



Scottish Information
Commissioner

**Decision 034/2007 The Sportsman's Association of
Great Britain and Northern Ireland and the Chief
Constable of Central Scotland Police**

*Requests for photographs of all bullet holes in doors, walls and
windows taken at and in the vicinity of Dunblane Primary School*

**Applicant: The Sportsman's Association of Great Britain
and Northern Ireland**

Authority: The Chief Constable of Central Scotland Police

Case No: 200503197

Decision Date: 28 February 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 034/2007 – The Sportsman’s Association of Great Britain and Northern Ireland and the Chief Constable of Central Scotland Police

Requests for photographs of all bullet holes in doors, walls and windows taken at and in the vicinity of Dunblane Primary School following the shootings at the school on 13 March 1996 – withheld on the basis of section 39(1) of the Freedom of Information (Scotland) Act 2002 – health and safety – Commissioner upheld decision to withhold information

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement); 2(1) (Effect of exemptions) and 39(1) (Health, safety and the environment).

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

Facts

The Sportsman’s Association of Great Britain and Northern Ireland (SAGBNI) asked the Chief Constable of Central Scotland Police (the Police) to let him see photographs of all bullet holes in doors, walls and windows taken at and in the vicinity of Dunblane Primary School following the shootings at the school on 13 March 1996. The Police refused to allow SAGBNI to see these photographs on the basis that the photographs were exempt in terms of section 39(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

The Police upheld their decision on review and SAGBNI made an application to the Scottish Information Commissioner for a decision as to whether the Police had complied with FOISA in refusing to let them see the photographs. The Commissioner found that the Police had complied with FOISA in dealing with the request from SAGBNI.



Background

1. On 11 October 2005, SAGBNI submitted an information request under section 1(1) of FOISA to the Police for copy photographs of all bullet holes in doors, walls and windows taken at and in the vicinity of Dunblane Primary School. As the request was headed “Dunblane Primary School 13th March 1996”, it was clear that the photographs SAGBNI wanted to see were those taken in relation to the incident at the school when 16 pupils and a teacher were killed by Thomas Hamilton.
2. The Police refused to provide SAGBNI with the photographs on the basis of the exemption contained in section 39(1) of FOISA. The response from the Police made it clear that, while the Police could understand SAGBNI’s interest in the matter, FOISA does not distinguish between applicants and that, consequently, the release of the photographs to SAGBNI would in fact mean that the photographs would be disclosed “to the world” with few restraints on their future use.
3. The response from the Police stated that, in their view, release into the public domain of the photographs would cause extreme anguish and distress to the relatives of the deceased and injured and that the extent of the anguish and distress would be such as to endanger the physical and mental health of those persons.
4. The Police also noted that the Scene of Crime Officer’s statements, along with accompanying diagrams, are available for public inspection at the National Archives of Scotland.
5. SAGBNI was unhappy with this response and subsequently asked the Police to carry out a review of the way in which they had dealt with the information request. In the request for review, SAGBNI made it clear that it did not want to see photographs containing images of the deceased but that it was looking for photographs of the crime scene after the removal of the bodies. SAGBNI also stated that, should the photographs be supplied to it (or to Mike Wells, General Secretary of SAGBNI, who had made the request on behalf of SAGBNI), they would not be used in a public forum to cause distress to the families involved.
6. SAGBNI also commented that there are some people who do not believe that Thomas Hamilton committed suicide and that, with Mr Wells’ experience as a shooter, it would be possible to examine the evidence to rule out that someone fired into the gym at Thomas Hamilton.



7. The Police subsequently carried out a review and advised SAGBNI of the outcome on 11 November 2005. The review upheld the Police's original decision. This letter from the Police again highlighted that if the photographs were to be released to SAGBNI then there would be few, if any, effective restraints on their future use.
8. SAGBNI remained unhappy with the outcome of the review and, on 25 November 2005, applied to me for a decision as to whether the Police had complied with Part 1 of FOISA in dealing with the information request. The application was allocated to an investigating officer.

The Investigation

9. The application was validated by establishing that a valid information request had been made to a Scottish public authority and that an application had been made to me only after asking the Police to carry out a review.
10. A letter was sent by the investigating officer to the Police on 13 December 2005, asking for their comments on SAGBNI's application in terms of section 49(3)(a) of FOISA. The letter also asked the Police for further clarification about the contents of the photographs and to comment on the public interest attached to the exemption in section 39(1) as this had not been addressed by the Police in their correspondence with SAGBNI.

Submissions from the Police

11. In response, the Police advised that 31 photographs were taken of the bullet holes in the floor, walls and windows of the gymnasium of the school. None of the photographs display the bodies of the victims, but in most of the photographs it is clear that the photographs are of the gymnasium where the pupils and their teacher were murdered. According to the Police, the manner in which many of the victims were murdered is also clear.



12. The Police also commented that the distress which would be caused to the relatives of the victims of the massacre if these photographs were to come into the public domain would be out of all proportion to any public interest in the release of these photographs. The Police stated that the public interest in this matter has already been addressed by the Cullen Inquiry and pointed out that evidence was given to the Inquiry by an acknowledged ballistic expert, Malcolm Chisholm. Mr Chisholm's statement and a diagram of the bullet holes to which his statement refers are already publicly available.

Submissions from Mr Wells

13. It would appear that SAGBNI wish to view the photographs in order to come to a view as to whether Thomas Hamilton committed suicide or was shot by a third party.
14. It would also appear to be the case that SAGBNI does not intend to publicise these photographs further and only wishes to examine them for the purposes set out above. Indeed, given that the information request was made by Mr Wells on behalf of SAGBNI and that he has, for example, offered to travel from London to Scotland to examine the photographs, it may well be the intention that only Mr Wells, as General Secretary of SAGBNI, would view the photographs.
15. SAGBNI has commented it is aware of the documents which are available at the National Archives of Scotland, but that these are not what it requested access to.

The Commissioner's Analysis and Findings

16. As mentioned above, the Police have refused to release the photographs to SAGBNI on the basis of the exemption contained in section 39(1) of FOISA. Section 39(1) exempts information if its disclosure would, or would be likely to, endanger the physical or mental health or the safety of an individual.
17. This exemption is subject to the public interest test required by section 2(1)(b) of FOISA. This means that, even if I find that the information is exempt in terms of section 39(1), I must still order release of the information unless, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.



18. I have issued guidance on the exemption contained in section 39(1) (<http://www.itspublicknowledge.info/legislation/briefings/section39.htm>). In that guidance, I express the view that the term “endangerment of health and safety” is broad enough to cover information which may indirectly harm a person or a group of persons. I also take the view that the phrases “danger to physical health” and “danger to mental health” can be interpreted widely. While danger to physical health could mean danger to someone’s person as a result of physical injury, illness or disease, danger to mental health could mean any type of psychological illness, resulting from the release of information. Mental health should not be confined to the symptoms of defined psychological pathology, but can also include consideration of a person’s mental wellbeing.
19. I have to consider whether the release of the photographs would, or would be likely to, endanger the physical or mental health or the safety of an individual. While it is important to consider the actual contents of the photographs, I think it is important to consider the context in which the photographs were taken and the effect of their release at this time. The photographs were taken in the aftermath of a horrific shooting incident, during which Thomas Hamilton killed 16 pupils and their teacher. The shock and revulsion felt at these killings cannot be underestimated. Although more than 10 years have now passed since the killings, Dunblane remains a highly emotive subject for many people, but particularly for the relatives of those who were killed or injured, and of course for those children involved.
20. During the investigation, I personally visited the headquarters of the Police to view the photographs in question. For obvious reasons, I am unable to describe, in this decision notice, the specific contents of the photographs. However, it is fair to say that they vary in their perspective – from wide angle to close ups. They capture a moment in time which is unique in Scottish experience and in a place which has now been razed.
21. Assessing the extent to which release of these images will have the effect which the Police claim is far from straightforward. Is the exemption at section 39(1) intended to apply only where there is direct medical advice that release would harm the mental health of a specific individuals or individuals? Certainly such supporting opinion would be powerful, but to require it may be too narrow a reading of the provision. However, it cannot be too broadly applied. It seems unlikely, for example, that the exemption could be claimed on the basis of an assertion that someone would be upset by the release of certain information.



22. In this case, the Police have advanced the argument that, based upon their experience and from their contacts, the trauma endured by the children and their families is such that the release of this information will cause, or is likely to cause, a degree of distress which the exemption at section 39(1) is intended to guard against.
23. I have given this matter careful consideration and have not accepted the argument as a matter of course. I have taken into account the specific nature of the photographs. I have taken into account the passage of time. I am aware of what has already been put into the public domain following the Cullen Inquiry.
24. I have taken the view that the exemption can be read as meaning that mental health should not be confined to the symptoms of defined psychological pathology, but can also include consideration of a person's mental wellbeing. There still has to be compelling reason to believe that this would be so, and it could not be simply asserted or readily claimed, without regard to other considerations such as, here, the content and context of the photographs. I have come to the conclusion that in this case those circumstances are present.
25. Having taken account of the content and context of the photographs, I am satisfied that the release of the information would, or would be likely to, endanger the mental health of an individual and that the information is therefore exempt in terms of section 39(1) of FOISA.
26. Given that I have decided that the information is exempt in terms of section 39(1), I must now apply the public interest in section 2(1)(b) of FOISA and go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.
27. I have considered the public interest in favour of release and the public interest in favour of maintaining the exemption and have weighed up the two. In favour of release, it could be argued that the disclosure of the information would contribute to the administration of justice and enforcement of the law, including the detection of crime and the apprehension or prosecution of offenders. SAGBNI hopes that by viewing the photographs they will be able to tell from the position etc. of the bullet holes whether Thomas Hamilton committed suicide or was murdered by a third party. Further arguments in favour of release of the information include ensuring that a public authority with regulatory responsibilities, such as the Police, has adequately discharged its functions.



28. However, there are also public interest arguments which favour the maintenance of the exemption. In correspondence with my Office, the Police have referred to the Cullen Inquiry which took place in the aftermath of the killings at the school. This Inquiry considered in depth what had happened at the school on 13 March 1996 and the circumstances which led up to the shootings. It is therefore difficult to see how the release of the photographs would contribute to the administration of justice when a full Inquiry has already been carried out.
29. As noted above, information about the ballistics is already publicly available, although not, admittedly, in the format requested by SAGBNI.
30. I must also consider the effect of the release of the information on the parents of the deceased and injured, as well as on the children who survived. While this is a matter which I took into account in considering whether the section 39(1) exemption could be applied to the photographs, it is also pertinent to consider the degree of distress when considering where the public interest lies.
31. On balance, given the fact that an Inquiry has already been held into the events at Dunblane, and given the likely distress which would be caused to the relatives of the deceased and injured were the photographs to be released, I find that the public interest would be better served by the exemption being maintained than by the information being released. I therefore uphold the decision of the Police not to provide SAGBNI with copies of the photographs in question.

Additional comments

32. As noted above, Mr Wells, on behalf of SAGBNI, has offered to come to Scotland to view the photographs and has also made it clear to the Police that, should he be provided with copies of the photographs, the photographs would not be allowed to enter the public domain. However, it is clear that any information released under FOISA is, effectively, put into the public domain. Should the photographs be released to SAGBNI (even for inspection purposes only), it is difficult to see how the Police could refuse to release them to any other person who asked for the information.
33. In his request for review, SAGBNI also said that it wished to view photographs of Thomas Hamilton's body. This was a new information request and, as far as I am aware, no request for review has ever been made in relation to these particular photographs. There was no reference to these photographs in the application made to me by SAGBNI. As a result, I had no power to consider the photographs of Thomas Hamilton's body as part of this investigation.



Decision

I find that the Chief Constable of Central Scotland Police (the Police) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to disclose to the Sportsman's Association of Great Britain and Northern Ireland (SAGBNI) copies of the photographs requested by it. The exemption contained in section 39(1) of FOISA was applied correctly by the Police and, as a result, section 1(1) was applied correctly.

Appeal

Should either SAGBNI or the Police wish to appeal against this decision, there is a right to 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
28 February 2007



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.

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 –
- (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

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.