

# Decision Notice



Decision 033/2012 Mr X and the Chief Constable of Strathclyde Police

Firearms capacity

Reference No: 201101780

Decision Date: 17 February 2012

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr X requested from the Chief Constable of Strathclyde Police (Strathclyde Police) information relating to the force's firearms capacity and overall number of officers. Strathclyde Police confirmed the number of officers in the force, but withheld the information relating to the firearms capacity, claiming that it was exempt from disclosure under sections 35(1)(a) and (b) (Law enforcement) and 39(1) (Health, safety and the environment) of FOISA. After a review in which Strathclyde Police upheld their previous decision, Mr X remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Strathclyde Police were entitled to withhold the information regarding their firearms capacity under the exemptions in section 35(1)(a) and (b) of FOISA.

However, he found that Strathclyde Police had failed to provide a response to Mr X's request within the 20 working day period required by section 10(1) of FOISA. He did not require Strathclyde Police to take any action.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 10(1) (Time for compliance) and 35(1)(a) and (b) (Law enforcement)

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

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1. On 16 June 2011, Mr X requested the following information from Strathclyde Police using the 'Whatdotheyknow'<sup>1</sup> website (the website):
  - a) the number of firearms Strathclyde Police own
  - b) the number of officers authorised in their use
  - c) the number of officers routinely equipped with a firearm.

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<sup>1</sup> <http://www.whatdotheyknow.com/>



- d) the total number of officers in Strathclyde Police.
2. Strathclyde Police wrote to Mr X via the website on 15 July 2011, expressing regret that they had not been able to respond within the statutory timescale. They explained that this was because a substantial amount of information was being collated, but assured him that they would issue a response as soon as possible.
  3. Strathclyde Police responded to Mr X's request on 11 August 2011. They confirmed the total number of officers within Strathclyde Police in response to part d), but withheld the information concerning firearms capabilities sought by parts a) to c) under the exemptions in sections 35(1)(a) and (b) and 39(1) of FOISA.
  4. On 15 August 2011, Mr X wrote to Strathclyde Police, again via the website, requesting a review of their decision. In particular, Mr X highlighted examples in which other police forces had disclosed similar (and in some instances more detailed) information and commented that Strathclyde Police had not provided him with a satisfactory explanation of the substantial prejudice that they believed would be prompted by disclosure of the withheld information. Mr X also expressed dissatisfaction with the length of time taken for Strathclyde Police to respond to his initial request.
  5. Strathclyde Police acknowledged Mr X's request for review on 16 August 2011 and apologised for the delay in responding to his initial request. They also provided further explanation of their thinking in response to the points raised in his review. Strathclyde Police commented that, although disclosures might have been considered appropriate in the past, changes in the operational climate might dictate on a case by case basis that there would be substantial prejudice or harm in subsequent public disclosure of similar information. Strathclyde Police noted that while some police forces might have historically disclosed such information, they had not, for the reasons outlined in their response of 15 August 2011.
  6. Strathclyde Police subsequently notified Mr X of the outcome of their review on 12 September 2011, upholding their previous decision and reliance on the exemptions in sections 35(1)(a) and (b) and 39(1) of FOISA.
  7. On 25 September 2011, Mr X wrote to the Commissioner, stating that he was dissatisfied with the outcome of Strathclyde Police's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
  8. The application was validated by establishing that Mr X had made a request 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 that request.



## Investigation

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9. On 11 October 2011 Strathclyde Police were notified in writing that an application had been received from Mr X and were asked to provide the Commissioner with the information withheld from him. Strathclyde Police responded with the information requested and the case was then allocated to an investigating officer.
10. The investigating officer subsequently contacted Strathclyde Police, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Strathclyde Police were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested. Their response was received on 23 November 2011.
11. During the investigation, Mr X was invited to provide submissions explaining why he considered the public interest would favour the disclosure of the withheld information. No comment was received in response to this request. However, when considering the case for disclosure in what follows, the Commissioner has taken into account the points made by Mr X in earlier correspondence with his office, and in his request for review to Strathclyde Police.
12. The submissions provided by both Mr X and Strathclyde Police will be considered fully, insofar as relevant, in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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13. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr X and Strathclyde Police and is satisfied that no matter of relevance has been overlooked.

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

14. The information under consideration is that specified in parts a), b) and c) of Mr X's request, relating to Strathclyde Police's firearms capacity.
15. 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 highlights<sup>2</sup>, 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 reduction and detection.

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<sup>2</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section35/Section35.asp>



16. 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".
17. There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers that 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.
18. In communications with both the Commissioner and Strathclyde Police, Mr X has highlighted that other police forces have disclosed similar information, which in some instances has provided more detail than sought in his request. He highlighted five other requests which had been submitted and responded to via the whatdotheyknow website, in one case to another Scottish police force, and four cases to English police forces.
19. These examples showed that:
  - In November 2009, Humberside Police had confirmed (among other things) the number of authorised firearms officers it employed.
  - In February 2010, West Yorkshire Police had confirmed (amongst other things) the number of armed response officers it employed.
  - In September 2010, Central Scotland Police provided (along with other information) details of the number of authorised firearms officers and armed response vehicles in its force.
  - In February 2011, Humberside Police confirmed (amongst other things) the number of firearms officers employed at that time, the number of those officers who were male/female, and the ages of the oldest and youngest of those officers.
  - In June 2011, British Transport Police confirmed that none of its officers in Scotland carry a firearm or had received training which would authorise them to carry one.
20. Mr X noted in his request for review that there were likely to have been other disclosures of this type that were not available online. He commented that, to his knowledge, there had been no suggestion that disclosure by these other forces (or similar forces) had caused any substantial prejudice.
21. He also noted that Strathclyde Police appeared to be relying upon circumstances having changed since such disclosures, but he noted that he was not aware of any significant firearms events that had occurred since those disclosures.



22. Strathclyde Police submitted that the intelligence picture across all Scottish police forces indicated an increasing access to and use of firearms by Serious Organised Crime Groups (SOCGs) across the region. They went on to note that the Strathclyde Police force catchment area contained 43% of the estimated population of Scotland in 2010, but accounted for 56% of all offences in which a firearm was alleged to have been involved in 2010-11. They asserted that the Strathclyde force area contained by far the highest number of SOCGs in Scotland and that statistical data and current intelligence illustrated that these threats were real and ongoing.
23. They maintained that should the withheld information be disclosed, individuals or groups with criminal intent would be in a stronger position to predict the number of armed officers on duty within the force at any given time. They maintained that this would enhance their current and future ability to plan and commit criminal activities, maximise their opportunity to evade capture and fundamentally prejudice Strathclyde Police's ability to detect and prevent crime as well as detracting from its ability to arrest and prosecute such individuals.
24. Strathclyde Police also commented on the changing threat of terrorism in recent years, noting that after the June 2007 terrorist attack at Glasgow airport, the UK threat level had been increased to CRITICAL. They noted that the current threat level was SUBSTANTIAL, meaning that a terror attack remains a strong possibility. They explained the steps that were taken in response to the prevailing threat, and provided the Commissioner with examples of operational activities they had been involved in during 2010 and 2011 in connection with terror attacks.
25. Strathclyde Police submitted that if the withheld information was disclosed, individuals intent upon committing terrorist activity would, with some degree of accuracy, be in a position to predict the likely response capabilities of Strathclyde Police, thereby increasing the potential for loss of lives or injury to the public and emergency services personnel, and also prejudicing the ability of the police to prevent and detect crime, and detracting from their ability to arrest and prosecute the individuals involved.
26. When asked to comment on disclosures by other police forces, Strathclyde Police explained that, on 4 November 2010, an Extraordinary Meeting of the Association of Chief Police Officers in Scotland (ACPOS) Armed Policing Strategic Group (a group which meets on a quarterly basis and comprises strategic firearms lead officers from all eight Scottish forces) discussed relevant issues in light of significant national developments relating to the danger posed by extreme threat scenarios (of the type outlined above), and the public disclosure of information in relation to individual force and Scottish regional armed policing capability and capacity.



27. They explained that, in light of the revised picture of threat, the group had agreed that on an individual force and regional (Scottish) basis, information in relation to armed policing capability (e.g. numbers of authorised firearms officers, weapon response capability), should not be voluntarily released by Scottish police forces. Strathclyde Police stated that this position was re-enforced at the most recent meeting of the ACPOS Armed Policing Tactical Group on 4 August 2011 and that no Scottish police force had disclosed information in relation to its armed policing capabilities since the position was agreed at the meeting of the Strategic Group on 4 November 2010.
28. Strathclyde Police noted that the reference made by Mr X to the disclosure of such information by a Central Scotland Police, related to a request which pre-dated the aforementioned meeting date.
29. With respect to disclosures by English police forces identified by Mr X, Strathclyde Police noted that forces in England and Wales fall under the national umbrella of ACPO (Association of Chief Police Officers) rather than ACPOS.
30. Strathclyde Police stated that an additional rationale for the non disclosure of the requested information comes from the particular geographical environment across which Scottish police forces require to deliver their armed policing response. Strathclyde Police stated, by way of example, that it currently protects nearly 2.3 million people across 5,371 square miles of Scotland, from Glasgow's urban areas to the rural remoteness of the Inner Hebrides. It contrasted these characteristics with those of the areas covered by Northern and Dumfries and Galloway Constabularies, which have much smaller populations, but also cover large geographical areas.
31. Strathclyde Police contended that modern day policing is required to be specifically tailored to the individual needs of communities across all force areas, and whilst this is equally true for ACPO Forces, the challenges of policing large and varied geographical areas with limited specialist resources (armed or otherwise) are more acute in the Scottish context, and also in the Strathclyde context.
32. Given the geographical issues faced across Scotland, Strathclyde Police submitted that disclosure of information providing armed policing capability would provide criminals with valuable information on the number of such resources likely to be on duty within an area at any given time. They expressed the view that the release of such information would have a lesser impact on English and Welsh police forces given the relative proximity of armed support amongst those forces. They suggested that this would explain why such disclosure may have been seen as acceptable by them.
33. The Commissioner has considered all of the points made by Strathclyde Police and Mr X. He recognises that there is considerable strategic and operational benefit to Strathclyde Police in their firearms capacity not being widely known. He can see that the tactical deployment of firearms officers and their capacity plays an important role in both the detection and prevention of crime, and the apprehension and prosecution of offenders, and that the role that the effectiveness of such officers in the field depends in significant part on their numbers and their firepower not being generally known to the public at large.



34. The Commissioner has considered carefully Mr X's comments regarding the disclosure of similar information by other forces, and whether this provides evidence against the application of the exemptions in sections 35(1)(a) and (b) of FOISA.
35. He recognises, however, that the sensitivity of information relating to policing might vary over time as threats change, and might also differ depending on the area to which it relates. The Commissioner accepts Strathclyde Police's points regarding the different operational environments facing it and other Scottish police forces, compared with those in the north of England which had disclosed similar information.
36. In addition, the Commissioner has also taken account of the passage of time since some of those disclosures, and noted in particular that the disclosure of similar information by Central Scotland Police preceded the decision by ACPOS on 4 November 2010 that such information would not be disclosed voluntarily. The Commissioner considers that the fact that a decision not to disclose such information was taken across all of the Scottish Police forces lends weight to the argument that there is strategic and operational benefit to policing if the armed response capacity of individual forces is not known.
37. In the circumstances, the Commissioner accepts that disclosure of the withheld information to Mr X, and thereby into the public domain, would be likely to significantly undermine Strathclyde Police's ability to prevent and detect crime, and apprehend and prosecute offenders.
38. He recognises that disclosure of the requested information could provide valuable intelligence to terrorists or others with criminal intentions about the capacity of the force to provide an armed response. Disclosure of the figures requested by Mr X may enable informed calculation by criminals as to where, when, and the extent to which officers at a particular scene are likely to be armed. Such calculations might lead to bolder attacks in circumstances where an armed response is considered unlikely, or an increase in the firepower carried by criminals themselves, if an armed response was considered likely.
39. The Commissioner is of the view that disclosure of the withheld information would, or would be likely to, prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders. He has therefore concluded that Strathclyde Police were justified in applying the exemptions in sections 35(1)(a) and (b) of FOISA to the withheld information.

#### **Public interest test**

40. Sections 35(1)(a) and (b) of FOISA are both qualified exemptions, which means that their application is subject to the public interest test set out in section 2(1)(b) of FOISA. Therefore having decided that the information is exempt under section 35(1)(a) and (b), the Commissioner must go on to consider whether, in all circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

*Public interest in favour of disclosure*



41. In his request for review, Mr X submitted that the public has a legitimate right to information about the use of firearms by the police and highlighted the police shootings in the cases of Jean Charles de Menezes and Mark Duggan.
42. In their submissions Strathclyde Police acknowledged that similar information had previously been disclosed by other forces and accepted that there were some arguments in favour of disclosure. They accepted that there was a public interest in accountability in releasing information that demonstrates how police resources are used, particularly when that information relates to the efficiency and effectiveness of the force.
43. They also accepted that the disclosure of the requested information would provide some information that could contribute both to public awareness and public debate surrounding the use of firearms, adding a degree of accuracy to public perceptions.
44. However, Strathclyde Police also identified a number of factors favouring non-disclosure. They commented that release of the withheld information would adversely affect the efficient and effective conduct of the service in its law enforcement role and would risk the safety of members of the public and firearms officers. They commented also that disclosure would hinder the prevention or detection of crime, leading to more crime being committed. They commented that the applicability of the exemptions in section 35(1)(a) and (b) gave rise to a public interest in non-disclosure.
45. Strathclyde Police concluded that, whilst previous disclosures have been made that were appropriate at the time, and accountability for public funds coupled with providing accurate information for public debate might suggest disclosure is appropriate, given the current national threat assessment and intelligence picture, the overall remit of ensuring public safety, the prevention or detection of crime and reducing the opportunity for crime outweighed considerations of disclosure. Accordingly Strathclyde Police assessed that on balance the public interest was better served by the non-disclosure of the information requested.

### **The Commissioner's conclusions**

46. The Commissioner has determined that there is some public interest in disclosure of the withheld information, in that it would allow some insight into the effectiveness and efficiency of the force and contribute to public awareness and debate surrounding the use of firearms by police.
47. However, he considers there is a greater public interest in maintaining the operational effectiveness of the force in maintaining law and order and is of the view that disclosure of information such as that sought by Mr X could severely compromise that effectiveness and detract from the prevention and detection of crime, with potential consequences for the safety of both police officers and members of the public.
48. Although he is aware that similar information has been disclosed by other forces in the recent past, the Commissioner accepts that in the current climate it would be counter-productive, and indeed detrimental to effective policing, for the withheld information to be disclosed at this time. He considers this would be contrary to the public interest.



49. Having balanced the public interest both for and against disclosure of the withheld information, the Commissioner has concluded that the public interest in favour of maintaining the exemptions in section 35(1)(a) and (b) outweighs that in favour of disclosure of the withheld information in this case.
50. The Commissioner has therefore concluded that Strathclyde Police were correct to withhold the information under the exemptions in section 35(1)(a) and (b) of FOISA. He notes that, as a result, it is not necessary to consider the exemption in section 39(1) of FOISA which was also cited by Strathclyde Police.

### **Section 10(1) of FOISA – Time for compliance**

51. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
52. Strathclyde Police did not provide their response until 11 August 2011, and so failed to respond to Mr X's request of 16 June 2011 within this timescale.
53. When asked by the Commissioner to comment on this, Strathclyde Police stated they felt it most appropriate that the expert opinion of those officers dealing with this issue should be gathered and their professional opinion considered. Strathclyde Police admitted that this had taken longer than expected and the response was delayed as a result. Strathclyde Police acknowledged the delay in providing a response and apologised for this, accepting that it did constitute a technical breach of the legislation.
54. The Commissioner has noted this explanation, and that Strathclyde Police informed Mr X that there would be a delay in providing a response, and later apologised to him. However, he must find that Strathclyde Police failed to respond to Mr X's request for information of 16 June 2011 within the 20 working days allowed under section 10(1) of FOISA and thereby failed to comply with Part 1 of FOISA.
55. The Commissioner notes that Strathclyde Police subsequently provided a substantive response to Mr X on 11 August 2011. In the circumstances, he does not require any action to be taken in relation to this breach.

Decision 033/2012  
Mr X  
and the Chief Constable of Strathclyde Police



The Commissioner finds that the Chief Constable of Strathclyde Police (Strathclyde Police) generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr X.

He finds that Strathclyde Police acted in accordance with Part 1 of FOISA finding that the information withheld from Mr X was exempt from disclosure under sections 35(1)(a) and 35(1)(b) of FOISA, and that the public interest in maintaining these exemptions outweighed that in disclosure of that information.

However, the Commissioner finds that Strathclyde Police acted in breach of Part 1 of FOISA by failing to respond to Mr X's request for information within the timescale required by section 10(1) of FOISA. For the reasons given above, he does not require Strathclyde Police to take any action in relation to this failure.

## Appeal

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Should either Mr X 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.

**Margaret Keyse**  
**Head of Enforcement**  
**17 February 2012**



## Appendix

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### 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.

...

- (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.

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...



**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;
  - ...