



Scottish Information
Commissioner

**Decision 003/2008 Mr K and
Chief Constable of Strathclyde Police**

Information relating to allegations made by a named individual

**Applicant: Mr K
Authority: Chief Constable of Strathclyde Police
Case No: 200700915
Decision Date: 14 January 2008**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
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Decision 003/2008 Mr K and Chief Constable of Strathclyde Police

Request for information relating to allegations made to the Police involving named individuals – refusal to confirm or deny that information is held.

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections: 1(1) (General Entitlement); 18 (Further provision as respect responses to request); 34(1)(a) and (b) (Investigations by Scottish Public Authorities and proceedings arising out of such investigations).

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

Facts

Mr K requested information relating to allegations that he believed to have been made by one named person against another from the Chief Constable of Strathclyde Police (Strathclyde Police). Strathclyde Police refused to confirm whether it held the information requested in terms of section 18 of FOISA. Following a review in which this decision was upheld, Mr K remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Strathclyde Police had dealt with Mr K's request for information in accordance with Part 1 of FOISA.



Background

1. On 13 March 2007, Mr K wrote to Strathclyde Police requesting various details pertaining to allegations that he claimed to have been made by a named third party against another named person to Strathclyde Police. He asked for details of when such allegations had been made, the nature of these allegations, and for various details of related events and steps taken by the Police.
2. Strathclyde Police wrote to Mr K in response to his request for information on 20 April 2007. Strathclyde Police refused to confirm whether the information sought by Mr K was held by it in terms of section 18 of FOISA. It stated that if this information was held, it would be exempt from disclosure under the terms of sections 34, 35 and 39(1) of FOISA.
3. Mr K was dissatisfied with this response and on 21 April 2007 wrote to Strathclyde Police requesting a review of its decision.
4. On 15 May 2007, Strathclyde Police wrote to notify Mr K of the outcome of its review. Strathclyde Police upheld its original decision on review without amendment.
5. On 22 June 2007, Mr K wrote to my Office, stating that he 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. He provided detailed reasons as to why he was of the view that the information he had requested (and which he believed to be held by Strathclyde Police) should be provided on public interest grounds.
6. The application was validated by establishing that Mr K 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

7. On 28 June 2007, Strathclyde Police was notified in writing that an application had been received from Mr K and was asked to provide my Office with specified items of information required for the purposes of the investigation. Strathclyde Police responded with the information requested and detailed information on the reasoning applied in this case.



8. The case was then allocated to an investigating officer, who subsequently contacted Strathclyde Police, asking it to provide comments on the application in terms of section 49(3)(a) of FOISA and to respond to specific questions on the application.
9. In response to the investigating officer's further questions, Strathclyde Police confirmed that it wished to rely on the submissions made in response to my notification of 28 June 2007.

The Commissioner's Analysis and Findings

10. 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 Mr K and Strathclyde Police and I am satisfied that no matter of relevance has been overlooked.
11. Section 18 gives public authorities the right to refuse to confirm or deny whether information is held by them in limited circumstances. Those circumstances are as follows:
 - a) a request has been made to the authority for information which may or may not be held by it;
 - b) if the information were held by the authority (and it need not be), the information would be exempt under one of the exemptions contained in sections 28 to 35, 39(1) or 41 of FOISA; and
 - c) the authority considers that to reveal whether the information exists or is held by it would be contrary to the public interest.
12. Strathclyde Police submitted that the information requested by Mr K, if held, would relate to a complaint or allegation made by a named individual and would identify that person with subsequent investigations in connection with the prevention and detection of crime. Strathclyde Police submitted that the confidentiality of such reported matters is crucial to the maintenance of trust in the service and that any request for such information will require to be carefully considered against the harm the disclosure of such information would cause, not only to the Force and the police service but also to the wider community.
13. Strathclyde Police submitted that if the information requested by Mr K existed and was held, this information would be exempt from disclosure in terms of sections 34(1)(a), 34(1)(b), 35(1)(a), 35(1)(b) and 39(1) of FOISA.



14. Where a public authority has chosen to rely on section 18(1) of FOISA, I must establish whether the authority is justified in issuing a refusal notice on the basis that to reveal whether the information exists or is held would be contrary to the public interest; and also to establish that if the information existed and was held, the authority would be justified in refusing to disclose the information by virtue of any of the exemptions provided for by sections 28 to 35, 39(1) or 41 of FOISA.
15. In so doing, I must ensure that my decision notice does not confirm one way or the other whether the information requested actually exists or is held by the public authority. This means that I will be unable to comment in any depth on the reliance by the public authority on any of the exemptions listed in section 18(1), as to do so could have the effect of indicating whether the information exists or is held by the public authority.
16. In general, however, the application of section 18 can be explained as a "Neither Confirm Nor Deny" (NCND) policy where the public interest would be harmed if the authority were to confirm or deny that certain information was held.
17. Strathclyde Police considered that, in general terms, the disclosure of information confirming the existence of a complaint of the kind specified in Mr K's request would hamper future investigations by deterring individuals from reporting such matters for fear that the information or its existence would be revealed. This would result in such information going unreported and would, over a period of time, severely prejudice the ability of the service to carry out a key enforcement role in terms of the prevention and detection of crime. Strathclyde Police also submitted that any disclosure of such allegations or investigations may also place those providing information to the police at risk of attack or some other form of retribution.
18. I have taken into consideration Mr K's arguments in respect of his case, and his arguments that the information requested (which he believes to be held) should be supplied to him. However, on the basis of the information that has been submitted to me by Strathclyde Police, I am in agreement that it would be contrary to the public interest for Strathclyde Police to reveal whether the information requested by Mr K exists or is held by them.
19. I will now consider the exemptions put forward by Strathclyde Police in conjunction with the use of section 18 of FOISA.
20. Strathclyde Police relied on sections 34(1)(a), 34(1)(b), 35(1)(a), 35(1)(b) and 39(1) of FOISA.
21. Section 34(1)(a) and (b) of FOISA exempts information if it is held for the following purposes:



- an investigation which the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence (section 34(1)(a)(i))
 - an investigation which the authority has a duty to conduct to ascertain whether a person prosecuted for an offence is guilty of it (section 34(1)(a)(ii));
 - an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted (section 34(1)(b));
22. I am satisfied that, if it existed and was held by Strathclyde Police, the information requested by Mr K would fall within the scope of each of these exemptions. I am also satisfied that if the information existed and was held, the public interest in maintaining these exemptions would outweigh the public interest in the disclosure of the information.
23. Strathclyde Police also stated that the exemptions contained in sections 35(1)(a), 35(1)(b) and section 39(1) of FOISA would apply to the information requested by Mr K if it existed and was held. Given that I have already agreed that this information, if it existed and was held, would be exempt under the exemptions in section 34(1) of FOISA, I do not intend to consider these additional exemptions.
24. On the basis of the above, I am satisfied that Strathclyde Police acted in accordance with Part 1 of FOISA by refusing to confirm whether the information requested by Mr K exists or is held by it.

Decision

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



Appeal

Should either Mr K 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 after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
14 January 2008



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.

18 Further provision as respects responses to request

- (1) Where, if information existed and was held by a Scottish public authority, the authority could give a refusal notice under section 16(1) on the basis that the information was exempt information by virtue of any of sections 28 to 35, 39(1) or 41 but the authority considers that to reveal whether the information exists or is so held would be contrary to the public interest, it may (whether or not the information does exist and is held by it) give the applicant a refusal notice by virtue of this section.
- (2) Neither paragraph (a) of subsection (1) of section 16 nor subsection (2) of that section applies as respects a refusal notice given by virtue of this section.

34 Investigations by Scottish public authorities and proceedings arising out of such investigations

- (1) Information is exempt information if it has at any time been held by a Scottish public authority for the purposes of-
 - (a) an investigation which the authority has a duty to conduct to ascertain whether a person-
 - (i) should be prosecuted for an offence; or
 - (ii) prosecuted for an offence is guilty of it;
 - (b) an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted; or

[...]