



Scottish Information
Commissioner

**Decision 041/2006: Mr N and the Chief Constable of
Strathclyde Police**

Information relating to an alleged speeding offence

Applicant: Mr N

Authority: The Chief Constable of Strathclyde Police

Case No: 200502914

Decision Date: 15 March 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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KY16 9DS



Decision 041-2006 – Mr N and the Chief Constable of Strathclyde Police

Request for information relating to an alleged speeding offence – information not held (section 17) – information exempt as held for the purpose of an investigation (section 34(1)(a)(i)) – failure to comply with timescales in section 10(1)

Facts

Mr N asked the Chief Constable of Strathclyde Police (Strathclyde Police) for information on nine separate matters following his receipt of a notice regarding an alleged motoring offence.

Strathclyde Police provided information which answered three of Mr N's questions and referred him to information available online to answer a fourth. The police notified Mr N that no information was held in relation to his other five questions.

During the course of the investigation it emerged that the police did in fact hold information relating to one of Mr N's requests (for documentation showing that calibration procedures for the speed gun used had been actioned and noted). Initially the police considered this information to be exempt from disclosure under section 34(1)(a)(i) of the Freedom of Information (Scotland) Act 2002 (FOISA). The police later revised this view and decided that it was in the public interest to provide Mr N with the information.

Outcome

The Commissioner found that where Strathclyde Police had claimed that information was not held, sufficient evidence had been provided to support this position.

The Commissioner found that Strathclyde Police had failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to respond to Mr N's request within the timescale laid down in section 10(1).



Appeal

Should either Mr N or the Chief Constable of Strathclyde Police wish to appeal against my 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 of receipt of this notice.

Background

1. On 18 July 2005 Mr N wrote to Strathclyde Police asking for answers to nine questions relating to a notice he had received about an alleged motoring offence.
2. Strathclyde Police replied on 29 August 2005, providing some of the information requested and notifying Mr N that the remaining information was either not held by the police or was otherwise available and therefore exempt from disclosure by them in terms of section 25 of the Freedom of Information (Scotland) Act 2002 (FOISA). I note that this reply was not sent within the 20 working days specified in section 10(1) of FOISA.
3. On 7 September 2005 Mr N asked Strathclyde Police to review the decision regarding four of his questions. The police replied on 11 October 2005, upholding the original decision.
4. On 20 October 2005 Mr N appealed to me for a decision on the matter. The case was allocated to an investigating officer.

The investigation

5. Mr N's application was validated by establishing that he had made his request to a Scottish public authority and had appealed to me only after asking that authority to review its response to his request.
6. A letter was sent to Strathclyde Police on 25 November 2005 informing them that an appeal had been received from Mr N and seeking their comments.



7. As it was clear from Mr N's letter of 7 September 2005 that he had had access to the information previously held to be otherwise accessible and therefore exempt from disclosure under section 25 of FOISA, the police were informed that my decision notice would consider only their responses to questions 2, 5 and 6 from Mr N's letter of 7 September. (For clarity, it should be noted that the numbering of Mr N's questions differed slightly from his original request of 18 July, as some of his requests involved more than one piece of information: the police had treated these as separate questions.)
8. Question 2 was a request for the current training and procedure certificates for the officer who had operated the radar gun at the time of the alleged offence. The police had replied that certificates were not issued for the use of the radar device deployed on this occasion, and therefore the information was not held.
9. Question 5 was a request for documentation showing that all calibration procedures for the site were actioned properly and were noted by both the equipment operator and the traffic car driver. In their initial response, the police replied that although the calibration procedures were actioned by the officers in accordance with the manufacturer's instructions prior to use, this was not recorded. The built in test procedures for the equipment no longer required the traffic car driver to be involved in this process. The information requested was therefore not held.
10. Question 6 asked for information to confirm that the vehicle involved in the alleged offence was isolated in the field of view and not shadowed by any other vehicle. The police had replied that evidence relating to the alleged offence had been obtained from a hand held radar device, and no photograph of the alleged offence was taken. The information requested was therefore not held.
11. Strathclyde Police were asked:
 - a) In relation to question 2, to provide an explanation of the training undertaken by officers responsible for operating hand-held radar devices and whether there were any formal training requirements for officers involved in this activity.
 - b) In relation to question 5, to provide any guidance or procedures for officers responsible for calibrating hand-held radar guns, including any requirement to log details of occasions on which the guns were calibrated.
 - c) In relation to question 6, to confirm that a hand-held radar gun would not have the technical capacity to take a photograph of the alleged offence.
12. Strathclyde Police replied on 15 January 2006.



13. In relation to question 2, Strathclyde Police confirmed that no training certificate was held for the officer concerned. The officer had completed his Road Policing Induction Course in 2003, and at that time Certificates of Competency in the operation of speed detection equipment were not issued, although they are now.
14. In relation to question 5, Strathclyde Police advised the investigating officer that Mr N had been wrongly advised that the information was not held. During the review of his request it had transpired that the calibration of the radar device had in fact been recorded in the officer's notebook. Although this had been included in the documents submitted to the review panel, this information had been overlooked when the response to Mr N's request for a review was prepared. Strathclyde Police indicated Mr N should have been informed that the information was held but was considered to be exempt from disclosure under section 34(1)(a)(i) of FOISA, which allows public authorities to withhold information relating to investigations for certain purposes.
15. In relation to question 6, Strathclyde Police confirmed that a hand held radar device was used to gather the evidence about the alleged offence, and that this equipment did not have any facility to take photographs.

The Commissioner's Analysis and Findings

Information not held (questions 2 and 6)

16. Having considered the replies submitted by Strathclyde Police in relation to questions 2 and 6, I am satisfied that they have provided sufficient confirmation that the information is not held by them.

Information withheld under section 34(1)(a)(i)

17. Section 34(1)(a)(i) of FOISA allows a public authority to withhold information if it has at any time been held 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. Information can only be withheld under this exemption if there is a greater public interest in upholding the exemption than in the release of the information.
18. I accept that the police have a duty to investigate whether drivers have broken the speed limit and should be prosecuted for an offence.



19. The next question to consider is whether the information in question was held by Strathclyde Police for the purposes of such an investigation. The police officer recorded information about the calibration of the radar gun at the start and finish of his period of duty. While this information was not recorded specifically as part of the investigation into Mr N's alleged offence, I take the view that it is reasonable to assume that the calibration of the radar gun and the record made of that activity were actions that would not have taken place unless Strathclyde Police intended to initiate investigations against any driver caught speeding in the area of operations. I therefore accept that the information was held for the purpose of an investigation to establish whether a person should be prosecuted for an offence, and that the exemption in section 34(1)(a)(i) applies.
20. The exemption in section 34(1) is subject to the public interest test and so the information can only be withheld if the public interest in upholding the exemption is greater than the public interest in releasing the information.
21. Initially, the police took the view the disclosure was against the public interest. However, during the investigation they came to the conclusion that the public interest might favour the release of calibration documentation, and that in this case they had decided that justice to the individual, namely the applicant, would favour disclosure of the information.
22. I note that the police have now provided Mr N with a copy of the police notebook in which calibration of the speed gun was recorded. Therefore I am no longer required to make a decision on this matter.

Decision

I find that the Chief Constable of Strathclyde Police was justified in advising Mr N that the information he requested in relation to two of his questions was not held by Strathclyde Police.

However, I find that the Chief Constable of Strathclyde Police did not deal with the applicant's request for information wholly in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), in that Strathclyde Police failed to respond to Mr N's request within the period of 20 working days specified in section 10(1) of FOISA.

I do not require the Chief Constable of Strathclyde Police to take any steps as a consequence of this Decision Notice.



Kevin Dunion
Scottish Information Commissioner
15 March 2006