

# Decision Notice

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## **Decision 033/2017: Mr David Bryce and the Chief Constable of the Police Service of Scotland**

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### **Police attendance at pro-independence march**

Reference No: 201602095

Decision Date: 10 March 2017



Scottish Information  
Commissioner

## Summary

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Police Scotland were asked for information about a pro-independence march. Police Scotland initially withheld all the information under a number of exemptions in FOISA. They later disclosed a redacted version of a debrief report, but continued to withhold the numbers and ranks of police officers allocated to this event.

The Commissioner found that Police Scotland should have disclosed the redacted report at the time of responding to the request and the requirement for review. She was satisfied that Police Scotland correctly withheld the redacted data (numbers of officers and their ranks) accepting that disclosure would substantially prejudice the prevention and detection of crime.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 35(1)(a) and (b) (Law enforcement)

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

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1. On 26 August 2016, Mr Bryce made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was in relation to a Procession to George Square on Saturday 30 July, 2016, and was:  
  
“... details of the number of police off[ic]ers including ranks allocated to the above procession. Also the police estimate of the number in the procession and Stewards. Along with this any police reports on the event.”
2. Police Scotland responded on 27 September 2016, withholding the information under the exemptions in sections 35(1)(a) and (b) (Law enforcement) and 39(1) of FOISA (Health, safety and the environment).
3. On 2 October 2016, Mr Bryce wrote to Police Scotland requesting a review of their decision, on the basis that neither exemption was engaged in the circumstances.
4. Police Scotland notified Mr Bryce of the outcome of their review on 28 October 2016, upholding their original decision with further explanation of how they reached this view.
5. On 11 November 2016, Mr Bryce wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Bryce stated he was dissatisfied with the outcome of Police Scotland’s review because information in the debrief report had already been shared with Glasgow City Council and he believed that Police Scotland had not demonstrated the exemptions were engaged.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr Bryce made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 7 December 2016, Police Scotland were notified in writing that Mr Bryce had made a valid application. They were asked to send the Commissioner the information withheld from Mr Bryce. Police Scotland provided the information and the case was allocated to an investigating officer.
8. 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 answer specific questions, with particular reference to the exemptions applied in responding to Mr Bryce.
9. Police Scotland provided submissions on 6 February 2017. They confirmed that they would provide Mr Bryce with the debrief report, subject to redaction of numbers and ranks of officers, and did so on 8 February 2017. They explained their reasoning for continuing to withhold the numbers and ranks of officers, under the exemptions in section 35(1)(a), 35(1)(b) and 39(1) of FOISA.
10. Mr Bryce queried why the police reference number was missing from the disclosed version of the report and this was provided to him on 20 February 2017. Further redacted information, on offences and incidents, was disclosed to Mr Bryce on 3 March 2017, but Police Scotland continued to withhold the numbers and ranks of officers. Mr Bryce continued to seek this information

## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Bryce and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

### **The information disclosed during the investigation**

12. The information capable of addressing Mr Bryce's request in full is held in a debrief report intended for the licensing authority (Glasgow City Council).
13. Originally, Police Scotland withheld the report in its entirety, applying exemptions under sections 35(1)(a), 35(1)(b) (Law enforcement) and Section 39(1) (Health, safety and the environment). Following Mr Bryce's application to the Commissioner, they disclosed a redacted version of the report to Mr Bryce, followed by additional details omitted earlier.
14. In withholding the disclosed information under these exemptions, the Commissioner finds that the Council failed to comply fully with Part 1 (and in particular section 1(1)) of FOISA in responding to Mr Bryce's request. As Police Scotland have now disclosed this information to Mr Bryce, the Commissioner does not require them to take any further action in relation to this breach. The Commissioner will now consider the remaining withheld information.

## Section 35(1)(a) and (b) of FOISA – Law enforcement

15. Police Scotland applied section 35(1)(a) and (b) of FOISA to withhold the numbers and ranks of officers allocated to the event.
16. In his application, Mr Bryce made reference to an article in the Herald newspaper, stating that the Police had provided the Herald with information on police numbers of the major Orange Procession in Glasgow in July 2015. He was unable to provide the investigating officer with a copy or a weblink for the 2015 article when asked by the investigating officer, but the investigating officer informed him (on 20 January 2017) that there was an article in this newspaper dated 29 June 2013<sup>1</sup> which contained a total figure for officers (750) “to be deployed” by Police Scotland at the Annual Boyne Parade. Mr Bryce did not challenge the investigating officer’s identification of this as the relevant article. The investigating officer informed Police Scotland there did not appear to be an article dated 2015 as Mr Bryce had suggested, but there was the 2013 article, for which a weblink was provided (on 23 January 2017), and Police Scotland were given the opportunity to comment on this.
17. Police Scotland explained that the 2013 event covered by the Herald newspaper was made up of 57 parades covering all parts of Glasgow (as stated in the newspaper article), typically feeder parades which would meet up and process with a main parade. It could reasonably be considered to be a number of individual events, albeit with a common purpose, and there would be a number of individual police deployments covering each parade. Police Scotland were not aware of the source of the Herald’s information, commenting that they might provide this type of information for public reassurance purposes, without exposing the number of officers to be deployed to any particular part of the operation or any specialist resources available on standby.
18. Mr Bryce also identified difficulties with Police Scotland’s reasoning for applying the exemptions to the withheld information in this case, highlighting concerns about the adequacy of policing and stewarding.
19. Police Scotland submitted that its primary duty at the 2016 event (information about which is the subject of Mr Bryce’s application) was to ensure the safety of marches, spectators and the general public. It stated that it was incumbent on Police Scotland, in policing an event such as this, to prevent crime, detect offenders and ensure as little disruption to the community as possible. It argued that disclosure of the numbers of police officers and their ranks would adversely impact on its operational effectiveness for future marches.
20. Police Scotland submitted there was an important distinction between the number of officers in uniform (who were therefore on view) and the number deployed in total. Reasons for this could include officers deployed in plain clothes, officers deployed on specialist duties and officers held in reserve. They argued that disclosing the total number of officers involved would make it reasonably straightforward for anyone to count the number of officers in uniform marching with a parade or at a demonstration and then deduce the number held in reserve. Similarly, disclosing the ranks deployed could provide an opportunity to deduce the overall magnitude of the policing deployment. Police Scotland were concerned that this could expose police tactics and capabilities.

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[http://www.heraldscotland.com/news/13111564.750\\_officers\\_to\\_be\\_deployed\\_to\\_safeguard\\_major\\_Orange\\_parade/](http://www.heraldscotland.com/news/13111564.750_officers_to_be_deployed_to_safeguard_major_Orange_parade/)

21. Police Scotland further explained that if the number of police officers was disclosed, persons or groups intent on committing offences or causing disorder would be able to make a reasonable assessment of Police Scotland's capacity to respond to their activities at the time of a similar march in future. It would also provide an insight into the level of disruption required to divert the majority of available resources at such a time. This would, Police Scotland argued, compromise any tactical advantage they had over such persons or groups when dealing with crime or disorder, and thus prejudice the prevention or detection of crime substantially.
22. Police Scotland highlighted the continuing risk to the public from crime and disorder, noting that the threat from terror-related crime in particular remained "severe", meaning that an attack was highly likely.
23. Section 35(1)(a) exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's guidance<sup>2</sup> on this exemption highlights, the term "prevention or detection of crime" is wide ranging. It encompasses 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 specific (anticipated) crime or wider strategies for crime reduction and detection.
24. Section 35(1)(b) exempts information if its disclosure 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". Section 35(1)(b) relates to all aspects of the process of identifying, arresting or prosecuting those suspected of being responsible for criminal activity. Again, this term could refer to the apprehension or prosecution of specific offenders or to more general techniques (such as investigative processes and the use of police intelligence).
25. The Commissioner is satisfied that the withheld information is used by Police Scotland in relation both to the "prevention or detection of crime" and "the apprehension or prosecution of offenders."
26. This is the first requirement for sections 35(1)(a) and (b) to apply. The next question for the Commissioner to consider is whether disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime, or the apprehension or prosecution of offenders.
27. The Commissioner notes that Mr Bryce is seeking both the numbers of officers "allocated" to the march and their ranks. She is satisfied that this would encompass officers both in uniform and not, and also those deployed but not visibly present at the march (as described by Police Scotland). She accepts that disclosure of the withheld information would provide an indication of Police Scotland's capacity to respond to incidents at similar times in the future. It would provide a reasonable indication of the amount of available police resources at the time of a similar future event, bearing in mind that Police Scotland already publish information about divisional resources and their composition (Quarterly Fact Sheets)<sup>3</sup>.

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<sup>2</sup> <http://www.itstopublicknowledge.info/Law/FOISA-EIRsGuidance/section35/Section35.aspx>

<sup>3</sup> <http://www.scotland.police.uk/about-us/police-scotland/212598/>

28. The Commissioner is satisfied that the historical information under consideration here, on numbers of officers (with their ranks) allocated to this event, remains of value in relation to future similar events. It would give a real indication of the proportion of officers unavailable for other duties at those times, with their roles. This would be of considerable value to those intent on criminal activity, who could be expected to use it to identify ways of exploiting potential vulnerabilities. This would, in turn, compromise Police Scotland's ability to prevent and detect crime, and apprehend and prosecute offenders.
29. The Commissioner concludes that sections 35(1)(a) and (b) are engaged here, because disclosure to the withheld information would, or would be likely to, prejudice substantially the prevention or detection of crime, and the apprehension or prosecution of offenders.

*The public interest test*

30. The exemptions in section 35(1)(a) and (b) are subject to the public interest test in section 2(1)(b) of FOISA. Having accepted that the exemptions apply to the withheld information here, the Commissioner must now consider the balance of the public interest.
31. Police Scotland acknowledged that disclosure would provide accountability for public funds and cast light on whether they were used efficiently. They recognised a public interest in being informed as to the efficient and effective deployment of police resources.
32. Reiterating the harm identified as a result of disclosure, Police Scotland also submitted that, given their statutory duty with regard to the prevention and detection of crime and the apprehension and prosecution of offenders, there was a significant public interest in maintaining their operational efficiency and effectiveness, which extended to ensuring every tactical advantage possible.
33. Overall, Police Scotland considered the public interest must lie in favour of withholding the information, highlighting the risk of disclosure making Police Scotland being more vulnerable, both to major attack and also lower level crime and disorder.
34. Mr Bryce stated there was no substance to Police Scotland's comments on the adverse impact to operational effectiveness and tactical advantage. He argued that the public interest in health and safety favoured disclosure of information on how Police Scotland handled the event.
35. The Commissioner acknowledges the general public interest in transparency and accountability. She accepts that disclosure of the information would allow public scrutiny of police resources. She notes Police Scotland do not dispute this.
36. On the other hand, the Commissioner has already acknowledged that disclosure of the information would, or would be likely to, lead to substantial prejudice for the purposes of section 35(1)(a) and (b) of FOISA. This would clearly not be in the public interest: the Commissioner accepts Police Scotland's contention that there is a strong public interest in maintaining the operational efficiency and effectiveness of the force.
37. Having balanced the public interest for and against disclosure, the Commissioner has concluded that the arguments against disclosure should prevail in this particular case. She is satisfied that, in all the circumstances of the case, the public interest in maintaining the exemptions in section 35(1)(a) and (b) outweighs that in disclosure of the information under consideration.
38. The Commissioner therefore finds that Police Scotland were entitled to withhold the information under the exemptions in section 35(1)(a) and (b) of FOISA.

39. As the Commissioner accepts that this information is properly withheld in terms of section 35(1)(a) and (b) of FOISA, she is not required to consider Police Scotland's application of the exemption in section 39(1).

## Decision

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The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) 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 Bryce.

The Commissioner is satisfied that Police Scotland were entitled to withhold numbers and ranks of officers under sections 35(1)(a) and (b) of FOISA.

The Commissioner finds that Police Scotland incorrectly withheld information in the debrief report under section 35(1)(a) and (b) of FOISA . This was a failure to comply with section 1(1). As Police Scotland have now disclosed this information to Mr Bryce, the Commissioner does not require Police Scotland to take any further action in respect of this breach, in response to Mr Bryce's application.

## Appeal

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Should either Mr Bryce or the Chief Constable of 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**10 March 2017**

### 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.

...

#### 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;

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