



Scottish Information  
Commissioner

## **Decision 054/2008 Mr E and Chief Constable of Strathclyde Police**

*Information relating to a telephone call*

**Applicant: Mr E**

**Authority: Chief Constable of Strathclyde Police**

**Case No: 200701486**

**Decision Date: 15 April 2008**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 054/2008 Mr E and the Chief Constable of Strathclyde Police**

***Request for information regarding a telephone call made by Strathclyde Police - information withheld under section 38(1)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA) – Commissioner upheld the reliance on section 38(1)(a) to withhold the requested information***

### **Relevant Statutory Provisions and Other Sources**

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement) and 38(1)(a) (Personal information)

Data Protection Act 1998 (the DPA): section 1(1) (definition of "personal data" and "data subject")

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

### **Facts**

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Mr E requested from the Chief Constable of Strathclyde Police (Strathclyde Police) a range of information regarding a telephone call. Strathclyde Police clarified Mr E's request and then responded by withholding the information under section 38(1)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA). Mr E was not satisfied with this response and asked Strathclyde Police to review its decision, which was upheld upon review. Mr E remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Strathclyde Police had complied with Part 1 of FOISA in dealing with Mr E's request, finding that the information withheld was Mr E's own personal data and therefore exempt from disclosure under section 38(1)(a) of FOISA.



## Background

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1. On 21 August 2007, Mr E wrote to Strathclyde Police requesting the following information regarding a telephone call made by Strathclyde Police in November 2003:
  1. Confirmation that a telephone call was made from Strathclyde Police.
  2. The name of the person who made the telephone call?
  3. Who gave the instruction for the telephone call to be made?
  4. Was the telephone call made in response to a request made to, or information received by, Strathclyde Police?
  5. Who made that request, or provided that information?
  6. What was the aim and purpose of that telephone call?
  7. What follow up action was taken by Strathclyde Police following the making of that telephone call?
2. Following further correspondence seeking information to assist in identifying the relevant telephone call, Strathclyde Police responded on 25 September 2007. Strathclyde Police refused to supply the information requested on the basis that it was exempt from disclosure under section 38(1)(a) of FOISA.
3. Mr E was dissatisfied with the response from Strathclyde Police and requested a review of its decision on 26 September 2007.
4. Strathclyde Police notified Mr E on 24 October 2007 that following an internal review it had upheld its decision in full.
5. On 29 October 2007, Mr E 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.
6. The application was validated by establishing that Mr E 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

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7. On 26 November 2007, Strathclyde Police were notified in writing that an application had been received from Mr E and was asked to provide my Office with copies of the withheld information. Strathclyde Police responded with the information requested stating that it was being withheld and the case was then allocated to an investigating officer.
8. The investigating officer emailed Strathclyde Police on 20 February 2008, asking it to provide comments on the application in terms of section 49(3)(a) and further information to inform my consideration in this case.
9. In subsequent correspondence and communications with the investigating officer, Strathclyde Police provided detailed comments on this case including its reasons for relying upon the exemption in section 38(1)(a) when responding to Mr E's request. The Police also submitted that a range of further exemptions would apply to the information.

## The Commissioner's Analysis and Findings

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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 E and Strathclyde Police and am satisfied that no matter of relevance has been overlooked.

### **Section 38(1)(a) of FOISA – personal information**

11. Section 38(1)(a) of FOISA contains an absolute exemption in relation to personal data of which the applicant is the data subject. This exemption exists under FOISA because there exists a right for individuals to make a request for their own personal information (known as a subject access request) under section 7 of the DPA. The rules under the DPA will therefore usually determine whether the person has a right to information about themselves. Therefore, the effect of the exemption in section 38(1)(a) is not to deny individuals a right of access information about themselves, but to ensure the right is exercised under the DPA and not under FOISA.



12. Section 38(1)(a) is an absolute exemption and is therefore not subject to the public interest. Consequently, if I find that section 38(1)(a) applies, I cannot order Strathclyde Police to disclose under FOISA the information requested by Mr E.
13. "Personal data" is defined in section 1(1) of the DPA, which is reproduced in the Appendix below.
14. I have considered the terms of Mr E's request along with the further comments made by Mr E following Strathclyde Police's request for clarification, and Strathclyde Police's comments on its interpretation of the request and searches undertaken in response to this. It is clear that the telephone call to which the request relates was made in the context of police investigations into allegations of criminal activity made against Mr E.
15. Although Mr E's request seeks specific information relating to that call, that context means the information concerned relates to Mr E and actions taken by Strathclyde Police in the course of its investigations concerning him. As such, I am unable to agree with Mr E that the information he has requested does not relate to him. This information may include information about other individuals, or record events in which he did not directly participate, but the information has Mr E as its focus and is biographical in a significant sense in relation to Mr E.
16. Therefore in the circumstances, I am satisfied that the withheld information is the personal data of which Mr E is the data subject. It is therefore exempt from disclosure under section 38(1)(a) of FOISA.
17. I note that Strathclyde Police advised Mr E on 25 September 2007 that he could make a subject access request, which Mr E declined. I cannot comment on whether Strathclyde Police would release the information under a subject access request to Mr E. However, I am satisfied that the information he is seeking is exempt under section 38(1)(a) of FOISA and my jurisdiction ends there. It is not the purpose of FOISA to extend the rights of data subjects to information that is held about them and any question as to whether information has been properly withheld from Mr E as a data subject is rather a question of the proper application of the DPA (which is a matter for the UK Information Commissioner).
18. The exemption in section 38(1)(a) is absolute and I am therefore not required to go on to consider whether the public interest lies in the information being released or withheld. As I am satisfied that all of the information is absolutely exempt under section 38(1)(a), I am not required to (and will not) consider the other exemptions applied by Strathclyde Police.



## **Decision**

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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 E in withholding the information regarding a telephone call under section 38(1)(a) of FOISA.

## **Appeal**

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Should either Mr E 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**  
**15 April 2008**



## Appendix

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### 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.

##### 38 Personal information

- (1) Information is exempt information if it constitutes-
  - (a) personal data of which the applicant is the data subject;
  - ...

#### Data Protection Act 1998

##### Basic interpretative provisions

1. In this Act, unless the context otherwise requires-  
"data" means information which-
  - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
  - (b) is recorded with the intention that it should be processed by means of such equipment,
  - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
  - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

...

"data subject" means an individual who is the subject of personal data;

"personal data" means data which relate to a living individual who can be identified-

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...