



Scottish Information
Commissioner

**Decision 177/2007 Mr Sam Coull and the Chief Constable of
Grampian Police**

*Number of registered sex offenders and police officers monitoring sex
offenders in the Peterhead / Buchan area*

Applicant: Mr Sam Coull

Authority: Chief Constable of Grampian Police

Case No: 200601935

Decision Date: 27 September 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 177/2007 Mr Sam Coull and the Chief Constable of Grampian Police

Number of registered sex offenders and police officers dedicated to monitoring registered sex offenders in the Peterhead / Buchan area of Aberdeenshire – information refused under sections 35(1)(a) and 39(1) of the Freedom of Information (Scotland) Act 2002 – Commissioner did not uphold exemptions and required release of information

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2(1) (Effect of exemptions); 17 (Notice that information is not held); 35(1)(a) (Law enforcement) and 39(1) (Health, safety and the environment)

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

Facts

Mr Coull requested from the Chief Constable of Grampian Police (Grampian Police) details of the number of sex offenders and the number of police officers dedicated to monitoring sex offenders in the Peterhead / Buchan area of Aberdeenshire. Grampian Police responded by providing some of the information requested but refusing to provide other information. Grampian Police advised that the withheld information was exempt under sections 35(1)(a) and 39(1) of FOISA. Grampian Police maintained its position following a review and Mr Coull applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Grampian Police had partially failed to deal with Mr Coull's request for information in accordance with Part 1 of FOISA. As he was not satisfied that he had been presented with sufficient evidence to support the contentions made in this regard, he required Grampian Police to release the number of registered sex offenders in Aberdeenshire Council's Buchan area. However, he also found that information in respect of the relevant number of police officers was not held by Grampian Police.



Background

1. On 10 October 2006, Mr Coull, a Councillor for the Peterhead South and Cruden Ward in Aberdeenshire Council, wrote to Grampian Police, requesting the number of sex offenders in the Peterhead / Buchan area and the number of officers Grampian Police had to cover the local situation.
2. On 6 November 2006, Grampian Police wrote to Mr Coull in response to his request for information. In that response Grampian Police advised Mr Coull that restricted release of figures, to Force Divisional level, was approved in accordance with national policy, and provided Mr Coull with details of the number of Registered Sex Offenders (RSOs) in the North Aberdeenshire Division as at the date of Mr Coull's request. However, Grampian Police refused to further refine that number and provide the number of RSOs in the Peterhead / Buchan area, citing sections 35(1)(a) and 39(1) of FOISA as the basis for refusal. Grampian Police also refused to provide the number of police officers in the same area dedicated to monitoring RSOs and cited the same sections of FOISA in seeking to exempt that information.
3. On 14 November 2006, Mr Coull wrote to Grampian Police requesting a review of its decision. In particular, Mr Coull stated his belief that there was a vital public safety interest in the release of the withheld information.
4. On 8 December 2006, Grampian Police wrote to notify Mr Coull of the outcome of its review. The review upheld the original decision and confirmed that Grampian Police believed it was correct to apply sections 35(1)(a) and 39(1) of FOISA and that the public interest lay in maintaining the exemptions rather than releasing the information.
5. On 10 December 2006, Mr Coull wrote to my Office, stating that he was dissatisfied with the outcome of Grampian Police's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Coull had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.



The Investigation

7. On 9 January 2007, Grampian Police was notified in terms of section 49(3)(a) of FOISA that an application had been received from Mr Coull and was asked to provide my Office with its comments and specified items of information required for the purposes of the investigation. Grampian Police responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted Grampian Police for further information and comment in relation to the application.

Submissions from Grampian Police

9. Grampian Police provided details of the information withheld from Mr Coull, together with information relating to the handling of his request. It advised that the latter set of information included its reasons for refusing Mr Coull's request.
10. In its submissions Grampian Police stated that until recently, the policy of the Association of Chief Police Officers in Scotland (ACPOS) on this matter had been that information regarding the number of RSOs should only be released to the public at Force level (i.e. for the entire area a particular police force is tasked with policing) but that had now been amended to Force Divisional (sometimes know as Command Area) level following my decision 178/2006 (*Mr John Rowbotham of the Hamilton Advertiser and the Chief Constable of Strathclyde Police*). Consequently Grampian Police had been content to release to Mr Coull the number of RSOs in the North Aberdeenshire Division but considered any further refinement of that to be exempt information in terms of sections 35(1)(a) and 39(1) of FOISA.
11. Grampian Police submitted that the Sexual Offences Act 2003 compelled RSOs to register with the police and enabled the police and other relevant authorities to supervise and monitor them with a view to assessing the risk of re-offending and thereafter deploying appropriate strategies to address the risks identified. Grampian Police argued that this process, which relied on the compliance of RSOs under supervision, was in place in the interest of public safety and to enable the police to prevent and detect crime.



12. For the purposes of section 35(1)(a) of FOISA, Grampian Police argued that to release the number of RSOs below Force Divisional level (e.g. for the Peterhead / Buchan area) would, or would be likely to, prejudice substantially the prevention and detection of crime. The information, Grampian Police argued, might lead to the identification of RSOs and cause speculation within a community that certain individuals might be RSOs. This, it was argued, would prejudice substantially the police's power to prevent and detect crime, as physical attacks and other crimes might be perpetrated upon RSOs and those believed to be RSOs.
13. Further, Grampian Police submitted that release of the information might result in RSOs fleeing from their supervision area, breaching the terms of their registration. RSOs could to move to an area where, without supervision, they would have the opportunity to commit further crimes.
14. For the purposes of section 39(1) of FOISA, Grampian Police submitted that release of the information could lead to the identification of individual RSOs and also speculation within a community that certain individuals might be RSOs, with resulting harm to RSOs and those suspected of being RSOs through revenge attacks and therefore disorder within a community.
15. Grampian Police applied the same exemptions and deployed substantially similar arguments in relation to these exemptions in seeking to justify the refusal to release the number of police officers within Grampian Police dedicated to monitoring RSOs.
16. Grampian Police added that the release of the figures would allow RSOs and others contemplating such crimes to be aware of the resources available to monitor sex offenders and consequently to gauge the extent and frequency of supervision undertaken. Grampian Police argued that information could then be used to gauge the likelihood of detection when committing such crimes and might influence offending behaviour.
17. Late in the investigation, Grampian Police submitted further arguments in support of its position. These do not add substantially to the arguments set out above, but I will consider them in greater detail in my Analysis and Conclusions below.

Submissions from the applicant

18. Mr Coull stated that he considered his requests to be simple and could not understand how the release of such information could lead to the fears expressed by Grampian Police being realised. He argued that there must be a right to know how safe or otherwise the public were from predatory sex offenders and, given that it was paid for from public funds, how much effort was being put into protection of the public by the police.



19. Mr Coull added that, as Buchan area could be at greater risk due to the presence of Peterhead Prison in the vicinity, both he and his constituents deserved some firm assurances from the figures.

The Commissioner's Analysis and Findings

20. I have considered both Mr Coull's and Grampian Police's submissions in determining this case. I am satisfied that no matter of relevance has been overlooked.
21. This investigation focussed on the two questions asked by Mr Coull and whether Grampian Police was correct to withhold the information requested on the basis of sections 35(1)(a) and 39(1) of FOISA.

Question 1: how many RSOs are there in the Peterhead / Buchan Area?

22. Prior to discussing the exemptions claimed by Grampian Police in relation to Mr Coull's first question (which I am satisfied, given the context of Mr Coull's request, must relate to RSOs), I will address the starting principles adopted by Grampian Police.
23. As mentioned, Grampian Police submitted that, further to advice received from ACPOS (a copy of which was supplied to this office), it was Scottish police policy not to release details from the sex offenders register below Force Divisional level. This ACPOS guidance was, in turn, based upon my Decision 178/2006, issued by my Office on 28 September 2006.
24. The ACPOS advice suggests that, in deciding whether to disclose such information, each Force should take cognisance of various factors raised in my Decision 178/2006, namely:-
 - The geographical size of the area
 - The resident population of the area
 - The presence of any major population centres or conurbations
 - The number of RSOs per head of population.
25. The ACPOS advice concludes that, for the majority of Forces, it will therefore be appropriate to disclose to Divisional level.



26. While I cannot comment on the advice provided by ACPOS, or the interpretation by Grampian Police of that advice, I should make it clear that my findings in Decision 178/2006 were not intended to be a prescriptive set of parameters under which it could be guaranteed I would or would not order release of information of the kind under consideration. In that case the level at which release was ordered was that requested by the applicant. While the facts in certain cases may support release of information only at Divisional level, I would not suggest that this creates a blanket ruling for all cases. Where an applicant asks for more detailed information, I will still require evidence that the individual police force concerned has considered the request on its own merits, taking into account all relevant factors (which are likely to include those mentioned in paragraph 24 above, but may include others), to decide whether that further refinement could be supported.
27. In its submissions to the investigating officer, Grampian Police merely stated that, as the official policy of ACPOS was to release figures down to Divisional level, this had been sufficient grounds to warrant not considering any further analysis.
28. Indeed, Grampian Police provided no evidence of having considered any of the factors mentioned in paragraph 23 above, or any other particular relevant factors, in reaching its decision on whether to disclose further or not.
29. It was not possible to identify an area that could be defined unequivocally as the "Peterhead / Buchan" area within the terms of reference of either Grampian Police or Aberdeenshire Council. However, the geographical / political boundaries of Aberdeenshire Council's Buchan area were identified as being the most likely to encompass both "Peterhead" and "Buchan".
30. The Buchan area is one of six administrative areas used by Aberdeenshire Council. According to the General Register Office for Scotland Small Area Population Estimates (2005 Update), the population of the Buchan area is approximately 39,177. It contains the town of Peterhead.
31. The Banff & Buchan area is another of the administrative areas used by Aberdeenshire Council and has (according to the same GRO Estimates) a population of 35,476. It includes the towns of Fraserburgh, Banff and Macduff. The physical extent of each of the two local government areas is similar.
32. North Aberdeenshire is one of four Command areas used by Grampian Police which, according to Grampian Police statistics, serves a population of similar size to the aggregate population of the Buchan and Banff & Buchan areas. It occupies a similar (although not identical) geographical area to that occupied by the two local authority areas and contains the main towns of Peterhead, Fraserburgh, Banff and Macduff within its bounds.



33. Given the similarity in resident population (approximately 75, 000), geographical area and major conurbations between the combined areas named Buchan and Banff & Buchan by Aberdeenshire Council and the area named North Aberdeenshire Command Area by Grampian Police, I am satisfied that there is a correlation between the two which allows them to be identified as broadly the same area. I am therefore satisfied that the two areas are broadly comparable in description.
34. Mr Coull, however, was given the relevant information for the North Aberdeenshire Command Area and was not satisfied with it. He will be familiar with the administrative divisions adopted by Aberdeenshire Council and I must conclude that if the area he has referred to is to be matched with an area that can be identified clearly on the basis of established boundaries, it must be the Buchan area of Aberdeenshire Council. In considering that area further in this decision, I will bear in mind its physical area and population.
35. I may also add that I am also satisfied that, as the number of RSOs in an area is information held on the basis of the addresses of the RSOs (as opposed to only the Police Command Area), which will be identifiable as falling within a particular electoral ward, it appears that it *is* possible to provide the numbers of RSOs within the Buchan area.

Section 35 (Law enforcement)

36. Grampian Police has applied the exemption in section 35(1)(a) of FOISA in seeking to withhold the number of RSOs in the Peterhead / Buchan area because its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime.
37. Authorities seeking to rely on this exemption need to show that disclosure will substantially prejudice the relevant interests. For example, they should be able to demonstrate that the risk of damage being caused by disclosing information is real or very likely, not simply a remote possibility. The harm caused or likely to be caused must be of some real and demonstrable significance, not simply marginal, and it would have to occur in the near (certainly the foreseeable) future rather than in some unspecified distant time. Authorities should therefore consider disclosing the information asked for unless it would (or would be likely to) cause real, actual and significant harm.
38. While I accept that registration under the Sexual Offences Act 2003 provides a valuable tool for monitoring and supervising RSOs, I have difficulty understanding how the release of the *number* of RSOs in this particular geographical area would, or would be likely to, prejudice substantially the prevention and detection of crime.



39. Grampian Police argued that release of this information below the Force Divisional Area (i.e. North Aberdeenshire Command Area) level might lead to the identification of RSOs or those suspected of being RSOs and that this would prejudice substantially the Police's power to prevent and detect crime as physical attacks might be perpetrated upon RSOs or those thought to be RSOs.
40. I note that Grampian Police submitted further, additional comments (in the form of a letter to Grampian Police from ACPOS), later in the course of the investigation which dealt with, among other things, whether attacks upon actual or suspected RSOs and the possibility of RSOs absconding was *likely*. I have considered this additional information and the comments made by Grampian Police.
41. In the latter submissions, ACPOS cited examples of incidents where alleged (sometimes innocent individuals) or actual RSOs were attacked or suffered persecution. I note, however, that in the cases where convicted RSOs were attacked, the identities and crimes of the RSOs were already known within the community. In the cases where innocent individuals were attacked or persecuted, no evidence has been provided to me to support the contention that the release of information of the kind requested would lead to such incidents or make them more likely: in fact, these incidents happened in the absence of such information.
42. Nothing in the submissions made by Grampian Police indicates that attacks against RSOs or suspected RSOs are likely as a result of the release of the information Mr Coull requested. While I accept that there may well be speculation and suspicion as to who within the population of an area is a RSO – and that in turn may give rise to police fears that individuals, whether RSOs or not, could be attacked – I am far from convinced that the speculation or potential for such attacks would arise or be exacerbated as a result of the release of the information requested.
43. Instead, the concerns expressed appear to be a hypothetical turn of events which Grampian Police fears *might* result from the release of the information. In my view such fears becoming reality turns on the likelihood of identification – if an individual cannot be identified then they will not be at risk of attack or feel the need to go to ground.
44. I am not persuaded that the mere number of RSOs within a geographical area of the size requested, or with the population residing there, in itself reveals anything about the identity of the individuals, the crimes they have committed in order to appear on the Register or where they live.



45. I have examined divisional and command areas in other police forces and constabularies in Scotland to compare the respective extents and populations these areas. I note that in at least two constabularies there are division or command areas with a population *smaller* than North Aberdeenshire Command Area (approximately 75, 000)
46. Dumfries and Galloway Constabulary, for example, has two operational policing divisions: Dumfries and Galloway (http://www.dumfriesandgalloway.police.uk/commsafety/your_area/map_1.htm) Dumfries division serves the areas matching the Dumfries and Galloway Local Authority areas formerly called Annandale & Eskdale (population 38, 502) and Nithsdale (population 49, 884). The Galloway division serves the Local Authority areas formerly called Wigtown (population 28, 542) and Stewartry (population 31, 037). In the case of the Galloway division (total population 59, 579) there is therefore a population difference of some 15, 400 between it and the North Aberdeenshire Command Area.
47. Northern Constabulary, by contrast, has eight Area Commands (<http://www.northern.police.uk/area-commands.html>) ranging from Orkney and Shetland (populations of 19, 000 and 15, 000 respectively) to Ross, Cromarty and Skye (population 70, 000) and Inverness (population 80, 000).
48. As such there is a clear disparity between the populations in various Divisional areas. I mention this simply to reinforce the point that whether the release of this kind of information is for an area greater or less than a police operational area is not the determining or perhaps even primary consideration. To release the number of RSOs in the Peterhead / Buchan area would be to provide details relevant to approximately half of the North Aberdeenshire Command Area (population approximately 35, 000). I have not been presented with submissions which would lead me to believe that this does not represent an area sufficiently large and populous to minimise the risk of identification of any individual offender.
49. Grampian Police further argued that release of this information might cause RSOs to flee from the area, breaching the terms of their registration and providing them, without adequate supervision, with the opportunity to commit further crimes. While I accept that there is evidence that sex offenders do abscond in order to evade monitoring, I have not been presented with any evidence to suggest that this situation would or would be likely to follow from, or be exacerbated by, the release of information of the kind in question 1 of Mr Coull's request.
50. In all the circumstances, and having taken full account of what appear to me to be the relevant factors in this case, I am not persuaded that Grampian Police has made a convincing case in applying the exemption in section 35(1)(a) of FOISA.



51. Therefore, I am not satisfied that Grampian Police has demonstrated that substantial prejudice to the prevention and detection of crime would occur if this information were to be released. After considering all the arguments put forward by Grampian Police I have not found that applying the exemption in section 35(1)(a) to the information requested is justified. As I am not satisfied that the exemption was properly applied, I am not required to consider whether the public interest in disclosure is outweighed by the public interest in maintaining the exemption.

Section 39 (Health and safety)

52. Grampian Police has applied the exemption in section 35(1)(a) of FOISA in seeking to withhold the number of RSOs in the Peterhead / Buchan area because its disclosure would, or would be likely to, endanger the physical or mental health or safety of an individual.
53. Authorities seeking to rely on this exemption should be able to demonstrate that the danger caused to an individual's health and safety by disclosing information is real or very likely, not simply a remote possibility.
54. Grampian Police submitted that release of the requested information could lead to RSOs being identified and the possibility of revenge attacks. The submission went on to argue that the likely effect of its release would be disorder within the community and that the police had a duty to protect all members of the community, including RSOs.
55. As discussed in paragraph 39 above, I am not satisfied that I have been presented with sufficient evidence that such revenge attacks or public disorder are likely, or that these would be as a *result* of the release of this information.
56. Given that I have not been provided with sufficient evidence of the risk of revenge attacks or public disorder being a real or likely result of the release of the information, I find that Grampian Police has not correctly applied the exemption in section 39(1) of FOISA to the information withheld. I am therefore not required to consider the public interest in relation to this exemption.

Conclusion to question 1

57. I find that neither of the exemptions in sections 35(1)(a) or 39(1) of FOISA were correctly applied by Grampian Police. I therefore require the release of the number of RSOs in the Peterhead / Buchan area.



Question 2: How many Grampian Police Officers are dedicated to monitoring RSOs in the Peterhead / Buchan Area?

58. Grampian Police refused to supply Mr Coull with any figures for the number of police officers in the area with a dedicated role to monitoring RSOs (which, from the context of his initial request for information, appears to have been a reasonable interpretation of his second question). In so doing, Grampian Police cited exemptions in sections 35(1)(a) and 39(1) of FOISA. I must therefore consider the application by these exemptions by Grampian Police in relation to this information.
59. Grampian Police submitted that it held numbers for the officers within Grampian Police dedicated to monitoring RSOs and, within that number, it held numbers of officers within the North Aberdeenshire Command Area dedicated to the task. However, beyond that, there was no further refinement as the North Aberdeenshire Command Area was the smallest administrative unit Grampian Police used.
60. I am satisfied that Grampian Police holds no numbers for officers dedicated to monitoring RSOs within the Peterhead / Buchan area, as defined by paragraph 30, above. I accept Grampian Police's position that the Peterhead / Buchan area has no meaning for it in terms of the allocation of its own resources and personnel. Mr Coull's request related to the Peterhead / Buchan area (which I have concluded equates to Aberdeenshire Council's Buchan area) and it could not be amended at the time of his request for review or later to embrace the whole of Grampian Police's North Aberdeenshire Command Area.
61. Therefore, I must conclude that the only appropriate response to question 2 of Mr Coull's request would have been to serve notice on him in terms of section 17 of FOISA to the effect that the information was not held.
62. However, given that Grampian Police applied the exemptions in sections 35 and 39 of FOISA and made submissions in support of maintaining these for the figures they did hold (i.e. those for the North Aberdeenshire Command Area), I consider it appropriate that I discuss these.

Section 35 (Law Enforcement)

63. Grampian Police relied on section 35(1)(a) of FOISA to withhold the information requested in this case. I have outlined the requirements a public authority must demonstrate in seeking to deploy this exemption in paragraphs 35 and 36 above.



64. Grampian Police submitted that release of the information would allow RSOs, and any person contemplating such crimes, to gauge the extent and frequency of supervision. This could be used by RSOs to gauge how likely they were to avoid detection when committing such crimes.
65. In support of this Grampian Police cited various research papers commissioned by the Home Office. I have noted the contents of these in considering the application of section 35(1)(a) by Grampian Police.
66. I do not accept that the release of the number of officers dedicated to monitoring RSOs in the North Aberdeenshire Command Area is information that would, or would be likely to, substantially prejudice the prevention and detection of crime.
67. It has not been explained to me and I find it difficult to see how *only* the police officers tasked with monitoring RSOs are responsible for preventing and / or detecting sex crimes. To accept that would be to accept that no other police officer has duties in preventing or detecting such crimes. This is clearly not the case. Indeed, in the various reports and studies cited as evidence by Grampian Police, it is indicated that various sources of information ranging from intelligence gathering, through home visits to monitoring by police, parole officers and other agencies all contribute to monitoring of RSOs and managing them within the terms of their release orders.
68. I do not accept that disclosure of the number of officers would or would be likely to prejudice substantially the detection or prevention of crime in that I am not persuaded, on the evidence provided by Grampian Police, that RSOs would be deterred from following the conditions of their registration *only* because they were aware of the number of officers dedicated to monitoring. My understanding is that failure to register or to meet the terms of registration is, in itself, an offence and it could be argued that the deterrent therefore lies in both the monitoring of the offenders and the legal sanctions that may be brought to bear.
69. Similarly, I have not been sufficiently persuaded that disclosure of this information would or would be likely to prejudice substantially the detection or prevention of crime in that it might allow a person thinking of committing such a sex crime to gauge the resources available to Grampian Police in preventing and / or detecting such a crime. Nothing in Grampian Police's submissions indicate that such a situation is likely to occur in the near future or as a direct consequence of the release of this information.



70. I do not consider that the information withheld from Mr Coull will inevitably prejudice the detection or the prevention of such crimes, or that it is likely to do so, as the police and the reports cited by Grampian Police have indicated that landlords, head teachers of local schools, social workers, beat policemen and various other agencies and professionals all contribute to the prevention and detection of such crimes through monitoring sex offenders within the local community. Therefore, I do not consider that Grampian Police has provided sufficient evidence in this case to show the exemption in section 35(1)(a) has been correctly applied.
71. Given that I do not accept section 35(1)(a) of FOISA applies in this case, I am not required to consider the public interest test in terms of section 2(1)(b) of FOISA.

Section 39 (Health, safety and the environment)

72. As discussed above, under section 39(1) of FOISA, information is exempt information if its disclosure would, or would be likely to, endanger the physical or mental health or safety of an individual.
73. Grampian Police argued that the release of the information requested would allow RSOs, and any person contemplating such crimes, to be aware of the resources available to monitor RSOs within the Force area and, consequently, to gauge the likelihood of detection when committing such crimes, increasing the risk of attacks and placing the members of the wider community at increased risk.
74. In support of this view, Grampian Police cited various research papers commissioned by the Home Office as well as reports to the Scottish Parliament Justice 2 Committee and sub-committees.
75. I have examined these sources and note their contents. However, a constant theme within the sources cited is that there is no single measure or factor which helps the Police predict or prevent RSOs from recidivism. Rather, my reading of the sources cited is that a range of measures – including monitoring of RSOs by specialist officers – is desirable and effective. Other strategies mentioned in these reports included briefings to patrol officers, use of informants and an increased multi-agency approach to gathering intelligence on RSOs, their habits and monitoring their movements.
76. Grampian Police offered no other, specific, evidence that there was an increased risk of attacks in the Peterhead / Buchan area, when these might occur, the nature of the threat, or that established a clear link between the release of the information requested and any danger to the safety of the community from such offences.



77. It does not seem clear to me that the alleged danger to the public identified by Grampian Police would be due to the release of the information requested by Mr Coull. If that information were to be released, I am satisfied – on the basis of the evidence submitted by Grampian Police itself – that there are other measures in place which effectively protect the public.
78. I am unconvinced that the release of the number of Grampian Police Officers dedicated to monitoring RSOs would be the decisive factor as it is not these officers only, nor the ignorance as to their number, which appear to be decisive in maintaining the safety of the public by monitoring RSOs.
79. Given that I do not accept that Grampian Police has shown sufficient evidence for asserting that the danger alleged by the Police would, or would be likely to, occur if the information requested is released, I find that Grampian Police did not correctly apply section 39(1) of FOISA in this instance.
80. Given that I do not accept section 39(1) of FOISA applies, I am not required to consider the public interest test in terms of section 2(1)(b) of FOISA.

Conclusion to question 2

81. Had Mr Coull's request been for the number of Grampian Police officers dedicated to monitoring RSOs in the North Aberdeenshire Command Area, I would have found, on the basis of the arguments and submissions made by Grampian Police, that the harm test required to deploy the exemptions in section 35(1)(a) and 39(1) could not have been met and that Grampian Police would not have been justified in maintaining those exemptions.
82. However, Mr Coull's request was not for that information and, as considered in paragraphs 51 – 53 above, I accept that Grampian Police does not (and did not at the time of Mr Coull's request) hold the information requested and find that the correct response would have been to serve notice on him in terms of section 17 of FOISA.

Decision

I find that the Chief Constable of Grampian Police failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Coull.

I find that by failing to correctly apply sections 35(1)(a) and 39(1) of FOISA to Mr Coull's question 1, the Chief Constable of Grampian Police failed to comply with Part 1, and in particular section 1(1), of FOISA.



I find that by failing to apply section 17 of FOISA to Mr Coull's question 2 (that information not being held), the Chief Constable of Grampian Police failed to comply with Part 1 of FOISA.

I therefore require the Chief Constable of Grampian Police to release to Mr Coull the number of RSOs in Aberdeenshire Council's Buchan area, as at the time of Mr Coull's request, within 45 days after the date of intimation of this decision notice.

Appeal

Should either Mr Coull or the Chief Constable of Grampian 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.

Kevin Dunion
Scottish Information Commissioner
27 September 2007



Appendix 1

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.

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.

17 Notice that information is not held

- (1) Where –
- (a) a Scottish public authority receives a request which would require it either –
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold the information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.



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;

39 Health, safety and the environment

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.