

Decision Notice



Decision 165/2013 Mr Ralph Holland and the Chief Constable of the Police
Service of Scotland

Standard Operating Procedure for delivery of threat to life warnings

Reference No: 201300267
Decision Date: 8 August 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 25 October 2012, Mr Holland asked the Chief Constable of Strathclyde Police (the Police) for a full copy of any standard operating procedure relating to a warning delivered by them. The Police refused to confirm or deny whether they held the information.

Following a review, the Police provided extracts of the relevant procedure to Mr Holland, but refused to disclose the remaining information on the basis that (amongst other reasons) to do so would prejudice substantially the prevention or detection of crime. Following an investigation, the Commissioner accepted this position.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 35(1)(a) (Law enforcement)

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.

As noted in the summary, Mr Holland's information request was made to the Chief Constable of Strathclyde Police. However, the decision has been issued in the name of the Chief Constable of the Police Service of Scotland (for convenience, also referred to as "the Police" in this decision) as the statutory successor to the Chief Constable of Strathclyde Police under the Police and Fire Reform (Scotland) Act 2012.

Background

1. On 25 October 2012, Mr Holland asked the Police for (amongst other information) a full copy of any standard operating procedure relating to the warning given to him by Strathclyde Police.
2. The Police responded on 22 November 2012. They notified him, in line with section 18 of FOISA, that they would neither confirm nor deny whether they held this information.
3. On 22 November 2012, Mr Holland wrote to the Police requesting a review of their decision. He refused to accept what he described as a "blanket dismissal" of his request.



4. The Police notified Mr Holland of the outcome of their review on 21 December 2012. They disclosed extracts from the relevant Standard Operating Procedure (SOP) to Mr Holland. They also informed him that they were applying the exemptions in sections 35 (Law enforcement) and 39 (Health, safety and the environment) of FOISA to withhold the remaining information in the SOP from him.
5. On 17 January 2013, Mr Holland wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Police'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 Holland made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 6 February 2013, the Police were notified in writing that an application had been received from Mr Holland and were asked to provide the Commissioner with any information withheld from him. The Police responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Police, 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. They were asked to justify their reliance on the exemptions under which information had been withheld from Mr Holland.
9. The Police provided their comments, and explained that they were no longer seeking to rely on the exemption in section 39(1) of FOISA.
10. During the investigation, the Police disclosed further extracts from the SOP to Mr Holland. They continued to rely on the exemptions in sections 35(1)(a) and (b) of FOISA for withholding the remaining information.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Holland and the Police. She is satisfied that no matter of relevance has been overlooked.



Section 35(1)(a) – Law enforcement

12. Section 35(1)(a) of FOISA exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's guidance on this exemption¹ indicates, the term "prevention or detection of crime" is wide-ranging, encompassing any action taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could mean activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and detention.
13. There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers that the authority would have to identify harm of real and demonstrable significance. The harm would also have to be at least likely, and therefore more than simply a remote possibility.
14. The Police explained that one of the basic reasons for compiling the Threat to Life SOP was to allow them to better manage the risk of threat and harm to both innocent members of the public and criminals themselves. The Police indicated that they had a responsibility under Article 2 of the European Convention on Human Rights (the right to life, as enshrined in the Human Rights Act 1998) to take necessary appropriate steps to prevent death or injury.
15. The Police considered it would be damaging to disclose the withheld information, as it would potentially limit their operational capabilities through criminals gaining a greater understanding of their methods and techniques (and thereby enabling them to take steps to counter them).
16. In addition to local criminals being better informed of the Police's operational capabilities, the Police argued that disclosure of a single force SOP would give those intent on organised crime throughout the UK (in time) the potential to "map" where certain tactics were, or were not, deployed. This would, the Police contended, be useful for those committing crimes where their activities crossed force boundaries.
17. The Police went on to argue that any information identifying the focus of policing activity could be used to the advantage of criminal organisations. Furthermore, the disclosure of information that undermined the operational integrity of these Police activities would, the Police submit, adversely affect public safety and have a negative impact on law enforcement.
18. Having considered the arguments received from the Police, the Commissioner accepts that if the remaining information were to be disclosed then this would inform individuals of the operational methods and techniques available to, and potentially utilised by, the Police in an effort to anticipate and prevent crime. She also accepts that it would allow those with the intention of committing crime to take steps to evade such methods and techniques. Such responses would (or would be likely to) limit, or possibly negate, the effectiveness of any such actions taken by the Police, which would clearly be detrimental to the duty of care placed upon them and would impact on public safety.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section35/Section35.aspx>



19. For the reasons set out above, the Commissioner is satisfied that disclosure of the withheld information would, or would be likely to, prejudice substantially the Police's ability to prevent or detect crime. In reaching this conclusion, she has to bear in mind that disclosure under FOISA is to the world at large and not just to Mr Holland. The Commissioner is therefore satisfied that the information is (and was, at the time the Police dealt with Mr Holland's request) exempt under section 35(1)(a) of FOISA.

Public interest test

20. Section 35(1)(a) of FOISA is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Therefore, having decided that the information is exempt under section 35(1)(a), the Commissioner must go on to consider whether, in all circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
21. The Police acknowledged that disclosure would lead to better awareness, which in turn might reduce crime or lead to more information from the public. They also recognised that disclosure would enable the public to take steps to protect themselves.
22. On the other hand, the Police did not consider it to be in the public interest to disclose information which would be beneficial to criminals and criminal organisations, and might lead to the creation of potentially life-threatening situations.
23. The Police therefore concluded that their primary focus was to keep people safe and this would be made significantly more difficult if
- their tactics were compromised,
 - the fear of crime increased, and
 - individuals were placed at risk due to either a lack of, or false, intelligence in areas relating to significant crime issues,
- all of which they considered likely in the event of disclosure. Consequently, they argued that the public interest favoured maintaining the exemption.
24. Mr Holland explained that he believed the SOP to have been used wrongly in his case, and that the Police were attempting to evade responsibility for this error by continuing to withhold the information. He believed it was in the public interest that when an action was taken in line with a specific policy, that policy should be open to scrutiny.
25. Having considered the submissions from both Mr Holland and the Police, the Commissioner accepts that there is a general public interest in ensuring that public authorities are both transparent in their actions and accountable for them. For this reason, she recognises that there is a public interest in ensuring that the action taken by the Police in relation to Mr Holland's situation was the correct one in the circumstances, in line with any relevant policies. Nevertheless, the Commissioner must acknowledge that a proportion of the information in the SOP has been disclosed to Mr Holland, which does go some way towards addressing this public interest (while also recognising a continuing public interest in further disclosure).

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26. She must, however, balance the public interest identified by Mr Holland against that identified by the Police. Having considered the public interest arguments advanced by the Police, the Commissioner accepts that there is an overwhelming public interest in the Police maintaining the ability to deploy all relevant tactics and actions to protect public safety and prevent or detect crime. The Commissioner considers that any disclosure which would limit or undermine the Police's ability to do this effectively, or reduce their armoury of operational tactics, will be contrary to that public interest.
27. On balance, therefore, the Commissioner has concluded that, in all the circumstances of this case, the public interest in disclosing the withheld information is outweighed by that in maintaining the exemption in section 35(1)(a) of FOISA. Therefore, the Commissioner has concluded that the Police were entitled to withhold the information in line with section 35(1)(a) of FOISA.
28. As the Commissioner is satisfied that the withheld information has been properly withheld in line with the section 35(1)(a) of FOISA, she is not required to go on to consider the application of the exemption in section 35(1)(b) (which was also applied to this information by the Police).

DECISION

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

Appeal

Should either Mr Holland or the Chief Constable of the Police Service of Scotland 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.

Margaret Keyse
Head of Enforcement
8 August 2013



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 –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-

- (a) the prevention or detection of crime;

...