

Decision Notice



Decision 183/2010 Mr Ben Wood and the Chief Constable of Tayside Police

Policing costs for football fixtures

Reference No: 201000491

Decision Date: 4 November 2010

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Scottish Information Commissioner

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Summary

Mr Wood requested from the Chief Constable of Tayside Police (Tayside Police) details of the policing costs that Dundee United Football Club were billed for three specified fixtures. Tayside Police responded by withholding the information under sections 35(1)(a) and (b) (Law Enforcement) and 39(1) (Health, Safety and the Environment) of FOISA. Following a review, Mr Wood remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Tayside Police had failed to deal with Mr Wood's request for information in accordance with Part 1 (and in particular section 1(1)) of FOISA, by withholding the information under the exemptions referred to above. He was not satisfied that disclosure would (or would be likely to) substantially prejudice the prevention or detection of crime or the apprehension or prosecution of offenders, or that it would (or would be likely to) endanger the physical or mental health or safety of an individual. The Commissioner required Tayside Police to provide Mr Wood with the information he had requested.

The Commissioner found, however, that Tayside Police had complied with the requirements of section 21 of FOISA in dealing with Mr Wood's requirement for review.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 21 (Review by Scottish public authority); 35(1)(a) and (b) (Law enforcement) and 39(1) (Health, safety and the environment)

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

Background

1. On 10 December 2009, Mr Wood wrote to Tayside Police requesting details of the policing costs which Dundee United Football Club had been billed for the following fixtures:
 - a. Motherwell – 19 September 2009;
 - b. Hamilton Academicals – 17 October 2009 and



- c. [Glasgow] Rangers – 1 November 2009.
2. Tayside Police responded on 11 January 2010. They withheld the requested information under section 35(1)(a) and (b) (Law enforcement) of FOISA, arguing that to disclose information relating to the cost of football matches would provide the opportunity to estimate the number of police officers deployed at each game, which would allow those intent upon committing crime to gauge the likelihood of avoiding detection at future events where lower numbers of police officers were anticipated to be deployed. Tayside Police also relied upon section 39(1) (Health, safety and the environment) of FOISA to withhold the information, and provided public interest arguments in relation to both exemptions. To assist Mr Wood, Tayside Police provided the total amount billed to Dundee United Football Club for the season 2008/09.
 3. On 11 January 2010, Mr Wood wrote to Tayside Police, requesting a review of their decision. In particular, Mr Wood drew Tayside Police's attention to the fact that other police forces had already provided him with information in response to similar requests, without raising the issue of law enforcement.
 4. Tayside Police notified Mr Wood of the outcome of their review on 5 February 2010. They upheld their initial decision that the information was correctly withheld under the quoted exemptions. Tayside Police stated that, in reaching their decision, they had consulted the Association of Chief Police Officers' Freedom of Information Central Referral Unit, whose advice backed the decision not to disclose the information. In order to be of assistance, Tayside Police supplied Mr Wood with the collective policing cost for the three quoted matches.
 5. On 4 March 2010, Mr Wood wrote to the Commissioner, stating that he was dissatisfied with the outcome of Tayside Police's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
 6. The application was validated by establishing that Mr Wood had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 10 March 2010, Tayside Police were notified in writing that an application had been received from Mr Wood and were asked to provide the Commissioner with any information withheld from him. Tayside Police responded with the information requested and the case was then allocated to an investigating officer.



8. The investigating officer subsequently contacted Tayside Police, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Tayside Police were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested.
9. Tayside Police's submissions, insofar as relevant, are considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Wood and Tayside Police and is satisfied that no matter of relevance has been overlooked.

Section 35(1)(a) and (b) (Law enforcement)

11. Tayside Police applied the exemptions in section 35(1)(a) and (b) of FOISA to the costs of the three football fixtures because, they submitted, disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders.
12. Section 35(1)(a) of FOISA exempts information the disclosure of which would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's guidance on this exemption¹ highlights, the term "prevention or detection of crime" is wide ranging, encompassing any action taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could mean activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and detection.
13. Section 35(1)(b) exempts information the disclosure of which would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders. As the Commissioner's guidance also states, there is likely to be a considerable overlap between information relating to the apprehension or prosecution of offenders and that relating to the prevention or detection of crime. The Commissioner considers that "apprehension or prosecution of offenders" has a narrower scope, however, relating to the process of identifying, arresting or prosecuting anyone suspected of being responsible for unlawful activity. Again, this term could refer to the apprehension and prosecution of specific offenders, or to more general techniques (such as investigative processes used, information received or guidance given) and strategies designed for these purposes.

¹ <http://www.itpublicknowledge.info/Law/FOISA-EIRsGuidance/section35/Section35.asp>



14. An authority seeking to rely on these exemptions needs to show that disclosure would, or would be likely to, prejudice substantially the relevant activities. It should be able to demonstrate that the risk of harm being caused by disclosing the information in question is real or very likely, not simply a remote possibility. The harm caused, or likely to be caused, must be of some real and demonstrable significance, not simply marginal. Authorities should therefore disclose information unless disclosure would (or would be likely to) cause real, actual and significant harm.
15. In this instance, Tayside Police explained that the amount charged to a football club in respect of a fixture was based on the number of officers deployed inside the ground. They advised that the hourly rates for respective ranks charged by Tayside Police were publicly available² and a person could use this information, and the reasonable assumption that there would be a smaller proportion of higher ranking officers deployed, to estimate with some accuracy from the cost billed per match the number of officers deployed inside the football ground.
16. Tayside Police submitted that, over time, it would be possible to build a reasonably accurate picture of the number of police officers deployed inside grounds at football matches, which could prove to be beneficial for those intent on committing crime or causing disruption at football matches. The football fixtures to which the request related were usually repeated during the football season, and annually, so that the information, were it disclosed, would allow those intent on committing crime or causing disorder to gauge the likelihood of detection or to identify and target those fixtures with the fewest police officers present.
17. The prevention or detection of crime would certainly include measures to deal with those planning disorder at football matches, or intent on committing other offences there, as would the apprehension and prosecution of offenders. The question, however, is whether disclosure of the policing costs would, or would be likely to, prejudice such measures substantially. This prompts the Commissioner to ask two related questions.
18. Firstly, could the information be used to estimate police numbers? In the circumstances, given the availability of rates charged for the respective police ranks and the fact that reasonable assumptions could be made as to the relative proportions of higher and lower ranks present (in particular, that those present would be mainly constables), the Commissioner accepts Tayside Police's submission that disclosure of the costs of each fixture would allow a reasonable estimate to be made of the number of officers deployed at each fixture. He would also note, however, that anyone attending the fixtures in question would be in a position, simply by observation, to make a rather more accurate estimate of the police presence there. In any event, the total cost of policing the three fixtures has been provided to Mr Wood: given the reasonable assumption that the Glasgow Rangers match might require additional resources, the Commissioner must question whether the withheld information would take the applicant significantly closer to an accurate estimate of police attendance than the information he has already.

² http://www.tayside.police.uk/foi_scheme_char.php



19. The Commissioner also notes Tayside Police's point that an accurate picture of the number of police officers deployed inside grounds at football matches could be built up "over time". His concern here, however, is with the effect of disclosure of the information withheld in this case, rather than the hypothetical effect of disclosure of further information which may be requested at some undefined point in the future.
20. Secondly, the Commissioner must ask whether this information would, or would be likely to, be used in the manner claimed by Tayside Police? In this respect, Mr Wood submitted that the claims by Tayside Police that those wishing to perpetuate disorder would be encouraged by publishing costs per event seemed spurious, given the absence of such issues in Dundee at football and other events requiring police presence.
21. Mr Wood stated that the policing costs for other football fixtures had been already been provided to him, in response to requests made under FOISA, by other police forces, and he provided a copy of the policing costs for six football fixtures disclosed to him by Lothian and Borders Police. He also referred to similar information disclosed by Central Scotland Police.
22. No evidence was provided by Tayside Police to show that any previous disclosure of policing costs for football fixtures had resulted in the adverse consequences they claimed, or to demonstrate in any other way that disclosure of the withheld information would, or would be likely to, have these consequences. Noting the disclosures by other police forces referred to above, the Commissioner is unaware of any reason why such consequences should be more likely in Dundee than in the areas of these other forces.
23. The Commissioner has commented in a previous decision, *Decision 071/2008 Mr S and the Chief Constable of Strathclyde Police*, that:
... to accept that the release of only the number of police officers on duty at one particular match would have the substantially prejudicial effect claimed, the Commissioner would need to be convinced that the information was relevant to more than just the one particular match and that it provided, either on its own or in conjunction with other information already in the public domain, a reasonable level of detail about the strategies and tactics used by Strathclyde Police for policing football matches and their environs. [Paragraph 32]
In this instance, the costs of policing the three fixtures in question do not show how the fixtures were policed, i.e. how the officers were deployed, or the strategies and tactics used, either in respect of these particular matches or more generally.
24. In all the circumstances, therefore, the Commissioner is not persuaded in this case that disclosure of the costs of these three fixtures would, or would be likely to, prejudice substantially Tayside Police's ability to prevent or detect crime, or apprehend or prosecute offenders, at or around football matches. Consequently, he is of the view that Tayside Police were not justified in applying the exemptions in section 35(1)(a) and (b) of FOISA to this information.



Section 39(1) (Health, safety and the environment)

25. Section 39(1) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, endanger the physical or mental health or the safety of an individual.
26. In respect of section 39(1), Tayside Police submitted that to disclose the information, which would allow the number of police officers deployed at each game to be calculated, would allow those intent upon causing disorder or violence to gauge the likelihood of achieving their goal and so increase the risk posed. Tayside Police asserted that this was "a very real risk" and that there were individuals who attended football matches with the sole intent of causing disorder or violence.
27. The risk of disorder in such circumstances must be minimised, Tayside Police argued, as any such disorder carried with it the possibility of widespread panic or sudden movement of a large crowd, and greatly increased the likelihood of injury or worse to those in the immediate area. Tayside Police explained that they had a duty of care to the general public in ensuring that such risks were minimised through effective policing strategies and in ensuring that specialist knowledge which would allow individuals to hinder or obstruct the police in their duties was not publicly disclosed.
28. While section 39(1) does not contain the usual harm test of substantial prejudice and, in referring simply to "endangerment" sets a lower threshold of harm, the Commissioner still requires that there must be some realistic prospect or likelihood of danger to the health and safety of one or more individuals, based on evidence or convincing arguments to that effect.
29. In reaching a conclusion on the exemption in section 39(1), the Commissioner would refer to the reasoning set out in paragraphs 18 to 24 (above). For these reasons, having concluded that disclosure of the information could not be expected to compromise effective policing to any significant extent, and noting in particular that disclosure of the withheld information could hardly be described as giving access to "specialist knowledge" which would allow effective policing to be hindered or obstructed, he cannot accept from the arguments put forward by Tayside Police that disclosure of that information would, or would be likely to, have any appreciable harmful effect on the physical or mental health or safety of any individual or group of individuals. Therefore, he does not consider that Tayside Police were correct to apply the exemption in section 39(1) of FOISA to the information.
30. The exemptions in sections 35 and 39 of FOISA are subject to the public interest test set out in section 2(1)(b) of FOISA. Given that the Commissioner has not accepted that any of the exemptions claimed apply to the information requested by Mr Wood, he is not required to go on to consider the public interest in this case.

Section 21(1) – Review by Scottish public authority

31. In his application to the Commissioner, Mr Wood expressed dissatisfaction with what he perceived to be a delay in Tayside Police providing him with the aggregated figures it had provided on review.



32. Section 21 of FOISA governs the conduct of a review by a Scottish public authority and is reproduced in full in the Appendix. Basically, this is the authority's opportunity to consider the applicant's request afresh. Section 21(4) of FOISA sets out what an authority might do when it conducts a review:
- a) confirm the decision complained of, with or without modification;
 - b) substitute a different decision for that original one, or
 - c) reach a decision, where the applicant's complaint is that none has been reached.
33. In this case, Tayside Police's review (the outcome of which was communicated to Mr Wood in their email of 5 February 2010) did something they were entitled to do in terms of section 21(4) – it confirmed the original decision on Mr Wood's request, with modification. The information was withheld under the same exemptions as originally, but other, aggregated, information was provided. Since the outcome of the review was notified to Mr Wood within the required 20 working days, Tayside Police complied with the requirements of section 21(1) of FOISA. In the circumstances, the Commissioner can identify no breach of section 21 in the conduct of the review.

DECISION

The Commissioner finds that the Chief Constable of Tayside Police (Tayside Police) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Wood.

The Commissioner finds that by responding to Mr Wood's requirement for review in accordance with the requirements of section 21 of FOISA, Tayside Police complied with Part 1 of FOISA.

The Commissioner also finds, however, that in withholding the requested information, Tayside Police misapplied the exemptions in sections 35(1)(a), 35(1)(b) and 39(1) of FOISA and thereby failed to comply with Part 1, and in particular section 1(1), of FOISA. He therefore requires Tayside Police to provide Mr Wood with the policing costs specified in his information request by 21 December 2010.

Decision 183/2010
Mr Ben Wood
and the Chief Constable of Tayside Police



Appeal

Should either Mr Wood or the Chief Constable of Tayside 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.

Margaret Keyse
Head of Enforcement
4 November 2010



Appendix

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.

...

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

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

- (2) If-

- (a) the authority is the Keeper of the Records of Scotland; and
(b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,

subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.

- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on the requirement.
- (4) The authority may, as respects the request for information to which the requirement relates-



- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.
- (7) Regulations under subsection (6) may-
- (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
- (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.

35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-
- (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders;
- ...



39 Health, safety and the environment

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.