

Decision Notice



Decision 059/2008 Mr Richard Cookson and the Scottish Prison Service

Office of Surveillance Commissioners Report

Reference No: 200700281

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Summary

Mr Cookson requested from the Scottish Prison Service (SPS) information in relation to the Office of Surveillance Commissioners (OSC) report on the inspection of the SPS in 2005-2006 and the SPS response thereto. The SPS responded, refusing to release any information and citing exemptions under the terms of section 35(1)(a), (b), (c) and (f) (Law enforcement) of FOISA. Following a review, which upheld the SPS's original position, Mr Cookson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the SPS additionally cited the exemptions in section 30(b)(i) and (c) of FOISA but also released certain information to Mr Cookson, the Commissioner found that certain of the remaining information had been correctly withheld under section 35(1)(f) of FOISA, which relates to the maintenance of good order in prisons and similar establishments. However, he could not accept the SPS's arguments as to harm in relation to the remainder of the information still withheld and therefore found that by claiming exemption for that information under the various sections of FOISA cited above the SPS had partially failed to deal with Mr Cookson's request for information in accordance with Part 1 of FOISA. He required the SPS to release further information to Mr Cookson.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement); 2 (Effect of exemptions); 30(b)(i) and (c) (Prejudice to effective conduct of public affairs); 35(1)(a), (b), (c) and (f) (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

1. The OSC is responsible for monitoring the use of powers conferred on the police and other organisations, such as the Scottish Prison Service, by the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA). RIPSA regulates the authorisation and conduct of covert surveillance operations and the use of covert human intelligence sources (as informants and undercover officers are now known).



2. The OSC's aim is to provide effective and efficient oversight of the conduct of covert surveillance and covert human intelligence sources by public authorities in accordance with the legislation, and for that purpose to undertake inspections which take the form of interviews with senior management and operational staff at all levels, assessment of documentation relating to strategies, policies and procedures, and detailed analysis of individual operations. One such inspection was carried out on the SPS in 2006, resulting in an OSC report being prepared and issued.
3. On 18 December 2006, Mr Cookson requested from the SPS information in relation to the OSC report on the inspection of the SPS in 2005 -2006. In particular, he requested:
 - a) a copy of the report's executive summary and/or introduction;
 - b) a copy of the report's conclusions;
 - c) a copy of the report's recommendations;
 - d) if possible, a copy of the full report; and
 - e) a copy of the SPS's official response to its findings and recommendations.
4. The SPS responded to Mr Cookson's request on 31 January 2007, refusing to disclose the information requested on the basis that it was exempt under the terms of section 35(1)(a), (b), (c) and (f) of FOISA, all of these being exemptions relative to law enforcement.
5. On 1 February 2007, Mr Cookson wrote to the SPS requesting a review of its decision not to release the information requested. He claimed the SPS had ignored his request for the official response referred to at 1 e) above and also failed to respond to his request within 20 working days. In addition, he challenged the application of the exemptions claimed, arguing that he did not believe the SPS could demonstrate to the Commissioner that the public interest lay in withholding all the various parts of the report as requested. He also questioned whether the SPS could demonstrate the substantial prejudice required under each of the exemptions claimed. He confirmed his intension was not to find out about the SPS's security, intelligence gathering and surveillance techniques, but rather to find out if the activities covered by the RIPSAs were being carried out lawfully.
6. The SPS wrote to notify Mr Cookson of the outcome of its review on 6 February 2007. The SPS confirmed refusal to release its official response to the report (which it argued had been covered in its initial reply to Mr Cookson) and (having reviewed the application of the public interest test) upheld the decision not to disclose any of the information requested. It apologised for the delay in responding to the initial request. Regarding Mr Cookson's concern as to whether the SPS had acted lawfully within the terms of RIPSAs, the SPS pointed out legal action would have been taken if any of its activities had breached that legislation and no such action had taken place.



7. On 21 February 2007, Mr Cookson wrote to the Commissioner's Office stating that he was dissatisfied with the outcome of the SPS's review and applying to him for a decision in terms of section 47(1) of FOISA. He reiterated the arguments he had made to the SPS in relation to the application of the exemptions and the public interest.
8. The application was validated by establishing that Mr Cookson 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

9. On 9 March 2007, the SPS was notified in writing that an application had been received from Mr Cookson and asked to provide comments on that application, as required by section 49(3)(a) of FOISA. In particular, the SPS was asked to provide copies of the information withheld from Mr Cookson, along with detailed analysis of its application of the relevant exemptions.
10. A response was submitted on behalf of the SPS on 29 March 2007, enclosing the information withheld, its statements on the case and other supporting documentation. The case was then allocated to an investigating officer.
11. The SPS supplied 2 documents, the first being the OSC's investigation report and the second the official response to the report by the SPS.
12. The SPS indicated that it considered the exemptions in section 35(1)(a), (b), (c) and (f) of FOISA to apply to all of the information withheld from Mr Cookson. In its submissions to the Commissioner's Office, the SPS stated that it was also relying on the exemptions contained in section 30(b)(i) and (c) of FOISA.
13. In the course of the investigation, the SPS agreed to release a version of the inspection report, with significant redactions, to Mr Cookson. At the same time, it clarified its position in relation to the information still withheld and the relevant exemptions. Having considered the redacted report, Mr Cookson remained unconvinced that the SPS could justify withholding the balance of the information under FOISA. He asked the Commissioner to consider that information and reach a decision on it.
14. As indicated in paragraph 5 above, Mr Cookson wishes to establish whether the SPS is carrying out activities covered by RIPSAs lawfully. He does not believe the SPS can demonstrate that the exemptions claimed or the public interest justify withholding the remaining parts of the report in their entirety. He has provided detailed arguments on the question of substantial prejudice and on the public interest and the Commissioner will consider these more fully, along with the SPS's arguments in support of its position, in his analysis and findings below.



Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner has considered all of the information and the submissions that have been presented to him by both the applicant and the SPS and is satisfied that no matter of relevance has been overlooked.
16. The first part of Mr Cookson's request was for a copy of the inspection report's executive summary and/or introduction. Since the introduction has been released and there is no executive summary, the Commissioner will not consider that part of the request further in this decision. The remaining parts of the request were for copies of the report's conclusions and recommendations, if possible a copy of the full report, and a copy of the official response to its findings and recommendations. To this information the SPS applied the exemption under section 35(1)(f), along with those under sections 35(1)(a), (b) and (c), and 30(b)(i) and (c), of FOISA. The Commissioner will consider the information only insofar as it remains withheld following release of a redacted version of the report: the information remaining withheld includes the SPS response to the inspection report.

Section 35(1)(f) – security and good order in prisons etc.

17. For the exemption in section 35(f) of FOISA to apply, the Commissioner must be satisfied that the disclosure of the information would, or would be likely to, prejudice substantially the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.
18. Although there is no definition of substantial prejudice under FOISA, it is the Commissioner's view that for an authority to be able to show that disclosure of the information would be substantially prejudicial it would have to show that the risk of damage arising from disclosure of the information was real or very likely, not merely hypothetical. The SPS would also have to show that the harm caused (or likely to be caused) by such a release would be significant, not marginal, and it would have to occur, or be likely to occur, in the near (certainly the foreseeable) future and not in some distant time.
19. Without going into the details of the withheld information or the full arguments put forward by the SPS, because to do so would of necessity result in disclosure of elements of that withheld information, the Commissioner finds that a distinction can broadly be drawn between that information which contains direct references to specific operational or procedural matters relating to covert surveillance or information gathering and that information within the report and response which relates to systems, policies or training.
20. The SPS stated that activities conducted under RIPSA, and therefore addressed within the inspection report and the SPS response, related to security practices, including the use or non-use of various intelligence techniques, the disclosure of information relating to which would substantially prejudice their effectiveness. Given the interconnection between RIPSA and the use or non-use of any such techniques examined, the SPS argued that all of the information remaining withheld was fundamental to the maintenance of security and good order in prisons and therefore exempt information under section 35(1)(f).



21. The SPS argued that the use of certain techniques covered by RIPSAs was an area of extreme delicacy and any reference to such techniques should be exempt as the ability to effectively operate them was fundamental to the maintenance of security and good order in prisons. The use of such techniques, it argued, helped to reduce violence, prevent escapes, prevent the introduction of controlled drugs and weapons, reduce the potential for serious incidents, reduce bullying, and contribute to crime reduction in the community. The release of intelligence management information, it argued, would substantially prejudice the ability of the SPS to successfully operate an effective security regime.
22. The SPS maintained that it did not normally reveal any of the procedural elements of intelligence gathering as experience had shown that prisoners would definitely cause serious harm to individuals who they believed (rightly or wrongly) to have assisted the SPS in relation to security. The SPS emphasised (with reference to specific examples) that there was very real potential for the release of information about its RIPSAs capacity to have an adverse effect on its ability to function safely and manage risk appropriately.
23. In considering whether the release of any of the withheld information would prejudice substantially the function of maintaining security and good order in prisons, the Commissioner accepts that should prisoners become aware of any techniques specifically employed, or not employed as the case may be, they could (and indeed would be likely to) take measures to avoid those techniques or take advantage where they are not so deployed. Equally, the release of specific information with regard to the use of intelligence and information gathering might reasonably be expected to have an impact on the safety and wellbeing of prisoners, staff and visitors.
24. The Commissioner is therefore satisfied that paragraphs 9 (first sentence) 15 (last sentence) 18, 20, 24 and 25 of the report contain information which falls within the exemption contained in section 35(1)(f) of FOISA, in that it relates to the maintenance of security and good order in prisons. The Commissioner is also satisfied that (insofar as it remains withheld) the part of the report relating to the inspection of Edinburgh Prison, with the exception of the first two sentences of paragraph 4, paragraph 6 and paragraph 15, is also so exempt. Similarly, that part of the report relating to the inspection of Aberdeen Prison (insofar as it remains withheld), with the exception of the first sentence of paragraph 4 and the first sentence of paragraph 11, is also exempt in terms of section 35(1)(f).
25. The Commissioner is not satisfied, however, that the other information remaining withheld (i.e. the SPS response to the report; paragraphs 7 (part) to 9 (apart from first sentence), 11 (part) to 13, 15 (apart from last sentence) to 17, 19, 22, 23, 26 to 28, 30, 31 and 33 to 35 of the report; the first two sentences of paragraph 4, paragraph 6 and paragraph 15 of the Edinburgh Prison section of the report, and the first sentence of paragraph 4 and first sentence of Paragraph 11 within the Aberdeen Prison section of the report) falls within the exemption of section 35(1)(f). This information relates to policies, systems and training, rather than specifically to operations or practices. Having considered all the relevant submissions, the Commissioner does not believe that its disclosure would be detrimental to effective information gathering, good order, personal safety or the wider effectiveness of the prison regime.



26. What is covered by RIPSA is contained within the legislation, as is what will be monitored and inspected by the OSC. In addition, there are codes of practice issued by the Scottish Ministers under RIPSA, which expand on the responsibilities of authorities under the legislation and to which those authorities must have regard in exercising their responsibilities.
27. There are official references elsewhere to the policy concerning the legislation, even with respect to specific establishments. The Scottish Government within their publication *Common Knowledge: Thematic Inspection of Information and Intelligence Sharing* (a report of an inspection carried out by Her Majesty's Chief Inspector of Constabulary), which can be found at <http://www.scotland.gov.uk/Publications/2007/03/13161000/7> mentions the *Implementation of a NIM (National Intelligence Model) compliant tasking and co-ordinating structure within Aberdeen Prison*. (Whilst this document was published in March 2007, after Mr Cookson's request and request for review were considered by the SPS, the relevant inspection had clearly been carried out, with publication of its findings in mind, by the time Mr Cookson submitted the request to the SPS and in the circumstances the Commissioner considers the reference relevant when considering if harm would have been (or would have been likely to be) caused by the release of certain sections of the OSC report.)
28. Prisons and police forces are used to being inspected and to sometimes critical reports being put into the public domain, The Commissioner cannot accept that the effectiveness of the prison system necessarily depends on a general lack of awareness of how the managers of that system implement the legal framework governing the use of surveillance and related techniques by public authorities (a framework itself established to protect the public interest).
29. The information identified in paragraph 25 will be considered in relation to section 35(1)(a) to (c) and section 30(b)(i) and 30(c) of FOISA later in this decision. Now, as section 35(1)(f) is a qualified exemption, the Commissioner must go on to consider the public interest test set out in section 2(1)(b) of FOISA.

Public interest in relation to section 35(1)(f)

30. With regard to the public interest test, the public authority must consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the relevant exemption. Information should only be withheld if the public interest in doing so (i.e. in maintaining the exemption) outweighs that in disclosure.
31. The SPS argued that the public had an overriding interest in having confidence in the effective operation of the prison system. The SPS's security and intelligence processes were, it submitted, critical to the day to day management of Scotland's prisons and therefore to the maintenance of security and good order. These mechanisms were in place to prevent criminal activity taking place within prisons and to help ensure the well-being and safety of prisoners and staff. Should certain practices become public knowledge, it argued, staff, prisoners and visitors would be placed at potentially serious risk of significant harm.



32. In his application Mr Cookson argued that public authorities should consider various factors (all highlighted in the Commissioner's guidance) whilst applying the public interest test, viz:
- disclosure would enhance scrutiny of decision making processes and thereby improve accountability and participation;
 - disclosure would contribute to the administration of justice and enforcement of the law, including the prevention or detection of crime or the apprehension or prosecution of offenders;
 - disclosure would contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money;
 - disclosure would contribute to ensuring that any public authority with regulatory responsibilities is adequately discharging its functions;
 - disclosure would ensure fairness in relation to applications or complaints, reveal malpractice or enable the correction of misleading claims;
 - disclosure would contribute to a debate on a matter of public interest.
33. In coming to a view on this matter the Commissioner recognises that the maintenance of security and good order in prisons is of real public interest, but so too is being satisfied that it is being carried out within the law and without disproportionate intrusion on the lives of those affected. The Commissioner accepts that intelligence techniques and the gathering of information are vital tools in the operation of SPS functions, and that disclosure of the use or non-use of particular such techniques can be expected to compromise the effective discharge of those functions, and potentially the safety of those within the prison community. On the other hand, many of the public interest benefits identified by Mr Cookson will be contributed to by the release of the information which the Commissioner has found not to be exempt. Whilst further scrutiny of the rest of the report might give additional public benefit, for the reasons given above the Commissioner is not of the view that it justifies the adverse consequences which might be likely to follow.
34. Taking all circumstances into account, the Commissioner considers on balance that the public interest in releasing the information identified at paragraph 24 above is outweighed by the public interest in withholding it and maintaining the section 35(1)(f) exemption, and therefore that the SPS was correct to withhold the information under that.

Section 35(1)(a), (b) and (c) – law enforcement

35. The Commissioner will now consider the remaining information, as identified at paragraph 25 above, under section 35(1)(a), (b) and (c).



36. In order for an exemption under section 35 (1) (a), (b) or (c) to apply the Commissioner has to be satisfied that the disclosure of information would, or would be likely to, prejudice substantially, as appropriate, the prevention or detection of crime, the apprehension or prosecution of offenders, or the administration of justice.
37. The SPS argued that the direct result of intelligence gathered within the prison environment and the management of this intelligence was the prevention of crime, the apprehension of offenders and in a broader context the administration of justice. Therefore, were the report to be released, making public both general and specific information in respect of internal covert surveillance practices, a direct result would be to prejudice substantially the prevention or detection of crime and generally to impede the administration of justice. It was argued that, given the nature of the information identified, disclosure would without doubt significantly reduce the likelihood of cooperation between certain prisoners and officials, and therefore severely curtail the passing of information. As a consequence, the prevention or detection of crime, the apprehension or prosecution of offenders and the general administration of justice, both internal to a prison and in the wider public arena, would be prejudiced substantially.
38. As outlined in his *Decision Notice 013/2007, Mr D and the Chief Constable of Strathclyde Police*, with regard to the exemption under section 35(1)(a), the Commissioner is of the view that the term “the prevention or detection of crime” encompasses any action taken to anticipate or prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could include activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and prevention.
39. Section 35(1)(b) has a narrower scope than section 35(1)(a), although there is likely to be a considerable overlap between the two exemptions. The Commissioner considers that section 35(1)(b) relates to all aspects of the process of identifying, arresting or prosecuting those suspected of being responsible for criminal activity. Again, this term could refer to the apprehension or prosecution of specific offenders, or to more general techniques (such as the investigative processes used).
40. There is no doubt that the activities covered by RIPSAs, and addressed within the report and the SPS response to it, include activities in relation to specific (anticipated) crime or wider strategies for crime reduction and prevention, and to more general techniques. As such, the information falls within the scope of both section 35(1)(a) and (b) and by extension section 35(1)(c) in relation to the general administration of justice.
41. Having considered all relevant arguments put forward by the SPS, the Commissioner cannot however accept that the release of any of the information identified at paragraph 25 above, and not already accepted as exempt in terms of section 35(1)(f), would or would be likely to prejudice substantially the prevention or detection of crime, the apprehension or prosecution of offenders or the administration of justice. This information relates to what the SPS has done to prepare itself for the appropriate exercise of the relevant powers should that be necessary, and not to the actual exercise of the powers in question (assuming they had indeed been exercised or required to be), and the Commissioner does not see how information of this kind is capable of engaging any of these exemptions. Consequently, the Commissioner is of the view that the SPS incorrectly applied section 35(1)(a), (b) and (c) of FOISA to this information.



Section 30(b)(i) and 30(c) (Prejudice to effective conduct of public affairs)

42. The Commissioner will now consider the information as outlined at paragraph 25 above, in terms of the exemptions contained under section 30(b)(i) and 30(c).
43. The Ministers submitted that disclosing the OSC Report and the SPS response would (or would be likely to) inhibit substantially the free and frank provision of advice, or would otherwise prejudice substantially (or be likely to prejudice substantially) the effective conduct of public affairs, under section 30(b)(i) and 30(c) respectively.
44. Both these exemptions are qualified exemptions and therefore the public interest test applies to any information exempt under them.
45. In considering the application of any exemption, the Commissioner will always look at the actual information withheld, not simply the category of information to which it belongs or the type of situation in which the request has arisen. In other words, in considering these particular exemptions, the Commissioner must consider whether the disclosure of the particular information under consideration would, or would be likely to, in all the surrounding circumstances, have the substantially inhibiting or prejudicial effect described in the relevant sections.
46. In section 30(b)(i) of FOISA, the chief consideration is not whether the information itself constitutes advice, but whether the release of the information that has been withheld would inhibit substantially the free and frank provision of advice. Equally under section 30(c) the chief consideration is whether release would substantially prejudice the conduct of public affairs.
47. The Commissioner has already mentioned above that there is no definition of substantial prejudice under FOISA and the same applies to the term "inhibit substantially". The Commissioner takes the view that in this context it means to restrain, decrease or suppress the freedom with which opinions or options are expressed. The Ministers' own guidance to their staff on the application of the exemptions in section 30(b) points out that the word "inhibit" suggests a suppressive effect, so that communication would be less likely to be made, or would be made in a more reticent or circumscribed fashion, or would be less inclusive. The points made in paragraph 18 above in respect of the risk and magnitude of harm required apply with equal force here. It should be noted that the Commissioner requires evidence of these matters and will not accept a presumption that harm can be expected to follow from the release of a particular kind of information.



48. In its submissions, the SPS argued that it was essential to have a robust investigatory regime, free to investigate and report as necessary and bring forward appropriate recommendations, and for authorities to be able to respond. It argued that disclosure of a restricted document such as this, written essentially for internal consumption, and the response to the issues it raised, would therefore be likely to substantially inhibit the level of detail and analysis such reports contained and thereby lay open to question the basis on which recommendations of best practice might be made. The value of such reports would be detrimentally affected (with the critical content potentially being restricted) and consequently the ability of organisations to learn from inspection and put into practice the advice and recommendations given. Release of the SPS response to the report could, it was argued, prejudice the implementation of best practice by distracting attention from such efforts.
49. The Commissioner does not accept the arguments put forward by the SPS that a statutory body with a defined statutory task, such as the OSC, would materially water down the content of reports on the basis that they might be made generally available to the public. He notes the SPS submission that OSC does not want this report disclosed and further notes from the OSC website that it is of the view that its reports generally will only be seen by the authorities concerned. The Commissioner is aware that OSC is not directly covered by the FOIA or FOISA, but that does not mean that its reports once provided to a public authority should not be considered in the normal way under the legislation. The role of the OSC, like many other oversight and inspection bodies is to ensure that appropriate policies, systems and procedures are in place and the operational practice accords with those systems. In so doing it will comment on good and poor practice and identify improvements which could or should be implemented. At times, if failings are significant or repeated, it is likely that such comments might be strongly expressed. However, the OSC indicates that even so the intention is that the report will be “balanced and informative.” It is unlikely in the Commissioner’s view that the OSC would alter its reports in such a way that such failings were not clearly flagged up or the strength of its views was not known. As indicated above, prisons and police forces are used to being inspected and in certain cases critical reports are put into the public domain. In any event, it is now relatively common practice for reports on external audits and inspections of public authorities to be made public and the Commissioner would require to be satisfied that particular circumstances existed before considering them exempt on the section 30 grounds advanced here. In the case of this report there are clearly matters of some sensitivity as the Commissioner has acknowledged and some information can be withheld. However, the fact that the document is marked restricted – the lowest security designation – does not mean that the entire content needs to be withheld. In large part, the information is what one would expect to be in such a report and response and the Commissioner is not convinced that the release of the information identified at paragraph 25 above would, or would be likely to, inhibit substantially the free and frank provision of advice, or would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs, under either section 30(b)(i) or section 30(c).



50. Since the Commissioner has held that the information identified at paragraph 25 is not exempt in terms of either section 30(b)(i) or section 30(c) he need not consider the public interest test. However, for completeness, even if either section 30 exemption had applied the Commissioner considers that there is a strong public interest in disclosing the information. The powers which have been given to the authorities to conduct surveillance and to acquire intelligence are considerable, and there is a strong public interest in knowing whether authorities have adequately prepared themselves to appropriately exercise the relevant powers should they be required. There would have to be identifiable substantial harm to the public interest from disclosure, or other benefits from withholding, to overcome the public interest in disclosure.

DECISION

The Commissioner finds that the Scottish Prison Service partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Cookson.

The Commissioner finds that by applying the exemption in terms of section 35(1)(f) of FOISA to certain of the withheld information the SPS complied with Part 1 of FOISA.

However, by applying section 35(1) (a), (b), (c) and (f), and section 30(b)(i) and (c), of FOISA to the remaining parts of the withheld information, the SPS failed to comply with Part 1 and in particular with section 1(1).

The Commissioner therefore requires the Scottish Prison Service to supply Mr Cookson with the information contained in the SPS response to the report, along with paragraphs 7 (that part remaining withheld) to 9 (apart from first sentence), 11 (that part remaining withheld) to 13, 15 (apart from last sentence) to 17, 19, 22, 23, 26 to 28, 30, 31 and 33 to 35 of the OSC report, the first two sentences of paragraph 4, paragraph 6 and paragraph 15 of the Edinburgh Prison section of the report, and the first sentence of paragraph 4 and first sentence of Paragraph 11 within the Aberdeen Prison section of the report, all within 45 days after the date of intimation of this decision notice, that is by 12 July 2008



Appeal

Should either Mr Cookson or the SPS 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
28 May 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.

...

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.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
 - (b) section 26;
 - (c) section 36(2);
 - (d) section 37; and
 - (e) in subsection (1) of section 38 –
 - (i) paragraphs (a), (c) and (d); and
 - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

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;
- (c) the administration of justice;
- ...
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained;
- ...

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

- ...
- (b) would, or would be likely to, inhibit substantially-
 - (i) the free and frank provision of advice; or
 - ...
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.