



SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 26  
XA83/24

Lord Justice Clerk  
Lord Malcolm  
Lord Armstrong

OPINION OF THE COURT

delivered by LORD MALCOLM

in the appeal by

ALEXANDRIA GALLAGHER

Appellant

against

THE SCOTTISH INFORMATION COMMISSIONER

Respondent

**Petitioner: Party with Scott Webb Lay Assistant**  
**Respondent : Welsh; Anderson Strathern LLP**

10 October 2025

**Introduction**

[1] Ms Alexandria Gallagher made a freedom of information request of the Police Investigations and Review Commissioner (PIRC) for the number of police officers it had arrested since its inception in 2013. She was taken aback when told that her request was refused because it was estimated that it would cost £108,390 to comply, this being based on a review of 433,588 files, the information not having been recorded as a matter of routine. In terms of section 12 of the Freedom of Information (Scotland) Act 2002 and regulations made

thereunder, any request can be refused if a reasonably estimated cost of compliance exceeds £600, based on £15 per hour of an employee's time.

[2] Ms Gallagher asked the Scottish Information Commissioner (the Commissioner) to investigate. He is charged with promoting the observance by Scottish public authorities of the provisions of the 2002 Act. After an investigation, which included information ingathered from PIRC, the Commissioner concluded that the cost estimate of locating, retrieving and providing the information was reasonable. In reaching this decision the Commissioner had regard to PIRC's current recording and data retrieval procedures, not the potential capabilities of an improved system as desired by Ms Gallagher. Section 12 applied and PIRC was under no duty to provide the requested information.

[3] Ms Gallagher has appealed that decision to this court. As per section 56 of the Act, the court can interfere only if the Commissioner committed an error in law. It cannot review the correctness of the Commissioner's decision, nor can it assess the adequacy of PIRC's record-keeping arrangements, see *Welsh v Scottish Information Commissioner* [2015] CSIH 47, 2015 SLT 397 at paragraph 17. In the absence of perversity or irrationality, disagreements as to the weight to be given to relevant factors will not justify a challenge on error of law grounds, see *Beggs v Scottish Information Commissioner* [2014] CSIH 10 at paragraph 15. In respect of decisions within its area of competence, the court will afford a degree of institutional respect to a specialist statutory decision-maker; *Murnin v Scottish Legal Complaints Commission* [2012] CSIH 34, 2013 SC 97 at paragraphs 31 and 33; *Levy & McRae Solicitors LLP v Scottish Legal Complaints Commission* [2025] CSIH 23; 2025 SLT 1025.

[4] Ms Gallagher claims that the Commissioner failed to have regard to the public interest in disclosure of the information. This proposition is misconceived; the ability to refuse compliance if the cost limit is exceeded applies to all requests, see section 12. A

public interest test can arise only if a request is refused because of reliance on an exempt category of information as set out in part 2 of the Act, see section 2(1) and *Beggs v Scottish Information Commissioner* [2023] CSIH 34, 2024 SC 68 at paragraphs 3 and 5. Here there was no reliance on any such exemption.

[5] Many of Ms Gallagher's grounds of appeal are directed at alleged failings of PIRC. She asks the court to declare that it owes a statutory duty of care to keep the public informed about the conduct of police officers. The court has no power to do that. PIRC's functions are set out in section 62 of the Police and Fire Reform (Scotland) Act 2012. In any event this appeal concerns the Commissioner's decision when responding to Ms Gallagher's complaint. PIRC are not parties to these proceedings and the court cannot embark on a review of its performance in general, nor of its record-keeping and data retrieval systems.

[6] In terms of an arguable error on the part of the Commissioner, the main submission was that he based his decision on PIRC's current recording systems, which Ms Gallagher considers to be out of date, highly inefficient and conducive to a lack of transparency and accountability. She contends that PIRC's data management procedures prevent a proper debate about police conduct. A cost estimate of over £100,000 based on them could not be regarded as sensible, realistic and supported by cogent evidence, see *MacDonald on the Law of Freedom of Information*, 3<sup>rd</sup> ed. at paragraph 4.127; *All Party Parliamentary Group on Extraordinary Rendition v Information Commissioner and Ministry of Defence* [2011] Info LR 75 at paragraph 27. The Commissioner's assessment of PIRC's figure ought to have had regard to the potential for a modern automated system which would allow for a less costly response to her request. The Commissioner should have sought expert advice on the subject similar to that subsequently obtained by Ms Gallagher.

[7] We understand the concerns expressed by Ms Gallagher, not least since the less efficient a public authority's systems are, the more likely it is that the cost limit will be exceeded; a limit which we note has not been increased since the Act came into force over 20 years ago. However, the Commissioner is bound by the terms of section 12(1) which provides that a public authority need not comply with a request for information if it estimates that the cost of complying would exceed £600. Regulation 3(1) of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 states that the projected costs are the total costs, whether direct or indirect, which the authority reasonably estimates that it is likely to incur in locating, retrieving and providing the requested information.

[8] Standing these provisions, we consider that the Commissioner did not err in his acceptance of the information provided by PIRC and the way he assessed its handling of the request. Any cost estimate required to proceed on the basis of the recording system used by PIRC, not a more efficient one of the kind desiderated by Ms Gallagher. In short, the Commissioner correctly identified his task, namely whether PIRC complied with its duties under the Act when refusing the request based on the excessive cost of compliance, and he carried it out free of any error in law. It was a decision he was entitled to make.

[9] There is authority on the matter from south of the border based on legislation and regulations similar to the relevant provisions in Scotland, namely *Kirkham v Information Commissioner* [2018] UKUT 126 (AAC). Cambridge University had refused a request for certain information based on the expected cost of compliance. In an appeal before the Upper Tribunal it was argued that the University could obtain software which could convert its records into an easily searchable format. The Act should be interpreted and applied "in the light of that reality".

[10] The Upper Tribunal noted that the Act protects a public authority from burdensome requests. It cannot comply with its statutory duty by supplying such information as it can find before section 12 applies (coincidentally the cost limit in both statutes is contained in section 12). At paragraphs 17-20 of the judgment it was explained that the focus is “on the authority, on how it holds the information, and how it would retrieve it”. An estimate of the “cost of compliance will be related to the way that the authority holds the information”. That is the language of section 12. The question “is not a purely objective one of what costs it would be reasonable to incur or reasonable to expect to incur”.

[11] In our view the same analysis applies to the equivalent Scottish legislation and regulations. It follows that the Commissioner would have erred had he concluded that the information should be disclosed because the cost of compliance could be reduced to an amount below the limit if PIRC upgraded its systems. In short, the Commissioner does not police PIRC’s data management procedures, only whether it complied with its duties under the Act, which in turn must depend on the terms of the relevant legislation.

[12] Ms Gallagher also makes generalised complaints as to breach of natural justice, bias, irrationality and unreasonableness on the part of the Commissioner, none of which have merit. She asks for an adjudication on whether her request was properly refused as costing more than £600, but the court’s jurisdiction does not extend beyond supervising whether the Commissioner acted within his powers. Had we identified an error on his part we could only have remitted the matter to him for a fresh decision. Ms Gallagher considers that the Commissioner’s agents acted unreasonably in drawing her attention to a potential liability in expenses should she be unsuccessful and in lodging a bundle of authorities exceeding 100 pages for the appeal hearing. We appreciate that all of this would be challenging for a lay person representing herself, but we can attribute no fault to the Commissioner or his

solicitors in this regard. They were obliged to draw relevant case law to the court's attention. In any event it appeared to the court that Ms Gallagher coped admirably with the documentation lodged in the court process, making extensive reference to it and to other material relied on by herself.

[13] At his own instance the Commissioner made a finding that PIRC failed in its duty under section 15 of the Act which requires a public authority to provide advice and assistance to a person making a request, at least so far as it is reasonable to do so. The Commissioner noted that when a request is being refused on cost grounds, it is good practice to provide advice as to how the submission of a new and narrower request might meet the limit, however PIRC had not provided any such advice. The only operative order made in this regard was to require PIRC to direct Ms Gallagher to any other public authority which might hold the information. Ms Gallagher complains that this was an inadequate response to the finding of a breach of the section 15 duty. The Commissioner should have required more of PIRC, such as the giving of appropriate advice.

[14] Again we understand Ms Gallagher's concerns, but we do not consider that they can be elevated to an error of law on the Commissioner's part. We infer from his discussion on this point that he was of the view that in the whole circumstances nothing would have advanced Ms Gallagher's position. As a specialist in this area, these were matters for the Commissioner.

[15] For the above reasons the appeal is refused.