

Decision Notice 136/2021

Standard Operating Procedures: Vulnerable Persons Database

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202100027



Scottish Information
Commissioner

Summary

Police Scotland were asked for the Standard Operating Procedure (SOP) used to record a concern report on their Vulnerable Persons Database. Police Scotland responded that they held no such SOP, but at review advised the Applicant of other relevant documents which they held.

The Commissioner investigated and found that Police Scotland had complied with FOISA in responding to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 20 October 2020, the Applicant made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The Applicant requested “the process (SOP) used to record a iVPD/VPD concern report on your information records management system”.
2. “VPD” stands for Vulnerable Persons Database and “iVPD” for interim Vulnerable Persons Database. “SOP” means Standard Operating Procedure. By way of background, Police Scotland’s iVPD is an incident-based database. iVPD records information about individuals who are, or are perceived to be, experiencing some form of adversity and/or situational vulnerability which may impact on their current or future wellbeing. The database records incidents involving adults where the adult is defined as an Adult at Risk under the Adult Support and Protection (Scotland) Act 2007¹.
3. Police Scotland responded on 3 November 2020 and stated that they did not hold the information, as there was no SOP that related to iVPD or Concern Reports specifically. They advised that the process was covered by a series of SOPs, including Child Protection; Adult Support and Protection; Hate Crime; and Domestic Abuse. They provided a link² to those SOPs, which were on Police Scotland’s website.
4. On 18 November 2020, the Applicant wrote to Police Scotland requesting a review of their decision. She considered it “simply nonsensical to suggest that hundreds of thousands (close to 0.5 million) entries could have been made onto the iVPD/VPD only to be ‘weeded’ off the iVPD/VDP sometime later and no SOP was in place.”
5. The next day, the Applicant provided Police Scotland with a link³ to a BBC article from 2017, which, in her view, suggested that information was held by Police Scotland.

¹ <https://www.scotland.police.uk/spa-media/wuand1gl/21-0835-response.pdf>

² <https://www.scotland.police.uk/access-to-information/policies-and-procedures/standard-operating-procedures/>

³ <https://www.bbc.co.uk/news/uk-scotland-41335762>

6. Police Scotland notified the Applicant of the outcome of their review on 23 December 2020. Their review confirmed that there was no SOP that related specifically to the recording of a concern report on iVPD, so Police Scotland upheld their refusal in terms of section 17 of FOISA. Police Scotland advised the Applicant that in relation to information sharing there were Police Scotland documents entitled *iVPD Sharing Information interactive guidance* and *Operational Officers Public task Q&A*.
7. On 31 December 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of Police Scotland's review because she believed that information was held by Police Scotland. The Applicant explained why she believed this.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and to answer specific questions. These related to how Police Scotland had established that they did not hold any recorded information. Police Scotland responded, detailing how they had established whether they held any relevant information.

Commissioner's analysis and findings

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

Section 17 - Notice that information is not held

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not usually require a public authority to create recorded information in order to respond to a request, or to provide information which is not held in a recorded form.
12. Police Scotland confirmed that they held no information that fell within the request. They explained that all their SOPs were available on their force Intranet site, which was fully searchable by all staff members, including by the FOI team. The system typically uses free text searches and hits are displayed in order of relevance. Searches for "iVPD" and "concern report" independently brought up well over 6,000 hits - given the frequency in which they appear in a range of force documents. That was not in itself surprising, Police Scotland explained, given that there are a variety of circumstances in which a concern report might be recorded on iVPD including in relation to hate crime, domestic abuse, child protection etc.

13. There was, however, a list of SOP titles which can be searched (Police Scotland supplied the Commissioner with this list). None of these included reference to “iVPD” or “concern reports”. Police Scotland explained how they had searched the SOPs they held for the information requested by the Applicant.
14. Police Scotland also commented that the Applicant’s request was “very narrow in scope” and, although it was established that the document sought was not held, it was assessed that the Applicant was likely seeking information regarding the circumstances in which a concern report might be recorded. As such, she was provided with links to various force SOPs which referred to the process of recording concerns on iVPD. At review stage, for transparency, Police Scotland included reference to another two documents that focused more on information sharing, in case those were of interest to the Applicant.
15. The Applicant stated that she believed information was held by Police Scotland. The Applicant commented:

“I am dissatisfied that Police Scotland have stated there are no formal standard operating procedures and I find it hard to believe that they would not have the recording, processing and transmission of personal data would not be held in an official format.”
16. She also commented:

“... it would be incredulous that Police Scotland would not have a completed SOP defining the lawfulness of processing and sharing personal data specifically without the data subjects (sic) knowledge of any data and no consent being shared.”
17. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
18. Having considered all the relevant submissions, the Commissioner is satisfied that Police Scotland took adequate and proportionate steps to establish whether they held recorded information falling within the scope of the Applicant’s request.
19. In this instance, the Applicant is seeking specific information: namely a SOP in respect of the VPD. This is information of a particular category and Police Scotland were correct to regard the request at issue as relatively narrow. It is also the case that locating a SOP – a specific type of information – would be less likely to result in the overlooking of relevant information. Also, the Commissioner accepts that the SOPs are held, as described by Police Scotland, on its force Intranet site, which is fully searchable by all staff members, including the FOI team. There is no suggestion that a SOP would be located elsewhere, and the Commissioner accepts that there is a high likelihood that Police Scotland would identify a relevant SOP, if held.
20. Police Scotland commented that it was relatively easy to establish whether there is a direct match for a SOP by subject matter - in this case iVPD or concern reports specifically. Having read Police Scotland’s description of how SOPs are held and searchable, the Commissioner accepts this to be the case.

21. Police Scotland distinguish between SOPs and policies. SOPs are described in Police Scotland's website⁴. According to their website, policies and SOPs set out the way Police Scotland intends their business should be carried out. SOPs combine guidance, information and instruction for officers and staff, describing in practical terms the work or activity to be carried out to ensure a fair and consistent approach is taken. The website states that SOPs "outline 'how we do' a distinct area of business. This is different to policies that usually outline 'what we aim to achieve' or 'what we intend to do'." It is not the case that Police Scotland hold no information about the iVPD, but rather that they hold no SOP.
22. In all the circumstances, the Commissioner is satisfied, on the balance of probabilities, that Police Scotland do not hold the recorded information that falls within the terms of the Applicant's request.
23. Police Scotland advised the Applicant of other information that may be relevant. Police Scotland directed the Applicant to their website and highlighted those SOPs that may be relevant, but they were clear that there was no SOP for the subject the Applicant wished: to record an iVPD/a VPD concern report. In doing so, Police Scotland complied with their duty under section 15 of FOISA to advise and assist the Applicant. (It should also be noted that in their submission to the Commissioner, Police Scotland re-iterated a willingness to assist the Applicant in identifying the recorded information she wished, especially if her interest was, as suggested in her comments, in the information sharing process.)

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.

Appeal

Should either the Applicant or Police Scotland wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement

6 September 2021

⁴ <https://www.scotland.police.uk/access-to-information/policies-and-procedures/>

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.

...

- (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.

...

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

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