT estate.

When we had the request initially ICT did try to do some searches for us but even looking at small portions of the estate, the searches kept crashing etc.

Just wondered if you had something to hand that says we have xx terabytes of unstructured data held across shared/ personal drives or millions (billions?) of individual files etc.

If it's a lot of work please don't worry about it - just though with that drive analyser tool you guys have that you might have had something.

Claire

**Claire Sturrock**  
**Disclosure Manager - North**  
**Information Management**



**(Currently working from home Monday to Friday)**

**From:** [Sturrock, Claire](#)  
**To:** "[Avril Mills](#)"  
**Subject:** RE: Application to the Commissioner ref. 202101062 [OFFICIAL]  
**Date:** 05 April 2022 16:09:00  
**Attachments:** [2022\\_04\\_05 Submissions.pdf](#)

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## OFFICIAL

Hi Avril,

Please see attached Police Scotland submissions in respect of this case.

Do let me know if you require anything else.

Claire

**Claire Sturrock**  
**Disclosure Manager - North**  
**Information Management**

**(Currently working from home Monday to Friday)**

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**From:** Avril Mills [mailto:[amills@itspublicknowledge.info](mailto:amills@itspublicknowledge.info)]  
**Sent:** 21 March 2022 13:51  
**To:** Brennan, Sheena [REDACTED]  
**Cc:** FOI <[foi@scotland.police.uk](mailto:foi@scotland.police.uk)>  
**Subject:** Application to the Commissioner ref. 202101062

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Dear Sheena

Please find attached a letter in respect of the above appeal.

Kind regards

Avril

**Avril Mills**  
**Freedom of Information Officer**  
**Investigator**

-----  
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Kinburn Castle,

Doubledykes Road,  
St Andrews, KY16 9DS

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**From:** [Andrea McEwan](#)  
**To:** [Sturrock, Claire](#)  
**Cc:** [FOI](#)  
**Subject:** Decision 078/2022 issued - Mr [REDACTED] - PA Ref: IM-FOI-2021-1635 and OSIC Ref: 202101062  
**Date:** 20 July 2022 11:08:11  
**Attachments:** [Decision Notice 078-2022.pdf](#)  
[Decision 078-2022 Letter to Police Service of Scotland.pdf](#)

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**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms Sturrock

Attached is a letter and decision from the Scottish Information Commissioner in relation to an application made by Mr [REDACTED]. Please bring both to the attention of Mr Iain Livingstone QPM, Chief Constable and acknowledge receipt.

If you have any questions about the letter or decision, please contact Colin MacFadyen on [cmacfadyen@itspublicknowledge.info](mailto:cmacfadyen@itspublicknowledge.info).

Yours sincerely

Andrea

**Andrea McEwan**  
**Enforcement Team Support Assistant**

---

**Scottish Information Commissioner**  
Kinburn Castle, Doubledykes Road  
St Andrews, KY16 9DS

Fax: 01334 464611  
Email: [amcewan@itspublicknowledge.info](mailto:amcewan@itspublicknowledge.info)  
Web: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)  
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## Sturrock, Claire

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**From:** ICT FOI  
**Sent:** 09 July 2021 11:58  
**To:** FOI, Dundee  
**Subject:** RE: FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

**Categories:** Claire

### OFFICIAL: POLICE ONLY

Good Morning FOI Dundee,

Thank you for your email.

I am acknowledging receipt of this FOI. It has been sent to the relevant business area of ICT for response.

The deadline of 16/07/2021 is noted and we will endeavour to have a response to you on or before this date.

Kind Regards,

[REDACTED]  
Business Administration Officer  
ICT Department  
Police Scotland / Poileas Alba  
Dunnottar Avenue  
STONEHAVEN  
AB39 2JD

Tel / Fòn: [REDACTED]

Email/Post-d: [REDACTED]

ICT Business Management Email: [REDACTED]

ICT FOI Email: [REDACTED]

ICT Recruitment Email: [REDACTED]

ICT Skills Demand Email: [REDACTED]

Website / Làrach-lìn: [www.scotland.police.uk](http://www.scotland.police.uk)

Twitter: @policescotland

Facebook: [www.facebook.com/policescotland](https://www.facebook.com/policescotland)

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**From:** FOI, Dundee  
**Sent:** 09 July 2021 11:03  
**To:** ICT FOI  
**Subject:** FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

### OFFICIAL: POLICE ONLY

Reference: 21-1634 & 1635

**Deadline: 16 July 2021**

**Information Required:**

*[Please provide] every document held by Police Scotland with a creation date between July 1 and July 7, 2021, which is marked as not disclosable under FOISA.*

*How many documents held by Police Scotland state that they are not disclosable under the FOISA Act?*

**Case officer notes:**

There has been a lot of media coverage re this in recent days/ weeks around organisations marking documents as non disclosable.

Effectively, what we would need you to do is 2 searches:

- full search of *all content* looking for any document that contains 'disclose'/ disclosable' **and** 'FOI'/ 'FOISA'

- full search of *all content* looking for any document that contains 'disclose'/ 'disclosable' **and** 'FOI'/ 'FOISA' **and** was created between 1&7 July

We would need copies of any material of potential relevance saved to:

<\\spnet.local\PSData\CSD\Info Management\IM-FOI\FOI Requests\2021\1501 - 1750\1634&35\IT Search for all>  
<\\spnet.local\PSData\CSD\Info Management\IM-FOI\FOI Requests\2021\1501 - 1750\1634&35\IT Search for July 1-7>

The only possible exemption we can apply is that the searches would take in excess of 40 hours (**each** - as they are separate requests).

If that's the case, either for one or both, please let us know along with evidence to support that position - explaining what work would be involved, how long it would take etc

Please respond to the **FOI Dundee** mailbox rather than to any personal mailbox - thanks - Claire

## Sturrock, Claire

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**From:** FOI, Dundee  
**Sent:** 22 July 2021 13:23  
**To:** [REDACTED] ICT FOI  
**Subject:** RE: FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

### OFFICIAL: POLICE ONLY

Hi [REDACTED],

Thanks - that all makes sense.

Leave it for now, I'll go back to the applicant explaining the various difficulties and we can take it from there.

If he challenges the position or puts in a refined request we may need to actually do a couple of sample exercises but I think it's pretty clear that as it stands, we can't provide any meaningful data for this one.

Thanks for all your assistance - I'll be back in touch if we do need anything further.

Claire

**Claire Sturrock**  
**Disclosure Manager - North**  
**Information Management**  
[REDACTED]

(Currently working from home Monday to Friday)

---

**From:** [REDACTED]  
**Sent:** 21 July 2021 12:05  
**To:** FOI, Dundee; [REDACTED] ICT FOI  
**Subject:** RE: FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

### OFFICIAL: POLICE ONLY

Hello,

We could do a search on "disclosable" and "FOI" or "FOISA" etc, however, it is bringing back thousands of documents that say disclosable, not non-disclosable only.

That was one search across one evening which did not complete either due to massive usage on the server almost causing it to fall over. The results when finalised, would be immense and would take your team weeks to sort through to find only the documents necessary for the requestor, if we do the searches this way.

In terms of staff time on our side, it would take at minimum I would expect 20 days' worth of search. Setting them up does not take long, however the sending over could take some time for that to process as well.

The one search done was completed against [\\spnet.local\PSData](#), using the term "disclosable under FOI". This will include anything non-disclosable AND disclosable, and also FOI AND FOISA.

If we are excluding CSD and Info Management, then I won't be able to run a search against all of PSData as obviously both are included and I will have to run the search individually against the other 29 folders. This may take less time as CSD I believe is the largest folder of them all, but it still won't be quick. It will still also I imagine, bring back a load of documents that are not relevant.

I can run the searches if necessary, but I would caution against it due to the large number of documents that will come back that will not be relevant which will mean a lot of work for your team.

Thanks,

[Redacted]

[Redacted]

Technical Audit and Assurance Team, ICT  
Technical Auditor  
Police Scotland  
Old Perth Rd  
Inverness  
IV2 3SY

Tel: [Redacted]  
Mob: [Redacted]

email: [Redacted]

Website: [www.scotland.police.uk](http://www.scotland.police.uk)

---

**From:** FOI, Dundee  
**Sent:** 16 July 2021 14:55  
**To:** [Redacted]; ICT FOI  
**Cc:** [Redacted]  
**Subject:** RE: FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

**OFFICIAL: POLICE ONLY**

Hi [Redacted],

That all makes sense and I understand why the question re terminology.

I think taking account of what you've said below, I will cancel these requests for now and go back to the applicant.

The request hasn't specified exact terminology to search on - and because it's not something we typically do (except SOPs) there's no set terminology we can search on that would be definitive.

If someone writes a report it could say at the top for example:

- 'Not disclosable under FOI'
- 'Non disclosable under FOI'
- 'Non-disclosable under FOI'
- 'Not disclosable in terms of FOI'
- 'Non disclosable in terms of FOI'
- 'Non-disclosable in terms of FOI'
- 'Do not disclose under FOI'
- 'Do not disclose in terms of FOI'
- 'Disclosable under FOI - No'
- 'Disclosable under FOI: No'
- 'FOI - Non-disclosable document' ... etc

I'd hoped that a bundle of the terms disclosable and FOI might be the best way forward for that reason but if all we can do is an exact search and we're talking 30 minimum then I think the applicant needs to say what terminology they want and understand that the response is thus caveated as not comprehensive.

Can I ask - how long in terms of staff time do the searches take?

I appreciate you have to leave them running for a long time but just in terms of actually setting them up and then sending the data over to us.

Can I also ask - the one that brought up 1,000+, what areas that was based on - or what proportion of the estate? And was that the 'all' time search, or just the 1 month period?

I didn't think to say that we would probably have to exclude the CSD/ Info Management folders from any search as we can obviously use that terminology in the context of FOI responses etc.

We (FOI) would also have to go through whatever the results were to try to determine whether or not the document was 'marked' or whether it just happened to be a line in the document etc.

Claire

**Claire Sturrock**  
**Disclosure Manager - North**  
**Information Management**  
[REDACTED]

**(Currently working from home Monday to Friday)**

---

**From:** [REDACTED]  
**Sent:** 16 July 2021 00:25  
**To:** ICT FOI; FOI, Dundee  
**Cc:** [REDACTED]  
**Subject:** RE: FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

**OFFICIAL: POLICE ONLY**

Hi,

We have started some searches as per below request but there are complications with this request.

The first problem we encountered when doing an enterprise search such as this is that it can grind to a halt on the server so we often have to break these up to smaller divisional searches (up to 30 different ones). The single search we performed that was left overnight only covered a small fraction of the estate, had already started to freeze the server and had over 1000 returns.

The search was based on including the wording 'disclosable under foi' as the search tool does not allow separate terms to be bundled e.g. we could add disclosable and also FOI in the same search but it would return any document that has disclosable in it or FOI in it.

So the above search we used would give more accurate results based on the phrase but as we are searching on disclosable instead of non-disclosable it will return a lot of results that are marked as disclosable. This is why we are questioning the logic of the request and feel it should refer to non-disclosable.

If we were to progress with a search on 'non-disclosable under foi' (it would also pickup foisa as foi is contained in it) we will have to separate the search out and potentially do it 30+ times with each search potentially taking a day to complete.

Again let us know if you wish to continue with this search and if so whether the above change to logic is acceptable.

Thanks, [REDACTED]

[REDACTED]  
Technical Audit and Assurance Manager  
ICT  
Police Scotland / Poileas Alba  
Old Perth Road  
Inverness  
IV23SY

Mob: [REDACTED]

Email/Post-d: [REDACTED]  
Team Email / Post-d na Sgioba: [REDACTED]  
Website / Làrach-lìn: [www.scotland.police.uk](http://www.scotland.police.uk)  
Twitter: @policescotland  
Facebook: [www.facebook.com/policescotland](http://www.facebook.com/policescotland)

---

**From:** ICT FOI  
**Sent:** 13 July 2021 17:00  
**To:** [REDACTED]  
**Subject:** FW: FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

**OFFICIAL: POLICE ONLY**

Hi [REDACTED]

I received the below back from the FOI Team, please let me know if you require anything further.

Kind Regards

[REDACTED]  
Business Administration Officer  
Police Scotland  
Clyde Gateway  
2 French Street  
Dalmarnock  
Glasgow  
G40 4EH

Tel: [REDACTED]

Email: [REDACTED]  
ICT Recruitment Email: [REDACTED]  
ICT Business Management: [REDACTED]

Website: [www.scotland.police.uk](http://www.scotland.police.uk)  
Twitter: @policescotland  
Facebook: [www.facebook.com/policescotland](http://www.facebook.com/policescotland)

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**From:** FOI, Dundee  
**Sent:** 13 July 2021 16:58  
**To:** ICT FOI [REDACTED]  
**Subject:** RE: FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

**OFFICIAL: POLICE ONLY**

Hi [REDACTED],

There's no standard format/ policy etc for anything other than SOPs in Police Scotland re 'discloseability' - so effectively all we can do is a free text search in the body.

There's no metadata search that would answer the question, and it's not language that would typically be included in any document - so we're looking by exception.

We are aware though that other organisations have been in the headlines recently for creating reports etc and adding 'not disclosable' thinking it was legally enforceable - when it absolutely isn't.

Appreciate a free text search will throw up all sorts - and it might be that if you find a lot of documents then cost exemption applies thereafter - but we have to tackle it the only way we can and then take it from there.

Hope that helps but let me know if you want to discuss further.

Claire

**Claire Sturrock**  
**Disclosure Manager - North**  
**Information Management**

(Currently working from home Monday to Friday)

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**From:** ICT FOI  
**Sent:** 13 July 2021 10:30  
**To:** FOI, Dundee; ICT FOI  
**Subject:** RE: FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

**OFFICIAL: POLICE ONLY**

Hi Team

Are you able to answer the below query from the business area managing this?

**In the meantime is there more information on exactly how these documents are marked as non-disclosable (header \ body \ Metadata) and the search criteria we are being asked to use seems to be the opposite and would potentially return items marked as disclosable FOI items.**

Kind Regards

[REDACTED]  
Business Administration Officer  
Police Scotland  
Clyde Gateway  
2 French Street  
Dalmarnock  
Glasgow  
G40 4EH

Tel: [REDACTED]

Email: [REDACTED]  
ICT Recruitment Email: [REDACTED]



ICT Business Management: [REDACTED]

Website: [www.scotland.police.uk](http://www.scotland.police.uk)

Twitter: @policescotland

Facebook: [www.facebook.com/policescotland](https://www.facebook.com/policescotland)

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**From:** FOI, Dundee

**Sent:** 09 July 2021 11:03

**To:** ICT FOI [REDACTED]

**Subject:** FOI 1634 & 1635 - Search of entire PS network (due 16/07) [OFFICIAL: POLICE ONLY]

**OFFICIAL: POLICE ONLY**

**Reference:** 21-1634 & 1635

**Deadline:** 16 July 2021

**Information Required:**

*[Please provide] every document held by Police Scotland with a creation date between July 1 and July 7, 2021, which is marked as not disclosable under FOISA.*

*How many documents held by Police Scotland state that they are not disclosable under the FOISA Act?*

**Case officer notes:**

There has been a lot of media coverage re this in recent days/ weeks around organisations marking documents as non disclosable.

Effectively, what we would need you to do is 2 searches:

- full search of *all content* looking for any document that contains 'disclose'/ disclosable' **and** 'FOI'/ 'FOISA'
- full search of *all content* looking for any document that contains 'disclose'/ 'disclosable' **and** 'FOI'/ 'FOISA' **and** was created between 1&7 July

We would need copies of any material of potential relevance saved to:

<\\spnet.local\PSData\CSD\Info Management\IM-FOI\FOI Requests\2021\1501 - 1750\1634&35\IT Search for all>  
<\\spnet.local\PSData\CSD\Info Management\IM-FOI\FOI Requests\2021\1501 - 1750\1634&35\IT Search for July 1-7>

The only possible exemption we can apply is that the searches would take in excess of 40 hours (**each** - as they are separate requests).

If that's the case, either for one or both, please let us know along with evidence to support that position - explaining what work would be involved, how long it would take etc

Please respond to the **FOI Dundee** mailbox rather than to any personal mailbox - thanks - Claire

## Sturrock, Claire

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**From:** Corp Communications Account Management  
**Sent:** 23 July 2021 15:13  
**To:** FOI, Dundee  
**Subject:** RE: Review as requested of FOI 1634 & 1635 [OFFICIAL]

**Categories:** Claire

### OFFICIAL

Claire

No issues here.

[REDACTED]  
Executive Lead - Corporate Communications  
Police Scotland  
Telephone: [REDACTED]  
[www.scotland.police.uk](http://www.scotland.police.uk)  
@policescotland  
[www.facebook.com/PoliceScotland](https://www.facebook.com/PoliceScotland)

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**From:** FOI, Dundee  
**Sent:** 23 July 2021 14:29  
**To:** Corp Communications Account Management  
**Subject:** Review as requested of FOI 1634 & 1635 [OFFICIAL]

### OFFICIAL

Good afternoon,

As requested, please see attached drafts for FOI 1634 and FOI 1635 which are now ready to be sent to the applicant.

(Identical apart from one additional line in 1635 - '*exacerbated...*')

Please let us know asap that you're happy these can go as-is, or if you would like additional context added.

Claire

**Claire Sturrock**  
**Disclosure Manager - North**  
**Information Management**  
[REDACTED]

(Currently working from home Monday to Friday)

# Application for a decision from the Scottish Information Commissioner



Use this form if you are unhappy with the way a Scottish public authority handled your request for information and you would like the Scottish Information Commissioner to look at it. You do not have to use this form but, if you do, we are likely to be able to help you more quickly.

If you choose to write or email instead, you may find it helpful to follow this form to make sure that you include everything you need to.

Some important points to note before you start:

Can you answer **YES** to **ALL** of the following questions:

1. Did you ask the authority for information?
2. Did you ask the authority to review the way it handled your request, either because
  - you were unhappy with the response or
  - the authority did not respond?
3. Did you receive a response to your review request that you are not happy with?

OR

Did you wait for 20 days but did not get a response to your review request?

If you answered **NO** to **any** of these questions it may be too soon to apply to the Scottish Information Commissioner.



Help is available on our website at <http://www.itspublicknowledge.info/YourRights>

Call us on **01334 464610**

Email us at [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

## What you will need to help you complete the form

Copies of:

- Your information request to the authority
- The authority's response to your information request (if you received one)
- Your request for a review to the authority
- The authority's response to your review request (if you received one)

## About You

This section asks for information about you. It is important you read this guidance as without the information we will not be able to investigate your application.

Important points:

- You **must** give your full name. If you used a pseudonym when you made your information request (e.g. "Mickey Mouse"), we will not be able to investigate. (See more: [www.itspublicknowledge.info/FAQs](http://www.itspublicknowledge.info/FAQs))
- Even if you made your request by email, **we need to know your postal address** (or a postal address where we can contact you). At the end of the investigation, we will send you a decision. This is a legal document and has to be sent by recorded delivery.
- If you made the request on behalf of someone else, it is important that you give us their name.

<b>Title</b>	
<b>First name</b>	
<b>Surname</b>	
<b>Address, including postcode</b>	
<b>Contact phone number</b>	
<b>Email address</b>	
<b>Are you making this application on behalf of someone else?</b> (highlight the answer that applies)	Yes / No
<b>If you answered "yes", what is the <i>full</i> name of the person or organisation on whose behalf you are making the application?</b>	
<b>What is your preferred method of contact?</b> (highlight the answer that applies)	Email Post Fax Phone Other (please give details)

## About your information request and your request for review

A wide range of public authorities are covered by FOI legislation, including the Scottish Government, the police, councils, universities, colleges and the NHS. (See more <http://www.itspublicknowledge.info/FAQ/GeneralFAQ/InformationRequestFAQ>).

Make sure you have read the guidance at the start of this form.

<b>Which authority did you make your request to?</b>	Police Scotland
<b>Date you made your request for information</b>	08/07/2021
<b>Did the authority respond?</b> (highlight the answer that applies)	<b>Yes</b> / No
<b>Date of the authority's response</b> (N/A if no response)	26/07/2021
<b>Date of your review request to the authority</b>	26/07/2021
<b>Why did you ask the authority for a review?</b> (Give a brief summary)	I initially questioned the use of the cost exemption and the fact both requests had been handled together.
<b>Did the authority carry out a review and respond to you</b> (Highlight the answer that applies)	<b>Yes</b> / No
<b>Date of the authority's response</b> (N/A if no response)	20/08/2021

## About your application

You must say why you are unhappy with the way the authority responded to your request for review. This will depend on your case. For example, you might be unhappy because:

- the authority did not carry out a review
- you do not agree that exemption(s) apply
- you think it would be in the public interest for the information to be disclosed
- the authority told you it does not hold the information (or doesn't hold more information than it has already given you), but you disagree
- the authority has told you it would cost too much to respond to your request or has issued you with a fees notice
- the authority has refused to respond to your request because it believes it is vexatious or repeat.

There may be other reasons why you are unhappy, but remember that the Commissioner can only investigate issues about freedom of information law. Be clear, precise and concise. If we need more information, we'll let you know. Generally, you do not need to explain why you needed the information. If we do not understand what you tell us, or we think we need more information to start our investigation, we will contact you.

A copy of this form will be sent to the public authority.

(See more: <http://www.itspublicknowledge.info/YourRights/WhocanIask>)

Dear Information Commissioner,

I believe Police Scotland have not undertaken proportionate searches in regards to this FOI and am very disappointed in the way it was handled.

I believe the approach taken here by Police Scotland is to avoid embarrassment that it does, in fact, label documents as non-disclosable under FOI which would be unlawful. I do not see any other way of gaining this information than through FOI, and I believe a week is a perfectly narrow scope for the public body to respond more adequately than they have.

Best wishes,

██████████


**Date application sent to  
Commissioner:**

25/08/2021

## Sending us your application

You must send us copies of the documents listed 1-4 below. If you did not keep copies of your information and review requests, ask the authority to send them to you before you send us this form. If you are unsure about what to do, contact us for advice.

You do NOT need to send us any other documents at this point. We will contact you if we need more

<p>information. Please check you have sent us everything and confirm below which documents are enclosed.</p>	
<p><b>1. Your request for information to the authority</b></p>	<p>Yes</p>
<p><b>2. The authority's response to your request (if you received one)</b></p>	<p>Yes</p>
<p><b>3. Your request for review to the authority</b></p>	<p>Yes</p>
<p><b>4. The authority's response to your request for review (if you received one)</b></p>	<p>Yes</p>
<p><b>Send your form and documents to</b>  <b>The Scottish Information Commissioner</b></p> <p>email: <a href="mailto:enquiries@itspublicknowledge.info">enquiries@itspublicknowledge.info</a></p> <p>post:  The Scottish Information Commissioner  Kinburn Castle  Doubledykes Rd  St Andrews  KY16 9DS</p> <p>fax to: 01334 464 611</p> <p><b>And remember:</b></p> <div style="display: flex; align-items: flex-start;">  <p> Help is available on our website at  <a href="http://www.itspublicknowledge.info/YourRights">www.itspublicknowledge.info/YourRights</a>  Call us on <b>01334 464610</b>  Email us at <a href="mailto:enquiries@itspublicknowledge.info">enquiries@itspublicknowledge.info</a>  Read our privacy notice to find out how we use any personal information you give us in your application form:  <a href="http://www.itspublicknowledge.info/home/privacy.aspx">http://www.itspublicknowledge.info/home/privacy.aspx</a>. </p> </div>	

## Document control sheet

Document Information	
Full name of current version: Class, Title, Version No and Status. <i>E.g. C5 Key Documents Handbook v01 CURRENT ISSUE</i>	C2 Application Form v02 CURRENT ISSUE
VC Fileld	129655
Type	Form
Approver	SMT
Responsible Manager	HOE
Date of next planned review	March 2023
Approval & Publication	
Approval Date (major version)	14 March 2017
For publication (Y/N)	Y
Date published	19/02/2020
Name of document in website file library	Application_Form_-_Website
Corrections / Unplanned or Ad hoc reviews (see Summary of changes below for details)	
Date of last update	7 February 2020

Summary of changes to document				
Date	Action by <i>(initials)</i>	Version updated <i>(e.g. v01.25-36)</i>	New version number <i>(e.g. v01.27, or 02.03)</i>	Brief description <i>(e.g. updated paras 1-8, updated HOPI to HOOM, reviewed whole section on PI test, whole document updated, corrected typos, reformatted to new branding)</i>
23/01/20	BOW	02.00	02.01	New document created following approval of draft
23/01/20	BOW	02.01	02.02	DCS updated, published on website
07/02/20	MK	02.02	02.03	Date of next planned review on DCS corrected
19/02/20	BOW	02.03	02.04	DCS updated, published on website





Scottish Information  
Commissioner  
*it's public knowledge*

Our Ref 202101062  
Your Ref IM-FOI-2021-1635

Iain Livingstone QPM  
Chief Constable  
Police Service of Scotland  
By email: [foi@scotland.police.uk](mailto:foi@scotland.police.uk)

20 July 2022

Dear Mr Livingstone

**Decision by Scottish Information Commissioner: 078/2022**

**Applicant:** [REDACTED] ("the Applicant")

The Applicant asked the Commissioner to investigate whether your authority complied with Freedom of Information law in dealing with an information request they made.

I enclose a copy of the Commissioner's Decision Notice, which sets out his conclusions and explains your authority's right to appeal to the Court of Session. Please read it carefully.

An anonymised version of the Decision Notice will be published on the Commissioner's website.

Yours sincerely

**Avril Mills**  
**Freedom of Information Officer**



# Decision Notice 078/2022

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## Documents stating “not disclosable under FOISA”

**Applicant:** [REDACTED]

**Authority:** Chief Constable of the Police Service of Scotland

**Case Ref:** 202101062

### Summary

The Applicant asked the Authority for documents which stated that they were not disclosable under FOISA. The Authority told the Applicant it was not obliged to comply with the request because it would cost more than £600 to do so. The Commissioner agreed.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 47(1) and (2) (Application for decision by Commissioner)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount)

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 8 July 2021, the Applicant made two requests for information to the Authority. He asked how many documents held by the Authority stated that they were not disclosable under FOISA (request 1) and for copies of every document created between 1 and 7 July 2021 containing that statement (request 2).
2. The Authority responded on 26 July 2021. It informed the Applicant that, in respect of both requests, it would cost too much to provide the information, and that section 12 of FOISA applied.

3. For request 2, the Authority explained that the searches required to identify documents created over a particular date range would require an estate wide search of all documents. The Authority commented that it had more than 20,000 police officers and staff, and that documents created in a particular week could be held anywhere across the entire ICT estate. Such documents would only be identifiable by searching the related metadata for information created between two dates. While the Authority had the ability to conduct a “free text” search, this would have to be done in small batches due to the intense level of processing required. The Authority could search for an exact term (such as “not disclosable under FOISA”, but there were numerous variations of this phrase (such as “not disclosable under FOI”; “non-disclosable under FOI” and “FOI – non-disclosable”) which would also be relevant to the request.
4. On 26 July 2021, the Applicant wrote to the Authority requesting a review of its decision in respect of request 2. While he accepted that section 12 would apply to request 1, he queried whether it applied to request 2.
5. The Authority contacted the Applicant that day. It reiterated why it considered section 12 applied and asked the Applicant to let it know if he still wanted to proceed with the review. The Authority also suggested to the Applicant that he may wish to consider whether it might be more appropriate to submit a new, more refined request.
6. The Applicant confirmed (28 July 2021) that he wished to proceed and the Authority notified the Applicant of the outcome of its review on 20 August 2021. It upheld its original finding.
7. On 25 August 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority’s review because he believed the Authority had not undertaken proportionate searches in regards to his request. He stated that a time window of a week should be a narrow enough for the Authority to respond.

## **Investigation**

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 7 October 2021, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions.
11. The Authority provided the investigating officer with submissions.

## **Commissioner’s analysis and findings**

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

13. Under section 12(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation 5). Consequently, the Commissioner cannot require an authority to disclose information should he find that the cost of responding to a request for information would exceed that sum.
14. The projected costs the authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA.

#### *Submissions from the Authority*

15. The Authority emphasised that it had engaged with the Applicant to suggest that he clarify what he meant by “document” and whether he wanted to specify an exact phrase for any searches, but that he did not come back to them on either point. The Authority confirmed that it had explained to the Applicant that it operates no policy of marking documents as non-disclosable under FOISA. Therefore, there would be no “standard” text that would appear on documents.
16. The Authority stated that, while there would be difficulties with electronic searches, the request also covered hard copy documents. The Authority expressed doubt that even the hard copy documents within one full filing cabinet could be individually assessed against the Applicant's criteria within the £600 limit.
17. The Authority submitted that it is a large organisation with more than 20,000 staff, each of whom have an individual email account and a “personal” drive. It also has a large number of shared email accounts and shared drive areas, the latter accounting for the bulk of its records. The Authority provided a snapshot example as at the end of March to illustrate this.
18. Electronically held data can be searched electronically but, even with a restricted creation date range, the entire IT estate would still require to be searched.
19. Documents held by the Authority are not only contained within folders according to the date on which they were created and are not just held in one location. In that sense, the Authority submitted, request 2 was no different from request 1.
20. The Authority commented that it had attempted to carry out a few searches, but that the searches kept crashing their servers, necessitating smaller and smaller sections to be done one at a time. On dividing the shared drive estate into around 30 sections, the searches were still crashing/running overnight, at which point the searches were stopped.
21. In addition to these difficulties, email searches would have to be carried out on an account by account basis.
22. It was therefore the view of the Authority that the Applicant's request in its current format could not be complied with within the cost limit.

#### *Submissions from the Applicant*

23. The Applicant considered that the Authority's approach to records management actively harms and restricts the ability of the public to access information. He was “incredulous” that a request such as his would require the entire IT system to be searched in such a way that would cause the system to crash.

24. The Applicant believed that, for FOISA to be applied correctly, searches such as the ones required in his appeal must be able to be responded to in a meaningful way. If not, then the systems of the Authority must change rather than the scope/terminology of the requests.
25. The Applicant provided copies of two documents provided to him by the Authority which both contained the phrase “Disclosable under “FOI 2002”. He therefore believed that other documents held by the Authority may have contained the phrase “Non-disclosable under “FOISA 2002” and questioned whether this should have been an easily searchable term.

### *The Commissioner's findings*

26. Request 2 is for every document with a creation date between 1 and 7 July 2021 marked as not disclosable under FOISA. In effect, the Applicant is asking the Authority to search through every document it holds which was created during this period (including electronically held documents, hard paper copy documents and emails and their attachments).
27. Although one week is a short period, for reasons set out elsewhere, the whole of the ICT estate would have to be searched. Additionally, paper documents would have to be searched.
28. Given that the Authority does not have a policy surrounding marking documents as “non-disclosable under FOISA”, then this search term would not have been sufficient to narrow down the number of documents to be reviewed.
29. The Applicant clearly believes that the Authority’s records management systems are inadequate to allow it to respond to information requests. However, the Commissioner is required to consider whether section 12 applies in the light of the Authority’s current systems, and not in the light of how others might wish the systems to be. Additionally, as noted in [Decision 050/2021<sup>1</sup>](#) (which did not involve this Authority), it is not within the Commissioner’s remit to instruct a public authority to change its record keeping systems.
30. Given the detailed submissions provided by the Authority, and having considered the nature of the work involved in searching for any relevant information, in both electronic and hard copy format, the Commissioner is satisfied in all the circumstances that the Authority could not have complied with the Applicant’s request within the £600 cost limit. Consequently, he finds that the Authority was entitled to rely on section 12(1) of FOISA and was under no obligation to comply with the request.

## **Decision**

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

---

<sup>1</sup> <https://www.itspublicknowledge.info/decision-0502021>

## **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.

A handwritten signature in black ink, appearing to read 'M Keyse', with a long horizontal flourish extending to the right.

**Margaret Keyse**  
**Head of Enforcement**  
**20 July 2022**

## **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.”
- ...
- (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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

#### **12 Excessive cost of compliance**

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.
- ...

#### **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).

...

## **Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004**

### **3 Projected costs**

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
  - (a) no account shall be taken of costs incurred in determining-
    - (i) whether the authority holds the information specified in the request; or
    - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
  - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

### **5 Excessive cost - prescribed amount**

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.