

# Decision Notice



Decision 140/2009 Mr Stuart Hunt and the Chief Constable of Northern Constabulary

Report of police investigation

Reference No: 200900579  
Decision Date: 15 December 2009

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Kevin Dunion**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Hunt requested from the Chief Constable of Northern Constabulary (Northern Constabulary) a report of a police investigation arising from a criminal complaint he had made to Northern Constabulary. Northern Constabulary responded by withholding the information under section 34(1) of FOISA. Following a review, Mr Hunt remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Northern Constabulary had dealt with Mr Hunt's request for information in accordance with Part 1 of FOISA by correctly applying the exemption in section 34(1)(a)(i) to the withheld investigation report.

## Relevant statutory provisions and other sources

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections: 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions), 15 (Duty to provide advice and assistance) and 34(1)(a)(i) (Investigations by Scottish Public Authorities and proceedings arising out of such investigations)

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

## Background

---

1. On 4 February 2009, Mr Hunt wrote to Northern Constabulary requesting a copy of the report prepared by a named officer regarding the circumstances of a criminal complaint made on a specified date by Mr Hunt.
2. Northern Constabulary responded on 20 February 2009, withholding the information under the exemptions in section 34(1) of FOISA.
3. On 20 February 2009, Mr Hunt wrote to Northern Constabulary requesting a review of its decision. In particular, Mr Hunt drew attention to the importance to the public interest of releasing the report. Mr Hunt referred to its potential relevance to ongoing enquiries of a similar nature.



4. Northern Constabulary notified Mr Hunt of the outcome of its review on 18 March 2009. Northern Constabulary upheld its previous decision not to release the report, citing the exemptions contained in sections 34, 35(1)(b) and 38(1)(a) and (b) of FOISA.
5. On 24 March 2009, Mr Hunt wrote to the Commissioner, stating that he was dissatisfied with the outcome of Northern Constabulary'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 Hunt 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 24 April 2009, Northern Constabulary was notified in writing that an application had been received from Mr Hunt and was asked to provide the Commissioner with any information withheld from him. Northern Constabulary responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted Northern Constabulary, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, Northern Constabulary was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. In response, Northern Constabulary provided submissions to the Commissioner and confirmed that it considered the exemptions in section 34(1)(a)(i) and (b) of FOISA applied to the report in its entirety. Additionally, Northern Constabulary also applied the exemptions in sections 35(1) and 38(1)(a) and (b) to specific parts of the report.
10. Northern Constabulary also informed the Commissioner that the report included 39 appendices and that Mr Hunt was already in possession or would have knowledge of 17 documents which were incorporated within these appendices, i.e. of a substantial proportion of the report. With the agreement of Northern Constabulary, Mr Hunt was provided with a list of the titles of the 39 appendices to the report (but no other information from it).
11. Mr Hunt was also invited to provide his comments on the public interest in disclosure of the information under consideration. In addition to providing these comments, Mr Hunt also submitted that the report ought to contain additional information and that significant matters had not been included in the report.
12. The submissions made by both Mr Hunt and Northern Constabulary are summarised (where relevant) below.



### Scope of the investigation

13. In his submissions to the Commissioner, Mr Hunt argued that the report should, in his view, contain more information than it appeared to. Mr Hunt also argued that significant items of evidence had in his view been removed from the report.
14. Northern Constabulary subsequently confirmed to the Commissioner that the content of the report was as described by them; i.e. that it was complete as it stood. Northern Constabulary argued that the report's nature and scope were matters for the professional judgment of the officer who undertook the police investigation and who had compiled the report as a result. Northern Constabulary also advised that it would be open to the Procurator Fiscal to call for further information if this was required.
15. Northern Constabulary stated that a myriad of documents may be reviewed as part of an investigative process, but that only a portion of these may be directly relevant to the report's content. The mere existence of other documents would not guarantee their inclusion in the police report, nor would this be required. The police officer conducting the investigation in question would not be reporting on the entire detailed history of what had gone before, but merely that section relevant to the complaint at hand.
16. The Commissioner notes that his remit in carrying out this investigation extends to the consideration of whether Northern Constabulary actually holds the information requested by Mr Hunt, in this case, the report into his allegations of criminal behaviour. The Commissioner cannot comment on whether a public authority should have recorded any or more information about a particular investigation, event or process, nor can he investigate the nature, scope or adequacy of an investigation carried out by Northern Constabulary. Consequently, he is not in a position to comment on the quantity or accuracy of the actual information contained within the report sought by Mr Hunt or the actions of Northern Constabulary in investigating his complaints. However, he is satisfied that there is no additional information held by Northern Constabulary which falls within the scope of Mr Hunt's request.

### Commissioner's analysis and findings

---

17. 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 Hunt and Northern Constabulary and is satisfied that no matter of relevance has been overlooked.

#### Section 34(1)(a)(i) of FOISA

18. Northern Constabulary has applied the exemption in section 34(1)(a)(i) of FOISA to all of the information contained in the report.



19. Section 34(1)(a)(i) of FOISA provides that information is exempt information 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.
20. This is a class-based exemption. This means that if information falls within the description set out above, the Commissioner is obliged to accept it as exempt. There is no harm test; the Commissioner is not required or permitted to consider whether disclosure would substantially prejudice an interest or activity, or otherwise to consider the effect of disclosure. However, the exemption is subject to the public interest test required by section 2(1)(b) of FOISA.
21. Having considered all of the information contained within the report, the Commissioner is satisfied that it is entirely exempt under section 34(1)(a)(i). Given the nature of the information (which relates to allegations of criminal conduct and their investigation by Northern Constabulary), the functions of the police and the fact that the report was submitted to the Procurator Fiscal for consideration, it has clearly been held by Northern Constabulary for the purposes of an investigation which it had a duty to conduct to ascertain whether a person should be prosecuted for an offence.
22. However, given that the exemption in section 34(1)(a)(i) is subject to the public interest test contained in section 2(1)(b) of FOISA, the Commissioner must go on to consider whether the public interest in disclosing the information contained in the report is outweighed by the public interest in maintaining the exemption.

#### *Public interest test*

23. As stated in previous decisions, the "public interest" is not defined in FOISA, but has been described as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interest of the public", i.e. it must serve the interests of the public.

#### *Mr Hunt's submissions*

24. Mr Hunt argued that disclosing the police report he had requested would be in the public interest because it would shed light upon allegations of criminal behaviour previously made by him.
25. Mr Hunt also considered that release of the information would be in the public interest by establishing its relevance or otherwise to ongoing enquiries of a similar nature and supporting independent scrutiny of current evidence relating to similar allegations of criminal behaviour.
26. Furthermore, Mr Hunt argued that it would be in the public interest to establish what had and had not been investigated by the police, the findings of the police report and the role of a (named) senior police officer.



*Northern Constabulary's submissions*

27. In its submissions, Northern Constabulary accepted that there was some public interest in showing the effectiveness and thoroughness of police investigations into misconduct or criminality, as well as in accountability and justice to the individual.
28. However, Northern Constabulary also pointed out that if there were disclosure in such circumstances, where information is gathered during the course of an investigation, disclosure would deter individuals from providing evidence and, with the flow of information impeded, the police would find it very difficult to investigate crime, which is a core police function. Northern Constabulary acknowledged that the information would be of interest to the individual concerned, but stated that no wider interest would be served by disclosure.
29. Northern Constabulary also argued that a high degree of confidentiality had usually been accorded to information such as reports and recording of statements. They repeated that disclosure would jeopardise the ability of the police to gather information; it would inhibit candour of those providing information, and there would be damage to the relationship of the police with the Procurator Fiscal and with the public if the information requested were disclosed. Northern Constabulary concluded that, in its view, disclosure would be contrary to the public interest and that the arguments in favour of withholding the information outweighed those in favour of disclosure.

*Conclusion on the public interest test*

30. The Commissioner has carefully considered all of the public interest arguments put forward by Mr Hunt and Northern Constabulary.
31. As stated above, the public interest should be considered in the context of FOISA as "something which is of serious concern and benefit to the public". Whilst the Commissioner recognises that Mr Hunt has a strong personal interest in fully understanding the investigations carried out by Northern Constabulary and its conclusions and recommendations thereon, in considering this case, the Commissioner must address the question of whether the information withheld by Northern Constabulary should, in effect, be made publicly available under FOISA and not just to Mr Hunt.
32. The Commissioner has considered the arguments both in favour of disclosing this information and in favour of maintaining the exemption. Release of the information could, for example, hold Northern Constabulary accountable for the quality and thoroughness of its investigation into alleged criminal behaviour and allow scrutiny of its actions. Additionally, release of the information might assist Mr Hunt in understanding more fully the circumstances surrounding his complaint.



33. However, given the subject matter of the allegations in this particular case, the Commissioner is satisfied in the circumstances that there is a genuine and strong public interest in ensuring that the flow of information and evidence to and from the police in relation to criminal investigations is not deterred or inhibited: if it were, the police would not be in a position to investigate and report fully whether and by whom a crime had been committed, one of their core duties.
34. Having considered the information withheld and the arguments for and against disclosure, the Commissioner finds the public interest in maintaining the exemption in section 34(1)(a)(i) outweighs that in disclosure in this case and accordingly finds that Northern Constabulary was correct to withhold the information in its entirety under this exemption.
35. Having reached this conclusion, the Commissioner has not found it necessary to go on to consider the application of any of the other exemptions relied on by Northern Constabulary.

#### **Court of Session decision**

36. The Commissioner notes that the information request by Mr Hunt was for a copy of a report and that in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA gives a right to information, not documents. However, the Court also said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
37. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr Hunt and Northern Constabulary that Northern Constabulary questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which Northern Constabulary has subsequently had with the Commissioner that Northern Constabulary was unclear as to what the information requested sought.
38. The Commissioner is satisfied that the request is reasonably clear and that the request is therefore valid.

#### **DECISION**

The Commissioner finds that the Chief Constable of Northern Constabulary acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Hunt.



## **Appeal**

---

Should either Mr Hunt or the Chief Constable of Northern Constabulary 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**  
**15 December 2009**





## 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.

...

- (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 –
- (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.

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

##### 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; or ...

