

Decision Notice



Decision 062/2008 Allan McLeod and the Chief Constable of Northern Constabulary

Names of all police officers stationed at Wick Police Station between January and March 1997

Reference No: 200700980
Decision Date: 5 June 2008

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr Allan McLeod (Mr McLeod) requested the names of all police officers stationed at Wick Police Station between January and March 1997 from the Chief Constable of Northern Constabulary (Northern Constabulary). Northern Constabulary responded by advising Mr McLeod that it considered the information exempt from disclosure in terms of sections 26(a) and 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mr McLeod remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Northern Constabulary had failed to deal with Mr McLeod's request for information in accordance with Part 1 of FOISA, by incorrectly withholding the sought information under sections 26(a), 35(1)(a), 38(1)(b) and 39(1) of FOISA. He was not persuaded by the arguments put forward by Northern Constabulary in relation to the application of these exemptions and he therefore required Northern Constabulary to provide Mr McLeod with a list of all police officers stationed at Wick Police Station between January and March 1997.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2(1) (Effect of exemptions); 26(a) (Prohibitions on disclosure); 35(1)(a) (Law enforcement); 38(1)(b), (2)(a)(i) and (b) (Personal information) and 39(1) (Health, safety and the environment)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of "personal data"); Part 1 of Schedule 1 (The data protection principles) (the first and second data protection principles) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (condition 6(1)).

Human Rights Act 1998 (HRA): section 6(1) (Acts of public authorities)

European Convention on Human Rights (ECHR): Article 8

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 May 2007, Mr McLeod wrote to Northern Constabulary requesting the following information:

“The names of all 29 police officers, regardless of their rank, who were stationed at Wick Police Station, Caithness in 1997”
2. Northern Constabulary replied to Mr McLeod on 31 May 2007, asking him to clarify or narrow his request. Northern Constabulary explained that members of staff are moved on a regular basis and that it would be helpful if he could specify a particular date or period between two specific dates in his request.
3. In response, Mr McLeod narrowed the terms of his initial request to seek the names only of those officers based at Wick Police Station between January and March 1997.
4. On 13 June 2007, Northern Constabulary wrote to Mr McLeod and advised him that it considered the sought information exempt from disclosure in terms of sections 26(a) and 38(1)(b) of FOISA.
5. Mr McLeod wrote to Northern Constabulary requesting a review of its decision to withhold the information from him on the basis of sections 26(a) and 38(1)(b) of FOISA on 15 June 2007. In particular, Mr McLeod stated that he did not accept that the information he requested was exempt from disclosure under FOISA.
6. On 5 July 2007, Northern Constabulary responded to Mr McLeod's request for review and upheld its original decision to withhold the information under sections 26(a) and 38(1)(b) of FOISA.
7. On 9 July 2007, Mr McLeod wrote to the Commissioner, stating that he was dissatisfied with the outcome of Northern Constabulary's review and applying to him for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr McLeod 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 16 July 2007, Northern Constabulary was notified in writing that an application had been received from Mr McLeod and was asked to provide the Commissioner with specified items of information required for the purposes of the investigation. Northern Constabulary responded with the information requested and the case was then allocated to an investigating officer.



10. A letter was sent to Northern Constabulary on 23 August 2007, giving notice that an investigation into the case had begun, as required by section 49(3)(a) of FOISA. Northern Constabulary was invited to comment on matters raised by Mr McLeod and on the application as a whole, including its handling of the request and details of the reasoning for the application of the exemptions in section 26(a) and 38(1)(b) to the information withheld.
11. Northern Constabulary replied on 18 September 2007. It advised that it had written to Mr McLeod providing the names of senior police officers who were based at Wick station between January and March 1997, in line with the approach set out with a previous decision made by me on a related matter. However, Northern Constabulary confirmed that it still wished to withhold the names of less senior officers. Northern Constabulary provided reasons for its application of the exemptions contained in section 26(a) and section 38(1)(b) of FOISA to the names that it was continuing to withhold. It submitted that it also considered the withheld information to be exempt in terms of section 35(1)(a) and 39(1) of FOISA, and it supplied arguments in support of the application of these two additional exemptions.
12. In later correspondence, Northern Constabulary submitted further information on its decision to apply the exemptions in 35(1)(a) and 38(1)(b) to the names of lower level staff stationed at Wick Police Station between January and March 1997.

Commissioner's analysis and findings

13. Mr McLeod is seeking a list of the names of police officers (of every rank) who were based at Wick Police Station between January and March 1997. Northern Constabulary has provided the Commissioner with a list of those officers and confirmed that it considers the names that it has not already disclosed to be exempt under the terms of a number of exemptions. This decision will set out the Commissioner's consideration of these exemptions in turn.
14. In essence, however, Northern Constabulary is arguing that the names of the police officers is personal data and, amongst other considerations, it would be unfair to release the information given the potential distress to the officers out of fear that the information would be used to harass or confront them. Furthermore, it is argued that the nature of such a confrontation could be such that disclosure would, or would be likely to, endanger the safety of some or all of those officers. If such a confrontation took place, it could well be a criminal offence and so disclosure of the information could prejudice substantially the prevention of crime. These are extremely serious claims to make and so Northern Constabulary was asked to provide detailed submissions in justification of their views. Not all of these submissions can be set out in detail, but in coming to a decision on this matter, the Commissioner has considered all of the information and submissions that have been presented to him by both Mr McLeod and Northern Constabulary and he is satisfied that no matter of relevance has been overlooked.



Application of the exemption in 39(1)

15. Section 39(1) of FOSIA states that information is exempt information if its disclosure under FOISA would, or would be likely to, endanger the physical or mental health or the safety of an individual. This section is broad enough to cover harm which could foreseeably occur in the future as well as immediate harm. This exemption is also subject to the public interest test contained in section 2(1)(b) of FOISA.
16. Turning to the words “would or would be likely to”, the Commissioner is aware that the word “likely” is open to interpretation. It may mean ‘more probable than not’, or it may mean ‘more than fanciful’. The general legal principle was explained by Chadwick LJ (in *Three Rivers District Council v Governor and Company of the Bank of England (No 4)* [2002] EWCA Civ 1182, [2003] 1 WLR 210) when he said that “‘likely’ does not carry any necessary connotation of ‘more probable than not’. It is a word which takes its meaning from context.” In other judgements ‘likely’ has been taken to mean ‘may well’, or it has been held that ‘likely’ implies a substantial rather than a merely speculative possibility, a possibility that cannot sensibly be ignored.
17. In the circumstances of this exemption, the Commissioner is of the view that to conclude that endangerment would be likely, he would require there to be a well founded apprehension of actual harm, such that the prospect of such harm could be regarded as a distinct possibility. (It is noted that the UK Information Commissioner, when assessing whether a similar exemption under Freedom of Information Act 2000 applied, has talked of “the real possibility” of members of an organisation being targeted for harassment and possible violence. (Decision Notice FS50066289 4 October 2006. http://www.ico.gov.uk/upload/documents/decisionnotices/2006/decision_notice_fs50066289.pdf)
18. In this case Northern Constabulary has expressed concern that disclosure of this information would be likely to lead to the harassment of the named police officers (and their families). They provided details of some previous incidents that have given rise to this concern.
19. In further communications, Northern Constabulary was asked for further evidence to support these claims. It was also asked to confirm in particular whether any junior officers named as a result of a previous decision by the Commissioner had been subjected to harassment. Northern Constabulary provided additional evidence as requested.
20. Although this decision will not detail all of the submissions received on this exemption (or other exemptions considered below), the Commissioner has considered all of these. While he understands why the Northern Constabulary has some misgivings about disclosure, he does not accept that the apprehension of harm is at all sufficiently well-founded enough to conclude that disclosure would, or would be likely to, endanger the safety of any officer.



21. Given the circumstances of this case, and the public facing role of many police officers generally, and in a relatively small community in particular, it is probable that the names of some of those officers are already known to Mr McLeod as a member of that community. Furthermore, as noted above, the names of some junior officers have been recently disclosed as a result of a previous decision by the Commissioner. There is no indication at all that these officers have been subject to harm, the threat of harm or been approached so that they feared for their safety (Decision 003/2007).
22. The Commissioner has also noted that the request is for names only, concerning a period 10 years in the past. Mr McLeod has not requested more detailed information about the police officers' current circumstances (e.g. whether they are still employed as police officers or their contact details). It is not at all clear why the release of this particular information would be likely to endanger any officer.
23. Where there is the real possibility that disclosure of information would, or would be likely to, endanger the physical or mental health or safety of an individual, the Commissioner would clearly wish to guard against that eventuality. However, if the Commissioner were to allow the exemption, he would require a conclusion not just that such an eventuality is within the bounds of possibility, but that such an eventuality has some realistic prospect or degree of likelihood of occurring, based upon evidence or convincing arguments to that effect.
24. Northern Constabulary's submissions and supporting evidence have drawn the Commissioner's attention to concerns about past behaviour and potentially minor recent harassment. However this is not sufficient to persuade the Commissioner that disclosure of the information would, or would be likely to, endanger the physical or mental health or safety of an individual.
25. In particular, the Commissioner is unable to accept the assertion that the individuals whose names have been requested would be likely to become the focus of harassment, such that it would, or would be likely to, endanger their physical or mental health or safety.
26. Accordingly, the Commissioner does not uphold the application of section 39(1) in relation to the names of police officers based at Wick Police Station between January and March 1997.
27. As the Commissioner has not upheld the exemption in section 39(1), he is not required to consider the application of the public interest test in relation to this exemption.

Application of the exemption in 35(1)(a)

28. Section 35(1)(a) exempts information if its disclosure under FOISA would, or would be likely to, prejudice substantially the prevention or detection of crime. Section 35 is subject to public interest test contained in section 2(1)(b) of FOISA.
29. Northern Constabulary has submitted that disclosure of the withheld information would be likely to lead to an offence being committed (in relation to the harassment of the officers concerned). Northern Constabulary has argued that by withholding the sought information, it can therefore prevent a crime taking place.



30. The Commissioner has reviewed the substance of Northern Constabulary's arguments and the additional information supplied in the course of his investigation, but is not persuaded that the exemption in section 35(1)(a) applies in this case. In particular, the Commissioner has concluded that Northern Constabulary has not sufficiently demonstrated that disclosure would, or would be likely to, prejudice substantially the prevention or detection of any crime. The arguments put to the Commissioner are hypothetical and he has not been supplied with any evidence that supports the supposition that disclosure would, or would be likely to, lead to a criminal offence being committed, and so would, or would be likely to, inhibit substantially the prevention of crime through the withholding of the information.
31. Consequently, the Commissioner cannot uphold the application of section 35(1)(a) to the withheld information.
32. As the Commissioner has not upheld the exemption in section 35(1)(a), he is not required to consider the application of the public interest test in relation to this exemption.

Application of the exemption in 38(1)(b)

33. Under section 38(1)(b) of FOISA (read in conjunction with section 38(2)(a)(i) or 38(2)(b)), information is exempt information if it constitutes personal data and the disclosure of the information to a member of the public otherwise than under FOISA would contravene any of the data protection principles contained in Schedule 1 to the DPA.
34. In this case, Northern Constabulary has argued that disclosure of the requested information would breach both the first and second data protection principles.
35. In considering this exemption, the Commissioner is therefore required to consider two separate matters: firstly, whether the information under consideration is personal data and, if so, whether the release of the information would breach the first and second data protection principles.
36. It must be borne in mind that this particular exemption is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.

Is the information under consideration personal data?

37. "Personal data" are defined in section 1(1) of the DPA as follows:

"data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."



38. The Commissioner is satisfied that the officers can be identified either from their name alone or from their name and other information held by Northern Constabulary. He is also satisfied that this information relates to the officers. (In this case, the information relates to individuals over a period 10 years ago. In the absence of evidence to the contrary, the Commissioner has proceeded on the assumption that all officers are still living.) In the circumstances of this case, the Commissioner is therefore satisfied that the officers' names constitute personal data under the terms of the DPA.
39. Having established that the information under consideration is personal data, the Commissioner must go on to consider whether disclosure of this personal data would breach the first or second data protection principles.

The second data protection principle

40. The second data protection principle states:
- "Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes."
41. Northern Constabulary has asserted that disclosure of the requested information would breach the second data protection principle. However, despite more than one request to Northern Constabulary for submissions on the second data protection principle, it has failed to advise the Commissioner of the purpose(s) for which the requested data was obtained, or explain why the processing of this data (by disclosure) would be contrary to the purpose for which the data was collected.
42. Without submissions on this point from Northern Constabulary, there is little, if any, basis for the Commissioner to conclude that the disclosure of the names would breach the second data protection principle. Consequently, the Commissioner is unable to accept that the exemption in section 38(1)(b) applies on this basis.

The first data protection principle

43. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 (of the DPA) is met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 (again, of the DPA) is also met.
44. The Commissioner has considered the definition of "sensitive personal data" in section 2 of the DPA and he does not consider that the information sought by Mr McLeod falls into this category.
45. Northern Constabulary has not made any submissions which suggest that disclosure of the information requested by Mr McLeod would be unlawful, other than by contravening the first data protection principle. In what follows below, the Commissioner will focus in turn on the questions of whether disclosure of this information would be fair, and whether any of the conditions set out in Schedule 2 of the DPA can be met in this case.



Is it fair to disclose the names of police officers based at Wick Police Station between January and March 1997?

46. According to guidance from the Information Commissioner, who is responsible for enforcing and regulating the DPA throughout the UK ("Freedom of Information Act Awareness Guidance No 1", which can be viewed at: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance%201%20personal_information_v2.pdf), the assessment of fairness includes looking at whether the disclosure would cause unnecessary or unjustified distress or damage to the person whom the information is about, whether the third party would expect that his/her information might be disclosed to others and/or whether the third party would expect that his/her information would be kept private. In addition, this guidance also states that:
- "Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."
47. The guidance goes on to indicate, however, "that these are not hard and fast rules". It states that: "while names of officials in public facing roles would normally be provided on request, it may not be fair processing to provide the name of a member of staff in a junior role. There may also be good reason not to disclose the names of those in a public facing role if there is good reason to think that disclosure of the information could put someone at risk. It may be unfair processing to disclose the full names and work locations of those who carry out a role involving a risk of harassment or abuse. It may also be relevant to think about the seniority of staff generally: the more senior a person is, the less likely it will be that to disclose information about him or her acting in an official capacity would be unfair".
48. In this case, Northern Constabulary has released the names of senior police officers stationed at Wick during the specified time period to Mr McLeod. It submitted that the names currently being withheld are those of lower level staff and that it has a responsibility to protect those members of staff. Northern Constabulary has argued that disclosure would place the named police officers (and/or their families) at risk of intrusion into their private lives and potential threats to their health and safety. Northern Constabulary provided submissions in support of its claims that disclosure would lead to a risk of harm.
49. The Commissioner has considered all of Northern Constabulary's submissions alongside the concept of 'fairness' set out in the DPA, and he has concluded that disclosure in this case would not be unfair to the individuals concerned. The Commissioner has noted that the information disclosed would relate only to the police officers' professional lives, revealing their place of employment in a 3 month period more than 10 years ago. It would not relate to their involvement in any specific investigation or incident, or disclose any further information about the individuals' current employment or private lives, but would simply provide a public record of their employment at the time specified by Mr McLeod.



50. The Commissioner has also noted that police officers, perhaps even especially junior officers, have a job that generally entails high visibility. Police officers wear distinctive uniforms which are easily recognisable by the public and routinely attend incidents or disturbances in their uniform. Even where they do not, they may be expected to identify themselves as police officers when carrying out their duties. Officers may be identified or be known by name, particularly in a relatively a small town like Wick with a population of some 8,000 people, in which it is likely that there would be a community knowledge of the names of current and past police officers stationed there. Northern Constabulary's submissions provided no evidence to suggest that these individuals had been given assurances that their names would not be disclosed. In these circumstances, and given that these people were working in the public sector in a public-facing role, the Commissioner finds it difficult to accept that they would have an expectation that this information would not be disclosed at the time of their employment, or after the fact.
51. The Commissioner has also noted Northern Constabulary's concerns for the health and safety of individuals but, in line with his findings on the exemption in section 39(1) of FOISA, he is not persuaded that this disclosure would be likely to endanger, or increase the level of risk to health and safety faced by the individuals concerned. Even if the level of risk or harm was set at a relatively low threshold such that disclosure may cause distress through the fear of specific harassment, the apprehensions of the Northern Constabulary seem not to be borne out by evidence or experience save for some unwanted but not offensive material being sent anonymously to certain officers at their place of work.

Can any of the conditions in Schedule 2 of the DPA be met?

52. Having concluded that disclosure in this case would be fair, the Commissioner has also considered whether any of the conditions set out in Schedule 2 of the DPA might be met in this case.
53. It is the Commissioner's view that condition 6(1) of Schedule 2 of the DPA is the only condition which might be considered to apply in this case. Condition 6(1) allows personal data to be processed (in this case, disclosed in line with an information request made under section 1(1) of FOISA) if the processing is necessary for the purposes of legitimate interests pursued by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
54. The application of condition 6 involves a balance between competing interests broadly comparable, but not identical, to the balance that applies when considering the public interest test in section 2 of FOISA. Condition 6 requires a consideration of the balance between (i) the legitimate interests of those to whom the data would be disclosed, which, in this context, are members of the public (see section 38(2)(a) of FOISA) and prejudice to the rights, freedoms and legitimate interests of the data subjects, which, in this case, are the police officers who worked at Wick station between January and March 1997. However, because the processing must be "necessary" for the legitimate interests of members of the public to apply, only where (i) outweighs or is greater than (ii) should the personal data be disclosed.



55. In considering the legitimate interests of Mr McLeod, the Commissioner has noted that Mr McLeod has a particular interest in understanding the circumstances surrounding the death of his nephew Kevin McLeod and the investigations subsequently undertaken by Northern Constabulary. A number of investigations have been undertaken concerning these events and a considerable amount of information about these has been placed in the public domain. Mr McLeod has indicated that in this context, there is a legitimate interest in knowing the identities of those employed at Wick Police station over the period specified. The Commissioner accepts that there is some legitimate interest in disclosure of the information requested by Mr McLeod as it would contribute to further understanding of the policing of Wick at the time of these events.
56. The Commissioner has considered whether these interests might be met equally effectively by a means other than by disclosure of the information requested by Mr McLeod and he has concluded that they cannot.
57. Turning to consider any prejudice to the rights, freedoms and legitimate interests of the data subjects, the Commissioner is aware that this disclosure will lead to their identification as an active police officer in Wick during the requested time period. This could possibly lead to communications being directed to these individuals by others who have an interest in events that occurred between January and March 1997.
58. However, the Commissioner has not been persuaded by the arguments made by Northern Constabulary that a consequence of disclosure in this case would be for communications to be made in a fashion that would involve significant intrusion into the private lives of the individuals concerned,. The Commissioner has been provided with no strong evidence to suggest that any of the data subjects (or their families) will be subjected to an unwarranted intrusion into their private lives. The Commissioner is also satisfied (as detailed in his consideration of the exemption in section 39(1)), that disclosure would not be likely to endanger the physical or mental health of any individual.
59. Having balanced the two competing interests in this case, the Commissioner is satisfied that any prejudice to the rights, freedoms and legitimate interests of the data subjects (i.e. the police officers based at Wick Police Station between January and March 1997) is outweighed (and so is not unwarranted) in this instance by the legitimate interests of the applicant and the wider public.
60. The Commissioner therefore finds that condition 6(1) of Schedule 2 of the DPA is met in this case.
61. As noted above, no separate arguments have been submitted to the Commissioner as to why disclosure of this information would be unlawful. The Commissioner is therefore entitled to proceed on the basis that the disclosure would be lawful.
62. Having found disclosure to be both fair and lawful in line with condition 6(1), the Commissioner does not accept that disclosure of the information under consideration would breach the first data protection principle, and so he does not accept that this information is exempt under section 38(1)(b).



Application of the exemption in 26(a)

63. Section 26(a) of FOISA exempts information from release under FOISA where disclosure by a public authority is prohibited by or under any enactment. This is an absolute exemption in that it is not subject to the public interest test set down in section 2(1)(b) of FOISA.
64. Northern Constabulary has argued that the disclosure of the information requested by Mr McLeod is prohibited by another piece of legislation, in this case the HRA.
65. Section 6(1) of the HRA states that it is unlawful for a public authority to act in a way which is incompatible with the European Convention on Human Rights (ECHR). The Commissioner is satisfied that Northern Constabulary falls within the definition of "public authority" in the HRA.
66. Although Northern Constabulary's submissions on this point were brief, they referred the Commissioner to Article 8 of the European Convention on Human Rights (ECHR), which states that "*everyone has the right to respect for his private and family life, his home and his correspondence*". Article 8 goes on to say that "*there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*".
67. The Commissioner understands Northern Constabulary's submissions to suggest that disclosure would lead to an intrusion into the private lives of the individuals concerned, and so would breach Article 8.
68. Article 8 of the ECHR protects the individuals' right to a private (and family) life. However, in this case the information that has been sought does not relate to the private life of an individual but to their professional life, specifically their employment as a police officer stationed in Wick during a particular time period that is now (and at the time of Mr McLeod's request) ten years in the past. Mr McLeod is not seeking the historic or current home addresses of the police officers, nor the names or their families or contact numbers. As has been made clear in my analysis of the exemptions considered above, the Commissioner has not accepted that the disclosure of these names would be likely either to prompt a significant intrusion into these individuals' private affairs, or to endanger their health and safety.
69. Having considered the nature of the information being sought, and Northern Constabulary's submissions in relation to this exemption, the Commissioner is of the view that disclosure of the information would not breach Article 8 of the ECHR nor section 6(1) of the HRA.
70. As the Commissioner has found that disclosure would not breach Article 8 of the ECHR and the HRA, it is clear that the disclosure of the information on this basis cannot be a prohibition on disclosure in terms of section 26(a) of FOISA.

Decision 062/2008
Mr Allan McLeod
and the Chief Constable of Northern
Constabulary



DECISION

The Commissioner finds that the Chief Constable of Northern Constabulary failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request from Mr McLeod. In withholding the names of all police officers based at Wick Police Station between January and March 1997, the Chief Constable of Northern Constabulary failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Chief Constable of Northern Constabulary to disclose this information to Mr McLeod within 45 days of the date of intimation of this Decision Notice.

Appeal

Should either Mr McLeod or the Chief Constable of Northern Constabulary 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
5 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.

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.

26 Prohibitions on disclosure

Information is exempt information if its disclosure by a Scottish public authority (otherwise than under this Act)-

- (a) is prohibited by or under an enactment;

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;

38 Personal information

- (1) Information is exempt information if it constitutes-
 - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
- (2) The first condition is-



- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles; or
- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

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.

Data Protection Act 1998

1 Basic interpretative provisions

In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

Schedule 1 – The data protection principles

Part I – The principles

- 1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.



2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Human Rights Act 1998

6 Acts of public authorities

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

European Convention on Human Rights and Fundamental Freedoms

Article 8

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.