



Scottish Information
Commissioner

Decision 024/2007 Mr Charles Traynor and the Chief Constable of Strathclyde Police
<i>Information about the links between three police officers and members of a named family.</i>

Applicant: Mr Charles Traynor
Authority: Chief Constable of Strathclyde Police
Case No: 200600468, 200600470 and 200600471
Decision Date: 08 February 2007

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 024/2007 Mr Traynor and the Chief Constable of Strathclyde Police

Request for information about the role of three Strathclyde Police Officers and criminal proceedings involving members of a named family – some information not held by the Police – refusal to confirm or deny whether other information held

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 17 (Notice that information is not held); 18 (Further provision as respects responses to request); 34(1)(a)(i) (Investigations by Scottish public authorities and proceedings arising out of such investigations).

Data Protection Act 1998 section 2(g) and (h) (Sensitive 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

Mr Traynor made three requests for information to the Chief Constable of Strathclyde Police (Strathclyde Police). Each request asked questions about whether a named police officer had any involvement with court cases and criminal investigations concerning members of a named family. Strathclyde Police refused part of each request on the grounds that the information was not held in terms of section 17 of FOISA. In relation to the remaining parts of each request, Strathclyde Police refused to confirm or deny whether they held the information Mr Traynor requested, or whether that information existed, in terms of section 18 of FOISA.

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



Background

1. On 9 October 2005, Mr Traynor made three separate information requests under FOISA to Strathclyde Police. Each request sought the same information about one of three named police officers, and their links to a named family (the family). Specifically, Mr Traynor's requests each asked the following questions about one of the three named officers:
 - a) Has the named officer ever testified in any court proceedings involving any member of the family?
 - b) Has the named officer ever given a statement to Strathclyde Police for a family member?
 - c) Has the named officer as a police officer ever been involved in any criminal case which involved a family member?Throughout this document, the above three questions will be referred to as parts a), b) and c) of the information requests.
2. Strathclyde Police responded to Mr Traynor's requests on 13 October 2005 by issuing refusal notices in terms of section 17 of FOISA, on the grounds that they did not hold the information he requested. However, the refusal notices only related to parts a) of the questions posed by Mr Traynor.
3. Mr Traynor asked Strathclyde Police to review their response on 30 October 2005.
4. Separately, on 7 November 2005, Strathclyde Police sent a letter to Mr Traynor to clarify that the response described in paragraph 2 above referred only to part a) of his three requests. The letter of 7 November 2005 advised him that in response to parts b) and c) of his three requests, Strathclyde Police were refusing to confirm or deny that the information was held by them and that, if the information were held by them, then it would be exempt in terms of sections 26 and 38(1)(b) of FOISA.
5. A review was subsequently carried out by Strathclyde Police. The outcome of the review was then communicated to Mr Traynor in letters dated 28 November 2005, upholding, without modification, the previous decision (as described in paragraphs 2 and 4 above).
6. Mr Traynor wrote to my Office on 23 February 2006 stating that he was dissatisfied with Strathclyde Police's responses to his requests and applying to me for a decision as to whether Strathclyde Police had failed to comply with FOISA in responding to his requests.



7. On receipt of Mr Traynor's application, a unique case number was allocated in relation to each of the three named officers. However, after considering the similar nature of each request, it was decided to consider the requests in one single decision.
8. Mr Traynor's application was validated by establishing that he had made a valid information request to a Scottish public authority under FOISA (i.e. Strathclyde Police) and had applied to me only after asking Strathclyde Police to review his response to the request. The case was then allocated to an Investigating Officer.

Investigation

9. Letters were sent to Strathclyde Police on 22 March 2006, in terms of section 49(3)(a) of FOISA, giving notice that three applications had been received and that an investigation into the matter had begun. Strathclyde Police were invited to comment on the matters raised by Mr Traynor and on the applications as a whole.
10. Following some delay, Strathclyde Police's formal responses to these letters were sent on 23 July 2006. This provided background information to support the claim that Strathclyde Police were unable to fulfil part a) of Mr Traynor's three requests because the information was not held by them. (I will consider this in more detail below.)
11. In relation to parts b) and c) of each request, Strathclyde Police advised my Office that while they still wished to rely on section 18 of FOISA (i.e. neither to confirm or deny to Mr Traynor that the information was held), they recognised that neither of the exemptions in section 26 and section 38(1)(b) would allow them to do this. Consequently, they wished to rely on the fact that the information, if held, would be exempt in terms of section 34(1)(a)(i) of FOISA. (Again, I will consider the reliance on the provisions of section 18 in more detail below.)



The Commissioner's Analysis and Findings

12. 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 Traynor and Strathclyde Police and I am satisfied that no matter of relevance has been overlooked.

Part a) of the requests – whether the information is held

13. I will first consider part a) of each of Mr Traynor's requests. These asked whether each of three named police officers had ever testified in any court proceedings involving any member of the family in question. Strathclyde Police's response to this was to notify Mr Traynor in terms of section 17 of FOISA that the information requested was not held.
14. In its submissions to my Office, Strathclyde Police informed me that although they held records of which officers had been cited to attend court, they did not hold any records on whether any of the cited officers actually entered the witness box. They pointed out that not all officers who are cited to attend court are requested to give evidence.
15. I also contacted the Association of Chief Police Officers in Scotland (ACPOS) to seek further background information on this matter. ACPOS confirmed that police forces do not record this information and suggested that the Scottish Courts Administration may be able to provide further assistance. However, I did not consider it appropriate to contact the Scottish Courts Administration as part of the investigation, given that what is relevant here is what information is actually held by Strathclyde Police.
16. I am satisfied that Strathclyde Police do not hold the information requested in part a) of Mr Traynor's three information requests. I am therefore satisfied that by responding to these parts of the requests by issuing a notice in terms of section 17 of FOISA, Strathclyde Police acted in accordance with Part 1 of FOISA.

Parts b) and c) of the requests – refusal to confirm or deny whether information held

17. Parts b) and c) of Mr Traynor's three requests asked Strathclyde Police whether each of the named police officers had ever given a statement to Strathclyde Police for a member of the family in question and whether any of them, as police officers, had ever been involved in any criminal case which involved a family member. After some consideration, Strathclyde Police chose to rely on section 18(1), on the basis that the information, if held, would be exempt in terms of section 34(1)(a)(i) of FOISA



18. Consequently, when considering the response to parts b) and c) of Mr Traynor's requests, I have to consider whether Strathclyde Police were justified in issuing a refusal notice on the basis that to reveal whether the information exists or is held is contrary to the public interest and also to establish that, if the information did exist and was held, Strathclyde Police would be justified in refusing to disclose the information by virtue of the exemption in section 34(1)(a)(i) of FOISA.
19. Where a public authority has chosen to rely on section 18, I must ensure that my decision notice does not confirm one way or the other whether the information actually exists or is held by the public authority. This means that I will be unable to comment in any depth on the use of section 18 or on the reliance on the exemption contained in section 34(1)(a)(i) by Strathclyde Police as to do so could highlight whether the information exists or is held by them.
20. In this case, Strathclyde Police has noted that revealing whether or not the information requested by Mr Traynor exists or is held by them could in turn reveal whether or not criminal investigations or proceedings had been undertaken in relation to members of the family named in the information requests. They consider that to confirm or deny this would not be in the public interest.
21. In coming to this decision, Strathclyde Police have considered various public interest arguments in relation to the reliance on section 18. In considering the public interest favour of denying whether the information exists and is held (if it does in fact exist and is held) exists, Strathclyde Police have considered the effect confirmation would have on criminal investigations, the flow of information to them, fairness to the individuals concerned and, as noted in paragraph 20 above, the fact that confirming whether the information exists or is held would in effect disclose sensitive personal data (see sections 2(g) and (h) of the Data Protection Act 1998) about the members of the family.
22. In considering the public interest in confirming whether the information exists or is held (if it does in fact exist and is held), Strathclyde Police have considered the public interest in highlighting in general the improper actions of public officials.
23. With regard to this particular point, Strathclyde Police notes that a pressure group of which Mr Traynor is a member has previously made allegations that a number of police officers have been in collusion with certain criminals and consider that the requests have been made by Mr Traynor in an effort to substantiate these allegations.



24. However Strathclyde Police maintain that any public interest in favour of confirming whether the information exists or is held by them is outweighed by the provisions in the Police (Conduct) Regulations 1996 (1996 Regulations) which allow for complaints against the police to be investigated. Indeed, Strathclyde Police have asked me to highlight to Mr Traynor that they would be happy for him to be interviewed at a time and date suitable to him to consider any concerns he may have under the 1996 Regulations.
25. Having considered and balanced the public interest in Strathclyde Police confirming or denying that the information requested by Mr Traynor exists or is held by them, I am satisfied on the basis of the arguments put to me by Strathclyde Police that it would be contrary to the public interest to confirm or deny whether the information requested by Mr Traynor exists or is held. I will say, however, that while I accept the need for consistent application of an approach of neither confirming or denying the existence of information of this kind, and am content that such an approach is likely to be appropriate in many requests for information of this kind, it is always possible that there will be exceptions to the general rule and therefore it is important that each request for such information is considered individually.
26. In reaching this view, I have also considered the comments made by Mr Traynor about his reasons for believing that disclosure of the information he has requested (should it exist) would be in the public interest. Having considered the comments of both parties to the case, I have concluded that there is no overriding public interest that would mean that section 18 does not apply in this case.
27. I am therefore satisfied that it would be contrary to the public interest for Strathclyde Police to reveal whether the information exists or is held by them.
28. I will now consider the exemption put forward by Strathclyde Police in conjunction with the use of section 18. As noted above, one of the tests for relying on section 18 is that the information requested, if it exists or is held by them, would be exempt in terms of certain listed exemptions. The exemption in section 34(1)(a)(i) is one of the exemptions listed in section 18.
29. Information is exempt information in terms of section 34(1)(a)(i) if it has at any time been held by a Scottish public authority for the purposes of an investigation which the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence.
30. Strathclyde Police have advised me that any information (should it exist) that would satisfy parts b) and c) of Mr Traynor's requests would be or would have been held for the purposes of an investigation to ascertain whether a person should be prosecuted for an offence.



31. Given the information requested by Mr Traynor and the comments from Strathclyde Police, I accept that if the information requested by Mr Traynor existed and was held by Strathclyde Police, it would fall under the scope of the exemption in section 34(1)(a)(i) of FOISA.
32. The exemption in section 34(1)(a)(i) is subject to the public interest test required by section 2(1)(b) of FOISA. This means that even although I am satisfied that the information requested by Mr Traynor would, if it existed and was held by Strathclyde Police, be exempt information, I must still go on to consider whether the public interest in releasing such information would (again, if it existed and was held by Strathclyde Police) be outweighed by the public interest in withholding the information. Only if I find that the greater public interest would lie in maintaining the exemption can I uphold the application of section 18.
33. In considering the public interest test, Strathclyde Police examined both the public interest in releasing the information and the public interest in maintaining the exemption. From the submissions provided to me by Strathclyde Police, I am satisfied that they concluded correctly that the public interest would favour maintaining the exemption, if the information actually existed or was held by them.

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 three requests for information in respect of which Mr Traynor made applications to me.

I am satisfied that Strathclyde Police does not hold information in relation to request a) in each of these requests and that Strathclyde Police was therefore correct to issue a notice under section 17 of FOISA in relation to this part of each request.

In addition, I find that Strathclyde Police complied with Part 1 of FOISA in refusing to reveal (in terms of section 18 of FOISA) whether information existed or was held by them in relation to parts b) and c) of Mr Traynor's three requests.



Appeal

Should either Mr Traynor or Strathclyde Police wish to appeal the 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 notice.

Kevin Dunion
Scottish Information Commissioner
08 February 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 paragraphs (a) or (b) of section 2(1),
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.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.

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 or 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
- ...

Data Protection Act 1998

2 Sensitive personal data

In this Act, “sensitive personal data” means personal data consisting of information as to –

- ...
- (g) the commission or alleged commission by him of any offence, or
 - (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.