



Scottish Information
Commissioner

**Decision 080/2007 Ms W and the Chief Constable
of Strathclyde Police**

*Request for a number of documents relating to an ongoing
complaint*

Applicant: Ms W

Authority: Chief Constable of Strathclyde Police

Case No: 200600699

Decision Date: 29 May 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 080/2007 Ms W and the Chief Constable of Strathclyde Police

Request for copies of specific reports compiled by Strathclyde Police relating to an ongoing complaint submitted by the applicant

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 17(1) (Notice that information is not held); 38(1)(a) (Personal information).

Data Protection Act 1998 (DPA) section 1(1) (Basic interpretative provisions) (interpretation of “personal data”).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

In 2001, Ms W was subject to a police investigation, which led to her being charged with certain offences, of which she was later acquitted. Ms W complained to the Chief Constable of Strathclyde Police (Strathclyde Police) about the conduct of certain officers and then made a further complaint to Her Majesty’s Inspectorate of Constabulary for Scotland (HMIC) as she was dissatisfied with the manner in which her original complaint had been dealt with.

In 2005, Ms W made an information request for certain documents relating to the investigations undertaken by Strathclyde Police relating to her complaint.

Strathclyde Police informed Ms W that one of the items requested was not held for the purposes of section 17 of FOISA. Strathclyde Police refused to provide Ms W with the information that was held on the basis that it was exempt from disclosure under a number of provisions contained in Part 2 of FOISA .

The Commissioner found that the information requested by Ms W was either exempt in terms of section 38(1)(a) or not held in terms of section 17 of FOISA. Consequently, the Commissioner found that Strathclyde Police had dealt with Ms W’s request for information in accordance with Part 1 of FOISA.



Background

1. On 22 May 2005, Ms W wrote to Strathclyde Police requesting various documents compiled by Strathclyde Police pertaining to her complaint.
2. After some delay and some confusion over how the matter should be dealt with, Strathclyde Police wrote to Ms W, confirming in terms of section 17 of FOISA that one of the items requested was not held for the purposes of FOISA.
3. With respect to the remaining four items that Ms W had requested, Strathclyde Police withheld these on the grounds that the information was exempt from disclosure under a number of exemptions in FOISA. These were:
 - Section 30(c) -Prejudice to the effective conduct of public affairs
 - Section 34(1)(a)(i) -Investigations by Scottish public authorities and proceedings arising out of such investigations
 - Section 35(1)(a), 35(1)(b), 35(1)(g) -Law enforcement
 - Section 38(1)(b) - Personal information
4. Strathclyde Police also advised Ms W of its procedures for making a subject access request under the terms of the DPA. It noted that some limited personal information may well be available through this route. However, Strathclyde Police did not explicitly cite the exemption in section 38(1)(a) of FOISA, which applies when the information concerned is personal data of which the applicant is the data subject, at this stage.
5. On 10 February 2006, Ms W wrote to Strathclyde Police requesting a review of its decision. In particular, Ms W questioned its reliance on a number of exemptions and its application of the public interest test.
6. On 9 March 2006, Strathclyde Police wrote to notify Ms W of the outcome of its review. This reply upheld the decision described above in paragraphs 2 and 3 in full.
7. On 6 April 2006, Ms W wrote to my Office, stating that she was dissatisfied with the outcome of Strathclyde Police's review and applying to me for a decision in terms of section 47(1) of FOISA.



8. The application was validated by establishing that Ms W had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.

The Investigation

9. On 12 April 2006, my office wrote to Strathclyde Police, giving notice that an application had been received and that an investigation into the matter had begun and inviting comments from Strathclyde Police as required under section 49(3)(a) of FOISA. In particular, Strathclyde Police was asked to provide copies of the information withheld from Ms W, along with detailed analysis of its application of the relevant exemptions.
10. Strathclyde Police responded on 12 June 2006, enclosing the information withheld, its statements on the case and other supporting documentation.
11. Within its submissions, Strathclyde Police indicated that it also considered the exemption in section 38(1)(a) of FOISA to apply to all of the information withheld from Ms W. Section 38(1)(a) of FOISA provides that information is exempt information if it constitutes personal data of which the applicant is the data subject.
12. On the basis of this submission, my investigating officer contacted Ms W and provided her with advice as to how to submit a subject access request under section 7 the DPA. On 23 January 2007, Ms W wrote to my office explaining that she had submitted a subject access request as advised, but had received no further information which she felt was within the scope of her request.

The Commissioner's Analysis and Findings

13. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Ms W and Strathclyde Police and I am satisfied that no matter of relevance has been overlooked.



14. The main issue for me to address here is whether the information withheld by Strathclyde Police should be considered to be the personal data of Ms W. If this is the case, then the exemption in section 38(1)(a) applies. I will also consider whether Strathclyde Police correctly advised Ms W that it did not hold one of the pieces of information she had requested.

The information requested by Ms W

15. Strathclyde Police refused to supply Ms W with information contained within four separate documents and claimed that it did not hold the information relating to one element of her request. The four documents withheld comprised of the following information:
- a) A report compiled by Strathclyde Police in response to Ms W's initial complaint.
 - b) An undated note summarising a review in the papers submitted to HMIC.
 - c) A report forwarded to Procurator Fiscal and used by Strathclyde Police as the basis for consideration of misconduct proceedings.
 - d) A report compiled following the conclusion of the HMIC's investigation.

All documents were prepared in the context of investigations conducted under the Police Conduct (Scotland) Regulations 1996 (the 1996 Regulations). Such investigations are undertaken where there has been an allegation of misconduct made against a police officer below the rank of Assistant Chief Constable under the terms of the 1996 Regulations.

Section 38: Personal Information

16. Strathclyde Police claimed that the information requested by Ms W falls within the definition of personal data, both of Ms W and of third parties involved in its investigation. It argued that the information is exempt under section 38(1)(a) insofar as it is the personal data of Ms W.
17. Section 38(1)(a) of FOISA exempts information from disclosure if it is personal data of which the applicant is the data subject. "Personal data" is defined in section 1(1) of the DPA (see Appendix below). Strathclyde Police applied the exemption in section 38(1)(a) to all information falling under the scope of Ms W's request. This is an absolute exemption and therefore is not subject to the public interest test. Consequently, if I find that section 38(1)(a) applies, I cannot order Strathclyde Police to disclose under FOISA the information contained within these documents relating to Ms W.



18. Looking at the information withheld, it is clear that this comprises information which has Ms W as its focus. These documents relate to alleged incidents involving Ms W in her personal life. These documents clearly identify Ms W, investigations in which she was directly involved and her complaints about the conduct of these. I am satisfied that they constitute personal data of which Ms W is the data subject.
19. Some of these documents also contain statements and evidence provided by other individuals. These statements relate to Ms W, the investigation into her alleged actions and the basis of her complaint. Ms W is, therefore, the focus of this information, and this information clearly concerns Ms W's private life.
20. Having considered the submissions from Strathclyde Police, together with the information which has been withheld from Ms W, I am satisfied that the information withheld consists of personal data of which Ms W is the subject. I am therefore satisfied that the information is exempt from release under section 38(1)(a) of FOISA.
21. The exemption in section 38(1)(a) is absolute and I am therefore not required to go on to consider whether the public interest lies in the information being released or withheld.
22. As noted above, Ms W wrote to my office earlier this year explaining that she had submitted a subject access request as advised by my office but had received no further information which she fell within the scope of her request under FOISA. In correspondence with my office, Strathclyde Police submitted that Ms W had been provided with all information that she would be entitled to under the terms of the DPA.
23. Since the question of Ms W's right to access this personal data is governed by the DPA, I cannot comment further on whether Ms W has received all information she is entitled to under the DPA. It is the Information Commissioner responsible for data protection matters throughout the UK who will have the authority to deal with any complaint Ms W wishes to make in relation to this matter.

Information not held for the purposes of section 17

24. As part of her request, Ms W requested a copy of a 'report' which was referred to in a letter dated 21 October 2001 which had been supplied to her previously.
25. Strathclyde Police explained that this letter referred to a 'briefing' rather than a report. Strathclyde Police explained to Ms W that this was a verbal 'briefing' and as such it did not hold the information requested. .



26. It should be noted that the right to receive information under FOISA only extends to recorded information. I am satisfied, given the explanation provided by Strathclyde Police that it acted in accordance with Part 1 of FOISA by notifying Ms W in terms of section 17 of FOISA that the briefing was not recorded and that, subsequently, this information is not held by Strathclyde Police.

Other exemptions

27. I am satisfied that all of the withheld information is either exempt from release under section 38(1)(a) or not held in the terms of section 17 of FOISA. Consequently, I am not required to consider the application of the additional exemptions cited by Strathclyde Police in relation to this information and will not do so.

Decision

I find that the Chief Constable of Strathclyde Police (Strathclyde Police) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms W.

I find that by withholding the information sought by Ms W under section 38(1)(a) FOISA, the Chief Constable of Strathclyde Police complied with Part 1. I have also concluded that Strathclyde Police acted in accordance with Part 1 of FOISA by informing Ms W in terms of section 17 of FOISA that it did not hold one of the items she had requested in recorded form.

Appeal

Should either Ms W or Strathclyde Police wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
29 May 2007



Appendix

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.

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.

[...]

38 Personal information

- (1) Information is exempt information if it constitutes-
- (a) personal data of which the applicant is the data subject;
- [...]



Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires-

[...]

"personal data" means data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

[...]