

# Decision Notice



Decision 142/2009 Greenbelt Group Ltd. and the Chief Constable of Central  
Scotland Police

Refusal to confirm or deny that information is held

Reference No: 200900638  
Decision Date: 15 December 2009

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**Kevin Dunion**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

Greenbelt Group Ltd. (Greenbelt) requested from the Chief Constable of Central Scotland Police (Central Scotland Police) verification of whether or not Central Scotland Police had received a specified document or file. Central Scotland Police responded by refusing to reveal whether the information requested by Greenbelt existed or was held by them, in terms of section 18 of FOISA. Following a review, Greenbelt remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Central Scotland Police had dealt with Greenbelt's request for information in accordance with Part 1 of FOISA. He did not require Central Scotland Police to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions); 15(1) (Duty to provide advice and assistance); 18 (Further provision as respects responses to request); 34(1)(a)(i) and (b) (Investigations by Scottish public authorities and proceedings arising out of such investigations)

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

## Background

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1. On 3 December 2008, Greenbelt wrote to Central Scotland Police requesting whether or not a document or file had been lodged with Central Scotland Police and, if so, its current status.
2. Central Scotland Police responded on 13 January 2009, by giving notice under section 18 of FOISA. Section 18 gives Scottish public authorities the right to refuse to reveal whether information exists or is held by them, where they consider that to do so would be contrary to the public interest and, if it did exist and was held by the authority, the information could be withheld under any of a number of specified exemptions.
3. On 18 February 2009, Greenbelt wrote to Central Scotland Police requesting a review of their decision.



4. Central Scotland Police notified Greenbelt of the outcome of their review on 5 March 2009. They upheld their decision without amendment.
5. On 31 March 2009, Greenbelt wrote to the Commissioner, stating that it was dissatisfied with the outcome of the review by Central Scotland Police and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Greenbelt also considered that Central Scotland Police had failed to provide advice and assistance as required by section 15 of FOISA.
6. The application was validated by establishing that Greenbelt 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. The case was then allocated to an investigating officer.

## Investigation

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7. The investigating officer contacted Central Scotland Police on 24 April 2009, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions.
8. Greenbelt was also invited to provide its comments on the public interest in Central Scotland Police confirming whether or not they held the requested information was held and, if held, the public interest in any information being disclosed.
9. The submissions made by both Greenbelt and Central Scotland Police are summarised (where relevant) in the Commissioner's analysis and findings section below.

## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Greenbelt and Central Scotland Police and is satisfied that no matter of relevance has been overlooked.
11. Section 18 of FOISA gives public authorities the right to refuse to reveal whether information exists or is held by them in certain limited circumstances. These circumstances are as follows:
  - (a) a request has been made to the authority for information which may or may not be held by it;
  - (b) if the information were held by the authority (and it need not be), the information could be withheld under any of the exemptions contained in sections 28 to 35, 39(1) or 41 of FOISA; and



- (c) the authority considers that to reveal whether the information exists or is held by it would be contrary to the public interest.
12. Where a public authority has chosen to rely on section 18, the Commissioner must ensure that his decision notice does not confirm one way or the other whether the information requested actually exists or is held by the public authority. This means that he is unable to comment in any depth on the reliance by the public authority on any of the exemptions listed in section 18(1), or on other matters, which could have the effect of indicating whether the information existed or was held by the public authority.
  13. The Commissioner can confirm, however, on the basis of the arguments put forward by Central Scotland Police, that he is satisfied in the circumstances that it would be contrary to the public interest for Central Scotland Police to reveal whether the information requested by Greenbelt exists or is held by them.
  14. As noted above, despite this finding, section 18 can only be relied on where the information, if it was held, is exempt information by virtue of sections 28 to 35, 39(1) or 41 of FOISA. Central Scotland Police submitted that if the information sought by Greenbelt existed and they did hold it, it could be withheld under the exemptions in sections 34(1)(a)(i) and (b) of FOISA, amongst others.
  15. In relation to the exemptions in sections 34(1)(a)(i) and (b), Central Scotland Police argued that should the requested information exist and be held by them, it would be held for the purposes of an investigation they had a duty to conduct to ascertain whether a person should be prosecuted for an offence, which in turn might lead to a decision by them to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted. The Commissioner accepts these arguments, which bring the information requested clearly within the definition of information exempt under sections 34(1)(a)(i) and (b) (the terms of which are set out in full in the Appendix to this decision).
  16. These exemptions are subject to the public interest test and therefore the Commissioner is required to go on to consider whether, in all the circumstances of the case, the public interest in disclosing the requested information (if it existed and if it was held by Central Scotland Police) would be outweighed by that in maintaining the exemptions under sections 34(1)(a)(i) and (b).
  17. Central Scotland Police identified some interest by applicants such as Greenbelt in the information requested. However, they also considered that disclosure of the information, if held, may prejudice the investigation of crime and assist offenders if the general expectation by any individual in society putting forward information to the police in the expectation that it would remain confidential was compromised. Central Scotland Police also stressed the need to avoid compromising the effectiveness of police forces by disclosing any such information and the hypothetical effect upon individuals' reputations if any such information, if it were held, were to be released. Central Scotland Police concluded that, if the information existed and was held, the public interest would fall in favour of maintaining the exemptions.



18. Greenbelt submitted that the media had widely reported that a document or file about it had been handed in to police forces in Scotland. This was a matter of importance to it and Greenbelt argued that it may encounter consequential legal difficulties if any relevant information about it was withheld by Central Scotland Police.
19. Greenbelt further submitted to the Commissioner that it provided a service to over 25000 households UK-wide who deserved to know whether any public allegations made about it were correct and should be given the reassurance of knowing the facts. Greenbelt also argued that failure to disclose any information may give rise to a preconceived idea that it was under some police investigation and could prejudice its current work and future contracts. Greenbelt argued that its reputation, credibility and relationships had suffered because of allegations of document or files being handed to the police.
20. Greenbelt also pointed out in its submissions that it had previously received prompt replies to the same question posed to Central Scotland Police from several other police forces in Scotland.
21. Having carefully considered the arguments presented by Central Scotland Police and by Greenbelt, the Commissioner has concluded that, on balance, the public interest in maintaining the exemptions in section 34(1)9(a)(i) and (b) would outweigh the public interest in the disclosure of the information, if it existed and was held.
22. Accordingly, the Commissioner is satisfied in the circumstances that Central Scotland Police were entitled under section 18 of FOISA to refuse to reveal whether the information requested by Greenbelt existed or was held.

### **Section 15 – Duty to provide advice and assistance**

23. In its application to the Commissioner, Greenbelt complained that Central Scotland Police had failed to provide Greenbelt with advice and assistance. Greenbelt explained that this complaint arose because Central Scotland Police had failed to tell Greenbelt whether or not they had received a document or file, unlike several other police forces which had specifically confirmed the equivalent information to Greenbelt.
24. Under section 15 of FOISA, 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.
25. In this case, given the constraints on Scottish public authorities in responding to requests where a response has been provided under section 18 of FOISA, the Commissioner has concluded that there was no breach of the duty to provide advice and assistance under section 15 of FOISA by Central Scotland Police.



## **DECISION**

The Commissioner finds that Chief Constable of Central Scotland Police complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Greenbelt.

## **Appeal**

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Should either Greenbelt or Central Scotland 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.

**Margaret Keyse**  
**Head of Enforcement**  
**15 December 2009**



## 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.

...

- (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.

...



**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 nor 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; or
    - ...
  - (b) an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted;

...