

Decision Notice



Decision 071/2008 Mr S and the Chief Constable of Strathclyde Police

Police officers carrying out duties at a football match

Reference No: 200700494

Decision Date: 30 June 2008

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr S requested details of the policing of a football match from the Chief Constable of Strathclyde Police (Strathclyde Police). Strathclyde Police responded by providing some information to Mr S, but withheld the remainder under sections 35(1)(a), 35(1)(g) and 39(1) of FOISA. Mr S was not satisfied with this response and asked Strathclyde Police to review their decision. Strathclyde Police carried out a review and, as a result, provided Mr S with some further information, but withheld the remainder, applying section 35(1)(b) of FOISA in addition to those exemptions claimed earlier. Mr S remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, in the course of which further information was disclosed to the applicant, the Commissioner could not accept the arguments as to substantial prejudice and other harm put forward by Strathclyde Police in relation to disclosure of the information withheld and therefore found that they had failed to deal with Mr S's request for information in accordance with Part 1 of FOISA. He required Strathclyde Police to provide Mr S with the remainder of the information he had requested.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 35(1)(a), (b) and (g) (read in conjunction with section 35(2)(i) and (j)) (Law enforcement); 39(1) (Health, safety and the environment)

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

1. On 31 January 2007, Mr S wrote to Strathclyde Police requesting details of the policing provided for the Kilmarnock v Falkirk football match at Fir Park Stadium on Tuesday 30 January 2007. In particular, he wished to know:
 - a. How many officers were assigned to duties relating to the match;
 - b. What costs were being claimed back from the match organisers;



- c. How many police officers were assigned to traffic management;
 - d. What plans were in place for traffic management before the match from East Kilbride to Raith Interchange on the A725, on the M74 and into Motherwell;
 - e. How the plans for traffic management were implemented;
 - f. How many officers worked on traffic management on the above route;
 - g. At what times they did so;
 - h. What they did there;
 - i. What the reasons were for delaying the start of the match for 15 minutes and then not delaying it further despite thousands being stuck in traffic;
 - j. How many complaints about the traffic congestion had been received.
2. On 28 February 2007, Strathclyde Police wrote to Mr S in response to his request for information. In relation to requests a and c, Strathclyde Police withheld the information requested on the basis that it was exempt from disclosure by virtue of sections 35(1)(a), 35(1)(g) and 39(1) of FOISA.
 3. Strathclyde Police responded to request i, but provided only general background information in response to requests d and e, and an overall timeframe in response to request g. They stated that they did not hold any information covered by requests f and j, providing some explanation of this in each case. Finally, they took the view that request h was not a valid request for recorded information for the purposes of FOISA.
 4. Strathclyde Police wrote to Mr S again on 1 March 2007, providing a full response to request b.
 5. On 1 March 2007, Mr S wrote to Strathclyde Police requesting a review of their decision. He took issue with their application of exemptions to the information covered by requests a and c, disagreeing also (with reasons) with the manner in which they had responded to requests d, e, f, g, h and j.
 6. On 29 March 2007, Strathclyde Police wrote to notify Mr S of the outcome of their review. In relation to requests a and c, Strathclyde Police upheld their application of the exemptions claimed earlier, and additionally applied section 35(1)(b) to the information.
 7. In relation to requests d and e, Strathclyde Police advised that they had provided Mr S with an explanation of events by way of advice and assistance, as they did not consider these to be valid requests for information for the purposes of FOISA. Noting from his request for review, however, that Mr S was seeking the relevant operational plans, Strathclyde Police responded by withholding the information under sections 35(1)(a), 35(1)(b), 35(1)(g), 38(1)(b) and 39(1) of FOISA. They concluded on review that requests f, g and h were also covered by an operational plan, and that the same exemptions applied to this information as had been claimed in relation to requests d and e.
 8. Finally, Strathclyde Police had identified information falling within the scope of request j and provided Mr S with it.



9. On 2 April 2007, Mr S wrote to the Commissioner's Office, stating that he was dissatisfied with the outcome of Strathclyde Police's review and applying to me for a decision in terms of section 47(1) of FOISA.
10. The application was validated by establishing that Mr S had made requests 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 those requests.

Investigation

11. On 19 April 2007, Strathclyde Police were notified in writing that an application had been received from Mr S and were asked to provide my Office with copies of the information withheld. Strathclyde Police responded with this information and the case was then allocated to an investigating officer.
12. The investigating officer subsequently contacted Strathclyde Police, asking them to provide comments on the application, and to respond to specific questions on their handling of the application and the exemptions claimed in relation to it.
13. Strathclyde Police provided detailed comments on the case, particularly relating to the exemptions claimed and the relevant public interest considerations, and further specific questions on these were asked and responded to in the course of the investigation. All relevant arguments made by Strathclyde Police will be considered fully in the Commissioner's analysis and findings below.
14. Strathclyde Police also claimed that section 38(1)(b) of FOISA applied to certain information requested by Mr S. During the course of the investigation, however, Mr S confirmed that he was happy for any personal information to be redacted from the documents affected by his request. The application of this exemption will not, therefore, be considered further in this decision.
15. During the investigation, Strathclyde Police wrote to Mr S with further information, including information relating to traffic policing and complaints about congestion. As a result of this, Mr S confirmed that he was content with Strathclyde Police's responses to requests c and j, and therefore wished to withdraw his application to the Commissioner in relation to these. He also advised for clarification that he was content with the responses he had received to requests c and l, which had not in fact formed part of the subject matter of his request for review (or, consequently, that of his application).
16. Following his application for decision, the investigating officer corresponded with Mr S at some length in relation to his application. His comments will be considered more fully, as required, in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

17. In coming to a decision on this matter, the Commissioner has considered all of the submissions and other information presented to him by both Mr S and Strathclyde Police and is satisfied that no matter of relevance has been overlooked.
18. The information withheld from Mr S is contained in 3 documents, numbers 25, 26, and 27 following the numbering in Strathclyde Police's submission to me of 11 May 2007. Parts of all 3 documents are pertinent to Mr S's request.
19. Documents numbers 25 and 26 are two operational orders produced by Strathclyde Police to give instructions to police officers who attended the football match in question. Document number 25 is an operational order for traffic policing arrangements before and after the football match. Insofar as Strathclyde Police holds information falling within the scope of Mr S's request d, the Commissioner is satisfied from his investigation that it is to be found in this document. Strathclyde Police have released to Mr S a number of extracts from Document 25. Having considered them along with the remainder of the document and all relevant submissions the Commissioner has concluded that they comprise all recorded information held by Strathclyde Police and falling within the scope of request d. In the Commissioner's view, the remaining information in the order is not relevant to request d and in all the circumstances he does not consider it necessary to examine further Strathclyde Police's handling of that request.
20. Document number 26 is an operational order for policing arrangements during the course of the football match and falls under the scope of Mr S's request only to the extent that it contains the number of police officers assigned to (non-traffic) duties relating to the football match. This information remains withheld from Mr S under a number of exemptions in FOISA and the application of these exemptions will be considered further below.
21. Document number 27 is a copy of the senior Strathclyde Police officer's log of the football match, which records any incidents considered relevant for policing purposes and Strathclyde Police's responses to these. Only certain entries in this log (for 19:41 (first entry), 19:55 and 20:03) relate to traffic management on the route Mr S is concerned about and these entries alone fall within the scope of Mr S's request, relating in particular to his requests e, g and h. From his investigation, the Commissioner is satisfied that these entries comprise the only recorded information pertinent to requests e, g and h which is held by Strathclyde Police and remains withheld from Mr S. This information has now, however, been released to Mr S and therefore the Commissioner is not required to consider it further in this decision.



22. With regard to Mr S's request f, the Commissioner has examined all of the information withheld from Mr S and is satisfied that there is nothing within it which would provide a more meaningful answer to the request than has been given in the provision of the total number of traffic officers dedicated to the policing of the event. There is no more specific information held from which could be gleaned the number of officers dedicated to the particular route Mr S is concerned about and therefore a more appropriate response to the request would have been (as Strathclyde Police indicated in its initial response to Mr S) that the information in question was not held. Having noted that, the Commissioner is satisfied that he does not require to consider Strathclyde Police's handling of that request further in this decision.
23. Strathclyde Police have applied a total of five exemptions contained within FOISA to the information covered by Mr S's request a, insofar as not provided to him already (i.e. the number of officers assigned to duties relating to the match). To date, Strathclyde Police's response to request c has provided a partial response to the request (the number of officers assigned to traffic management), but the number of other officers assigned to the match has been withheld.

Sections 35(1)(a) and (b): the prevention or detection of crime and the apprehension or prosecution of offenders

24. Strathclyde Police applied the exemptions in sections 35(1)(a) and (b) to the number of police officers assigned to duties relating to the match (information to be found in document 26) because they argued that disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime or apprehension of offenders.
25. Authorities seeking to rely on this exemption need to show that disclosure will substantially prejudice the relevant activities. They should be able to demonstrate that the risk of harm being caused by disclosing the information in question 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, or be likely to occur, in the near (certainly the foreseeable) future rather than in some unspecified distant time. Authorities should therefore consider disclosing information unless it would (or would be likely to) cause real, actual and significant harm.
26. In relation to these exemptions, Strathclyde Police argued that they had a fundamental duty to protect life and property. They claimed that release of the breakdown of numbers of police officers would impact on their ability to police football matches effectively.
27. They went on to argue that public dissemination of these numbers would compromise any advantage held by the police over individuals or groups intent on disrupting the match in question or future matches, causing serious public disorder with the likelihood of serious injury. They pointed out that they had finite resources to manage in order to carry out their policing role, which involved maintaining an adequate service elsewhere at the same time as policing football matches.



28. While accepting that football violence was declining, Strathclyde Police presented evidence of a number of active groups of hooligans associated with the support of particular clubs (including those involved in the match in question) and argued that a small number of individuals could still have a disproportionate effect on the safety of crowds and others in the vicinity of matches. These groups were adept at circumventing policing methods and aims (and usually avoided the police with a view to inflicting violence and fear) and Strathclyde Police argued that it was dangerous to assume that they were incapable of using information about police numbers to their advantage. While acknowledging that comfort might be brought to the majority of law abiding fans by knowing that large numbers of Police were in attendance, Strathclyde Police also took the view that the minority who were intent on causing trouble might see disclosure of the information as an opportunity to rise to the challenge.
29. The fundamental position of Strathclyde Police remains, therefore, that to disclose the information covered by Mr S's request would substantially prejudice their ability to combat hooliganism, compromising the work done over years to bring it down to a manageable level.
30. The Commissioner accepts Strathclyde Police's arguments that a number of highly organised hooligan groups exist, work in certain ways and are capable of using (and likely to use) information on police organisation and planning in relation to football matches to their own advantage. The release of certain information of this kind into the public domain may well be of advantage to these groups, to the substantial detriment of crime prevention and detection and the apprehension and prosecution of offenders. Here, however, the Commissioner is considering simply the number of officers assigned to policing a particular match.
31. Mr S argued that the circumstances of this particular match were unique. It was a cup semi final between two relatively minor teams within the Scottish Premier League, and so the teams had gained special permission from the Scottish Football Association to hold the game at a much smaller stadium than would normally be used for such matches. He argued that disclosure of the number of police officers used to police this particular match could not be used to build up a pattern of information which could then be used against Strathclyde Police in future.
32. There is some force in this point. If a request had been made for the number of police officers present at every match played in a football season, or if Mr S had requested document number 26 in its entirety, there would be a stronger argument that the information could be used against Strathclyde Police in future by hooligans. However, to accept that the release of only the number of police officers on duty at one particular match would have the substantially prejudicial effect claimed, the Commissioner would need to be convinced that the information was relevant to more than just the one particular match and that it provided, either on its own or in conjunction with other information already in the public domain, a reasonable level of detail about the strategies and tactics used by Strathclyde Police for policing football matches and their environs.



33. In this case, the information relates to one specific football match, which appears to have been atypical, and is unlikely to be of particular relevance to other football matches played in Scotland, whether in the various stages of particular competitions or in the general run of weekly games. The Commissioner is not satisfied that there is other information currently in the public domain which could be used with this information to assist those intent on causing trouble at matches played at Fir Park (or elsewhere, for that matter) to build up a useful picture of Strathclyde Police's plans for policing future matches, or indeed that the information would serve this purpose in its own right.
34. Strathclyde Police are, however, convinced that disclosure of the number of police officers on duty at the match would lead to the information being used against them. They indicated that hooligans could see the disclosure of such information as an opportunity to "rise to the challenge". Whether this is true or not (most of the evidence provided by Strathclyde Police appears to suggest that such hooligans devote most of their efforts to avoiding the police, to fight each other or generally to cause trouble), the Commissioner is not persuaded that the numbers alone would be of great assistance to hooligans in either challenging the police or avoiding them, in the absence of further information as to how those officers were to be (or were in fact) deployed or used. While it is possible that the release of further numbers, in similar or different circumstances, might offer such assistance (perhaps to the extent that substantial prejudice of the kinds claimed would or would be likely to follow), that is not a matter for the Commissioner in this particular case.
35. While Strathclyde Police have provided detailed arguments against the general disclosure of information relating to the policing of football matches, in this case they have not provided sufficient information to convince the Commissioner that disclosure of the number of police officers assigned to police this particular game would, or would be likely to prejudice substantially their ability to prevent or detect crime, or apprehend or prosecute offenders, at or around football matches. Therefore the Commissioner is of the view that Strathclyde Police were not justified in applying the exemptions in sections 35(1)(a) and (b) of FOISA to this information.

Section 35(1)(g) (read in conjunction with sections 35(2)(i) and (j)): law enforcement (health and safety)

36. As noted above, Strathclyde Police also refused to disclose information falling under the scope of Mr S's request a on the basis of the exemption contained in section 35(1)(g) of FOISA. This exempts information if its disclosure would, or would be likely to, prejudice substantially the exercise by a public authority or a Scottish public authority of its functions for any of the purposes listed in section 35(2) of FOISA. Strathclyde Police considered that its functions in for the following purposes would be substantially prejudiced should the information be disclosed:
- (i) to secure the health, safety and welfare of persons at work; and
 - (j) to protect persons, other than persons at work, against risk to health or safety where that risk arises out of, or in connection with, the actions of persons at work.



37. The first question for consideration in this context is whether Strathclyde Police have functions for the above purposes. Clearly, they are subject to the usual general duties under the Health and Safety at Work etc Act 1974, to protect, so far as is reasonably practicable, the health and safety of their officers and employees and others who might be affected by their actions. These functions it has in common with any employer. While the Commissioner is reluctant to accept that the police have any more specific role in relation to either aspect of health and safety (the long-established duty of a constable to protect life and property does not, for example, sit easily within either purpose), he is prepared to accept that the police do have functions for both purposes. The question, therefore, is whether disclosure of the number of officers requested would, or would be likely to, prejudice the exercise of these functions substantially.
38. Strathclyde Police's reasoning for the application of this exemption is in essence the same as for their application of section 35(1)(a) and (b). They argue, for the reasons set out above in relation to these other exemptions, that the disclosure of the information would mean that they would be substantially inhibited from protecting from hooliganism the health, safety and welfare of the public, their own officers and other staff, or the staff of the football clubs.
39. The Commissioner considers the reasoning he has set out in paragraphs 32 to 35 above to be of equal application to Strathclyde Police's use of the exemption in section 35(1)(g). Having concluded that disclosure of the number of officers would not substantially prejudice either the prevention or detection of crime or the apprehension or prosecution of offenders, for the same reasons he cannot accept on the basis of the submissions presented by Strathclyde Police that disclosure would, or would be likely to, substantially prejudice Strathclyde Police's exercise of its functions for either of the purposes mentioned in section 35(2)(i) or (j). Therefore, he cannot accept that Strathclyde Police were correct to apply the exemption in section 35(1)(g), read in conjunction with section 35(2)(i) and (j), to the information.

Section 39(1): health and safety

40. Section 39(1) of FOISA states that information is exempt information if its disclosure under FOPISA would, or would be likely to, endanger the physical or mental health or the safety of an individual. Strathclyde Police's arguments for withholding the information under this exemption are in essence to those advanced in relation to section 35(1)(g), again focusing on the premise that their ability to protect from hooliganism the health, safety and welfare of the public, their own officers and other staff, or the staff of the football clubs, would be inhibited should the information be disclosed.
41. While section 39(1) does not contain the usual harm test of substantial prejudice and in referring simply to endangerment sets a lower threshold of harm, the Commissioner still requires that there must be some realistic prospect or likelihood of danger to the health and safety of one or more individuals, based on evidence or convincing arguments to that effect.



42. In reaching a conclusion on this exemption, the Commissioner would refer once again to the reasoning set out in paragraphs 32 to 35 above. For these reasons, having concluded that disclosure of the information could not be expected to compromise effective policing to any significant extent, he cannot accept from the arguments put forward by Strathclyde Police that disclosure of the number of officers requested by Mr S in his request a would, or would be likely to, have any appreciable effect on the risk of physical or mental harm to any individual or group of individuals. Therefore, he does not consider that Strathclyde Police were correct to apply the exemption in section 39(1) of FOISA to that information.
43. The exemptions in sections 35 and 39 of FOISA are subject to the public interest test set out in section 2(1)(b) of FOISA. The Commissioner has not, however, accepted that any of the exemptions claimed apply to the information requested in Mr S's request a and therefore he does not require to go on to consider the public interest in this case.

DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police (Strathclyde Police) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with Mr S's request for the number of officers assigned to duties relating to a particular football match. In withholding the number of (non-traffic) officers assigned to the match, Strathclyde Police misapplied the exemptions in sections 35(1)(a), 35(1)(b), 35(1)(g) and 39(1), and thereby failed to comply with section 1(1), of FOISA.

The Commissioner therefore requires Strathclyde Police to provide Mr S with the number of non-traffic police officers assigned to the match in question, as identified in the "N" Division Operational Order numbered 26 in their letter to the Commissioner's Office dated 11 May 2007, within 45 calendar days after the date of intimation of this decision notice (that is, by 14 August 2008).

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Appeal

Should either Mr S or the Chief Constable of Strathclyde 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
30 June 2008



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.

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;
 - ...
 - (g) the exercise by any public authority (within the meaning of the Freedom of Information Act 2000 (c.36)) or Scottish public authority of its functions for any of the purposes mentioned in subsection (2);
 - ...
- (2) The purposes are-
 - ...
 - (i) to secure the health, safety and welfare of persons at work; and
 - (j) to protect persons, other than persons at work, against risk to health or safety where that risk arises out of, or in connection with, the actions of persons at work.

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.
- ...

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