

Decision Notice

Decision 235/2014: Mr Harry Scott and the Chief Constable of the Police Service of Scotland

Staffing levels

Reference No: 201401926

Decision Date: 17 November 2014



Scottish Information
Commissioner

Summary

On 28 March 2014, Mr Scott asked the Chief Constable of the Police Service of Scotland (Police Scotland) for the number of officers, by rank, deployed within the Scottish Borders Council area on a number of shifts between specific times on specific dates.

Police Scotland withheld the information on the basis that disclosure would substantially prejudice the prevention and detection of crime and the apprehension and prosecution of offenders.

The Commissioner investigated and found that Police Scotland were entitled to withhold the information requested.

Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 28 March 2014, Mr Scott made a request for information to Police Scotland. He asked for the number of officers, by rank, deployed within the Scottish Borders Council area on 14 shifts between specific times on specific dates. He also asked for the number of operational officers based at police stations within the Scottish Borders Council area.
2. On 5 May 2014, Mr Scott clarified that he was interested in uniformed response officers who were deployed specifically within the Scottish Borders Council area (the old 'G' Division of Lothian and Borders Police). He stated that the response might also include 'Community Beat Officers' and Roads Policing officers in the figures, if they were working within that area on the dates and times listed.
3. Police Scotland responded on 9 May 2014. They informed Mr Scott that disclosure of the requested information would, or would be likely to, prejudice substantially the prevention and detection of crime and the apprehension and prosecution of offenders. They stated that, having considered the public interest test, the information should be withheld in terms of section 35(1)(a) and (b) of FOISA.
4. On 20 May 2014, Mr Scott wrote to Police Scotland requesting a review of their decision. He did not see how disclosing the historical figures requested would cause the substantial prejudice and claimed there was a public interest in disclosure. He also stated that such figures had been disclosed in the past, by the then Lothian and Borders Police.
5. Police Scotland notified Mr Scott of the outcome of their review on 17 June 2014, upholding their original decision with further explanation. It also explained that the figures withheld show that the number of officers per shift barely varied from day to day and from week to

week. Mr Scott was informed that there were approximately 150 officers stationed within the Scottish Borders Council area.

6. On 30 July 2014, Mr Scott wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Scott stated he was dissatisfied with the outcome of Police Scotland's review because he did not agree that the harm claimed could be caused by providing the information.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Scott made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision.
8. On 1 August 2014, Police Scotland were notified in writing that Mr Scott had made a valid application. They were asked to send the Commissioner the information withheld from him. Police Scotland provided the information and the case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and answer specific questions, focused on their application of section 35(1) of FOISA to the information requested. They provided submissions in response to these questions

Commissioner's analysis and findings

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

Section 35(1)(a) and (b) of FOISA - Law enforcement

11. Police Scotland have relied upon the exemptions in sections 35(1)(a) and (b) to withhold the information requested.
12. In order for an exemption under section 35(1)(a) and/or (b) to apply, the Commissioner has to be satisfied that the disclosure of the information would, or would be likely to, prejudice substantially the prevention or detection of crime (section 35(1)(a)) and/or the apprehension or prosecution of offenders (section 35(1)(b)). There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers 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.
13. Section 35(1)(a) 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 exemption highlights¹, 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

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

reduction and detection. The Commissioner accepts that such strategies would include policing levels.

14. Section 35(1)(b) exempts information if its disclosure would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders. As the Commissioner's guidance also states, there is likely to be a considerable overlap between information relating to "the apprehension or prosecution of offenders" and that relating to "the prevention or detection of crime". She considers that section 35(1)(b) relates to all aspects of the process of identifying, arresting or prosecuting those suspected of being responsible for criminal activity. Again, this term could refer to the apprehension or prosecution of specific offenders or to more general techniques (such as the investigative processes used).
15. Police Scotland provided submissions to the effect that the withheld information was exempt in terms of both section 35(1)(a) and (b) of FOISA, on the basis that they saw the prevention and detection of crime, and the apprehension of offenders, as among the primary duties of a police constable. In day-to-day policing, they believed these to be inextricably linked.
16. They explained that they allocated and operated police officer posts over three tiers, local, regional and national. Of these, the core complement of officers was those in local policing posts. They further explained that they published the number of each category of officer in each division in Scotland on their website².
17. Police Scotland submitted that the information Mr Scott sought was a further breakdown of the published figures, in that he has asked for the number of officers deployed at Command area (sub-divisional) level on two shifts on specific dates over a seven-week period.
18. Police Scotland submitted that disclosure of the figures at this level provided a detailed guide to policing deployment in the Command area. Whilst the figures requested were historical, they believed the relative consistency from day to day made the information an accurate indicator of actual ongoing and future planned deployment. To that extent, the information remained current and could be used to negative effect.
19. They further explained that the published policing figures showed from where other divisional and regional resources were drawn in order to assist demand in a Command area. They believed that if detailed deployment figures were published, it would allow those intent on committing crime to draw police officers away from duties in other divisional areas: this, they claimed, was particularly magnified in a rural population of significant geographical spread.
20. Police Scotland submitted that the disclosure of the figures in question would allow anyone intent on committing crime to plan how best to engage or occupy these core policing resources, to maximise the chance of evading detection and avoiding apprehension when committing offences.
21. Police Scotland explained that they deployed a number of tactical options, together serving to manage and mitigate the threat from terrorism, organised crime and wider criminality. They submitted that the disclosure of such tactical options, which extended to the resource allocation at any time of any day, would offer an advantage to those who would seek to threaten communities.

² <http://www.scotland.police.uk/about-us/police-scotland/212598/>.

22. Police Scotland stated that it had long been understood that criminals made use of their knowledge about police officer resources, often targeting their activities at times of the day where shifts ended and started as an obvious period when there were fewer resources on the streets. Due to this knowledge, they stated, shift overlaps were introduced into legacy forces to mitigate that perceived vulnerability.
23. Police Scotland provided a number of examples to illustrate their point that the requested information would significantly assist criminal activity. They also explained why they did not consider the information previously published by Lothian and Borders Police to be comparable to that sought by Mr Scott.
24. Mr Scott submitted that Police Scotland's arguments were based on supposition, with no credible evidence base. He considered their arguments hypothetical, suggesting that people intent on committing criminal acts would attempt to do so irrespective of how many resources were deployed in any given area, or in what manner.
25. Having fully considered the submissions from both Mr Scott and Police Scotland the Commissioner is satisfied that the deployment of officers at national, regional and local level is a strategy employed by Police Scotland in relation to both the "prevention or detection of crime" and the "apprehension or prosecution of offenders". This will include the breakdown of such deployment as requested by Mr Scott. Consequently, she is satisfied that this falls within the scope of the exemptions in section 35(1)(a) and (b) of FOISA.
26. Without going into further detail of all the submissions made by Police Scotland (as to do so could cause the substantial prejudice claimed), the Commissioner is satisfied, given the examples Police Scotland provided to illustrate their point, that disclosure would assist those of criminal intent in the manner described in Police Scotland's submissions. In reaching this conclusion, she acknowledges the extent to which the withheld information corresponds to routine levels of deployment. She is therefore satisfied that the disclosure of the information requested would, or would be likely to, prejudice substantially both the prevention and detection of crime and the apprehension and prosecution of offenders.
27. Section 35(1)(a) and (b) of FOISA are both qualified exemptions, which means that their application is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner will go on to consider the public interest arguments provide by both parties, to determine whether the information was correctly withheld under sections 35(1)(a) and (b).

Public Interest test

28. Police Scotland accepted there was a public interest in transparency and (in this connection) that disclosure would indicate the number of officers routinely deployed on local policing duties in the Scottish Borders, demonstrating the proportion of officers allocated to those duties within the area.
29. However, they did not consider it to be in the public interest to provide accurate and detailed information to allow criminals to disrupt and divert the effective deployment of police resources, thereby wasting those resources and impacting negatively on public safety and the protection of property.
30. On balance, Police Scotland concluded that it could not be in the public interest to disclose information that would jeopardise the safety and wellbeing of individuals and communities. They stated that detailed information on officer numbers at a divisional level was already

available, to explain how resources were deployed within specific areas: this, in their view, went significantly towards meeting the public interest in disclosure.

31. Mr Scott submitted that the people of the Scottish Borders had a right to know what level of service was being provided by Police Scotland. Any assertion of an adequate service should be supported by evidence. This would make Police Scotland more accountable to the communities it served, which was of particular importance in the absence of a link between executive levels of Police management and local councils (in the form of police authorities).
32. In considering the submissions made by Police Scotland and Mr Scott as outlined above, the Commissioner is conscious that Police Scotland have published deployment figures at national, regional and local level on their website, and have confirmed that approximately 150 officers are stationed within the area in question. She acknowledges that such publication goes some way towards satisfying the public interest in disclosure.
33. The Commissioner has already acknowledged that disclosure of the information requested, would, or would be likely to, lead to substantial prejudice for the purposes of section 35(1)(a) and (b) of FOISA. Whilst she also acknowledges that disclosure of the detailed information requested may give the public some greater insight into the adequacy of resources deployed by Police Scotland, she does not believe this would outweigh the substantial prejudice likely in the event of disclosure, with all the consequent risks.
34. On balance, therefore, the Commissioner considers that the arguments against disclosure should prevail in this particular case. Consequently, she is satisfied, in all the circumstances of the case, that the public interest in disclosing the information is outweighed by that in maintaining the exemptions.
35. The Commissioner is therefore satisfied that the information requested by Mr Scott was correctly withheld under the exemptions in section 35(1)(a) and (b) of FOISA.

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 Scott.

Appeal

Should either Mr Scott or Police Scotland wish to appeal against this decision, they have the right to 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

17 November 2014

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.

...

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;
 - (b) the apprehension or prosecution of offenders;

...

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