

Decision Notice



Decision 055/2011 Mr Alex Brown and the University of Glasgow

Face recognition software tests

Reference No: 201002277

Decision Date: 15 March 2011

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

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Summary

Mr Brown asked the University of Glasgow (the University) for information supplied to a newspaper for an article about face scanners at airports, and other associated information.

The University provided copies of the email correspondence with the newspaper but withheld certain information under sections 38(1)(b) and 33(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). Mr Brown asked for a review of the decision to withhold information under section 33(1)(b), and also queried whether the University had identified all information covered by his request. The University confirmed its decision after review and Mr Brown subsequently applied to the Scottish Information Commissioner for a decision.

The University subsequently advised that it no longer wished to withhold information under section 33(1)(b) and the information was provided to Mr Brown, along with other information which had been identified as relevant to his request.

As he was not satisfied that disclosure of the information would, or would have been likely to, prejudiced substantially the University's commercial interests, the Commissioner found that the University had not been entitled to withhold information under section 33(1)(b) of FOISA. He accepted that the University had identified all information covered by the terms of Mr Brown's request. As Mr Brown had already received the information initially withheld under section 33(1)(b), the Commissioner did not require the University to take any further action in relation to this case.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions) and 33(1)(b) (Commercial interests and the economy)

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 28 October 2010, Mr Brown wrote to the University making reference to an article in *The Telegraph* newspaper about face scanners at airports, in which a member of the University staff (Dr Jenkins) was quoted. Mr Brown asked the University to provide:

“...all correspondence between the University (including Dr Jenkins) and the Telegraph (or their representatives) on this matter. Please also provide any documents or associated material produced in connection with this matter (e.g. test plans, test reports, test outcomes, internal notes/emails). If payment was provided please provide copies of invoices.”
2. On 25 November 2011, the University wrote to advise Mr Brown that it did not hold the information he had requested in relation to the Telegraph article. The University let him know about a similar article in *The Sunday Times* of 5 April 2000, and provided some information relating to the face recognition tests mentioned in this article. The information consisted of a series of emails between the newspaper and Dr Jenkins, and an invoice. The University had redacted some information believed to be exempt under section 38(1)(b) of FOISA (Personal information), and the name (in the form of the website address) of a company providing face recognition software, on the grounds that this information was exempt from disclosure under section 33(1)(b) of FOISA (Commercial interests and the economy).
3. Mr Brown responded on the same day, and requested a review of the University's decision in relation to the information withheld under section 33(1)(b) of FOISA. He also queried the lack of any information about the tests carried out by Dr Jenkins or staff working on his behalf.
4. On 7 December 2010, the University provided its response to Mr Brown's request for review. The University upheld the decision to withhold the name of a company under section 33(1)(b) of FOISA, and confirmed that its previous response to Mr Brown's request included all records relating to the tests carried out.
5. Mr Brown remained dissatisfied with the University's response and applied for a decision from the Commissioner on 10 December 2010. He did not accept that the exemption in section 33(1)(b) had been correctly applied in relation to the information withheld. He subsequently confirmed that he wished the Commissioner to consider whether all information relating to the software tests had been provided, a query he had raised in his request for review.
6. The application was validated by establishing that Mr Brown had made a request for information to a Scottish public authority and had applied for a decision from the Commissioner, in terms of section 47(1) of FOISA, only after asking the authority to review its response to that request.



Investigation

7. On 15 December 2010, the University was notified in writing that an application had been received from Mr Brown and was asked to provide the Commissioner with any information withheld from him. The University responded with the information requested and the case was then allocated to an investigating officer.
8. On 18 January 2011, the University was asked to provide any comments it wished to make on Mr Brown's application (as required by section 49(3)(a) of FOISA). The University was asked to provide further details of its reasoning in relation to the decision to withhold information about a company name under section 33(1)(b) of FOISA. It was also asked to provide details of any searches or enquiries undertaken in order to establish that no additional information was held in relation to the test results, or to explain why, otherwise, it was satisfied that no information was held.
9. The University replied on 3 February 2011, providing comments and information as requested. The University had reviewed the arguments in relation to the withheld information and now acknowledged that disclosure would not prejudice its commercial substantially. The University also advised that it had identified information pertinent to his request in respect of the article in *The Telegraph*. In both cases, the University offered to provide the information to Mr Brown, and the investigating officer arranged for this to take place.
10. The University explained why it did not hold additional information relating to the tests carried out using the face recognition software. The University's explanation is considered in the next part of this decision.
11. Mr Brown was advised of the University's explanation on this point, and was asked whether he still required a decision from the Commissioner. Mr Brown confirmed that a decision was still required (10 February 2011).

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the information withheld and the submissions which have been presented to him and is satisfied that no matter of relevance has been overlooked.

Section 33(1)(b) of FOISA – Commercial interests and the economy

13. In terms of section 33(1)(b), information is exempt if its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of any person (including those of a Scottish public authority).



14. The University initially argued that disclosure of the name of the company whose face recognition system was used by Dr Jenkins would be likely to prejudice substantially the commercial interests of the University. The University argued that since researchers at the University used more than one type of face recognition software, there was a real and significant risk that disclosure of the name of the company whose software was used on this occasion would be detrimental to the University's existing relationships with software companies, and to its commercial interests.
15. As already noted, the University later advised the Commissioner that it no longer wished to withhold the information about the company name under section 33(1)(b), acknowledging that disclosure would not prejudice its commercial interests substantially. The University has not sought to argue that the information was exempt under section 33(1)(b) at the time of Mr Brown's request or his request for review. Accordingly, the Commissioner finds that in responding to Mr Brown's request and request for review, the University failed to comply with section 1(1) of FOISA, in failing to provide information which had been requested and which was not exempt from disclosure under FOISA. As Mr Brown has now received the information in question, the Commissioner does not require the University to take any further steps in relation to this failure to comply.

Whether all information was provided

16. Mr Brown also queried whether the University had provided all information covered by his request. He noted the absence of information relating to the tests carried out, and found it unlikely that information such as the figures, image names, and software settings were not recorded in some way prior to entry into the relevant emails.
17. The University explained that the information provided by Dr Jenkins was not created within the context of a larger piece of academic research, but had been provided very quickly using his prior knowledge of the subject and by using the software hosted on the company's website, of which he was already aware. The University noted that Dr Jenkins was asked two questions by the newspaper, one of which he was able to answer verbally, through his knowledge in this field, while the second question was answered by simply providing examples of image pairs that generated a 30% match.
18. The University advised, as indicated in the preceding paragraph, that Dr Jenkins had carried out comparisons using the face recognition software on the website, with which he was already familiar. He noted the percentage likeness results on a Post-It note, which was disposed of soon afterwards; there was no need for him to retain any records, or to carry out any further investigation or research, in relation to the request from the newspaper. Dr Jenkins had confirmed that little information had been created in relation to the work carried out for the newspaper, and that everything he held had been provided to the University's FOI team.



19. The University went on to advise that upon reviewing the documents provided to Mr Brown in the course of preparing its submission to the Commissioner, it had come to its attention that the file names themselves could provide information relevant to Mr Brown's request. The files were named in such a way as to provide an indication of which individuals were being compared, and the percentage of face similarity. This information was provided to Mr Brown without further delay, the University advising that it would not have been withheld had its significance been recognised at the time.
20. The Commissioner is satisfied that the University has now identified and provided all information covered by Mr Brown's request (with the exception of some personal data, the withholding of which Mr Brown has not challenged).
21. The Commissioner notes that some of the information was not identified when the University initially considered Mr Brown's request and request for review. Accordingly, the Commissioner finds that, in relation to this information, the University failed to comply with section 1(1) of FOISA, in failing to provide information which it held and which was not exempt from disclosure under FOISA. As Mr Brown has now received the information in question, the Commissioner does not require the University to take any further steps in relation to this failure to comply.

DECISION

The Commissioner finds that the University of Glasgow (the University) partially failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Brown.

The Commissioner finds that the University was not justified in withholding certain information under the exemption in section 33(1)(b), and initially failed to provide certain other information which it held and which was not exempt from disclosure, as required by section 1(1) of FOISA.

As Mr Brown has now received the information to which he was entitled, the Commissioner does not require the University to take any further steps in relation to this matter.

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Mr Alex Brown and
the University of Glasgow



Appeal

Should either Mr Brown or the University of Glasgow 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.

Margaret Keyse
Head of Enforcement
15 March 2011



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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...
- (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.
- ...

33 Commercial interests and the economy

- (1) Information is exempt information if –
- ...
- (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).