



Scottish Information  
Commissioner

**Decision 056/2005 - Mr Michael Carberry of Blochairn Housing  
Co-operative and the Scottish Executive**

*Request for information regarding location and housing tenure of  
registered sex offenders in Glasgow*

**Applicant: Mr Michael Carberry of Blochairn Housing  
Co-operative**

**Authority: The Scottish Executive**

**Case No: 200502854**

**Decision Date: 23 November 2005**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 056/2005 – Mr Michael Carberry of Blochairn Housing Co-operative and the Scottish Executive**

***Requests for information about the location and housing tenure of registered sex offenders in Glasgow – information not held (section 17).***

### **Facts**

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Mr Carberry asked the Scottish Executive (“the Executive”) to provide information about the location of registered sex offenders in Glasgow in the form of postcode data excluding the last two letters (e.g. G21 2##). He also asked for details of the housing tenure of registered sex offenders.

The Executive replied that the only relevant information it held were statistics showing the numbers of registered sex offenders within each police force area in Scotland. After consultation with Strathclyde Police, the Executive provided Mr Carberry with the statistics for Strathclyde.

### **Outcome**

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The Commissioner found that the Executive had demonstrated that the information requested by Mr Carberry was not held by the Executive.

The Commissioner found that the Executive had failed to comply fully with the provisions of the Freedom of Information (Scotland) Act 2002 (FOISA) in the way in which it had dealt with Mr Carberry’s request.

### **Appeal**

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Should either Mr Carberry or the Executive wish to appeal against my 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 of receipt of this notice.



## Background

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1. On 2 February 2005, Mr Carberry emailed the Executive with a request for statistical information on the location of registered sex offenders in Glasgow, in the form of their postcode with the last two letters omitted (e.g. G21 2##). In a follow-up email of 3 February 2005, Mr Carberry included an additional request for details of the registered sex offenders' housing tenure.
2. The Executive responded by letter on 4 March 2005, advising Mr Carberry that the Executive holds information about registered sex offenders only at police force level. The number of registered offenders in the Strathclyde Police area, as at 1 January 2005, was provided. At this time Mr Carberry's enquiry was not treated as an FOI request.
3. Mr Carberry repeated his requests for information on the location of sex offenders and their housing tenure in an email of 7 March 2005. The Executive responded by letter dated 12 April 2005, providing further information and repeating that the information requested was not held by the Executive.
4. The Executive's letter of 12 April crossed with a letter from a letter dated 11 April 2005 from Anne Moffat, Chairperson of Blochairn Housing Co-operative, writing on behalf of Mr Carberry. Ms Moffat repeated the previous requests for information about the location and housing tenure of registered sex offenders, and asked for these requests to be treated in accordance with FOISA.
5. The Executive responded to Ms Moffat's letters on 13 May 2005, reiterating that the Executive did not hold the information requested. In addition, the Executive wrote to Ms Moffat on 17 May 2005, providing additional information and contact details to which any further queries could be addressed.
6. On behalf of Mr Carberry, Ms Moffat wrote to the Executive on 8 June 2005. She raised a number of further points, and reiterated the request for information about the location of sex offenders, stressing that Blochairn Housing Co-operative sought statistical information on this point. The Executive responded on 11 July 2005, repeating that the detailed information requested about the location of registered sex offenders was not held, as the Minister for Justice was not involved in the arrangements for placing sex offenders.
7. Mr Carberry did not accept the Executive's reply and in a letter dated 19 September 2005 he asked me to investigate and reach a decision on the matter.



8. Although Mr Carberry had not made a formal request for the Executive to review its response to his initial requests, I took the view that the repeated reiteration of those requests should be treated as a request for review, given that the Executive had not advised him how to request a review of its response, or of his subsequent rights of appeal. Paragraph 64 of the Section 60 Code of Practice states “Where an applicant has not been made aware of his or her rights to a review but nevertheless questions, in writing, the decision of an authority, the authority should treat the query as a formal request for review.”
9. Mr Carberry’s application was accepted and an investigating officer was allocated to the case.
10. Mr Carberry has also applied to me for a decision regarding a similar request submitted to Strathclyde Police (case 200502623). That case will be considered in a separate Decision Notice.

## The Investigation

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11. Mr Carberry’s application was validated by establishing that he had made a request for information to a Scottish public authority, and had appealed me only after requesting the authority to review its response to his request.
12. A letter was sent to the Executive on 21 October 2005, informing it that an appeal had been received and that an investigation into the matter had begun.
13. The Executive was asked to supply:
  - a) information that would show the extent or scope of information held by the Executive about the location or housing of registered sex offenders in Glasgow;
  - b) a description of the steps taken by the Executive to establish that the information requested by Mr Carberry was not held; and
  - c) comments on the way in which Mr Carberry’s requests were dealt with, in terms of compliance with FOISA.
14. The Executive replied on 9 November 2005, providing the information and comments requested above.



## The Commissioner's Analysis and Findings

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15. The investigation into this case focused on two points:
- a) whether or not the Executive held information relevant to Mr Carberry's requests, and
  - b) whether the Executive complied fully with FOISA in dealing with Mr Carberry's requests.

### **Is the requested information held by the Executive?**

16. The Executive has consistently stated that the only information held about the location of registered sex offenders is statistical information provided each month by the Scottish Criminal Record Office to the Police Division within the Executive.
17. The Executive has confirmed to me that no other information relating to the location of registered sex offenders is held. The investigating officer was provided with copies of the statistical information held in order to demonstrate that Mr Carberry's request could not be fully answered from the information available to the Executive.
18. In establishing whether or not the information requested by Mr Carberry could be provided, the Executive took the view that any relevant information would be most likely to be held by the Housing Division or the Police Division and I accept this as reasonable in the circumstances. Officials in these divisions checked whether relevant information was held, but did not find any. Given the controversial subject matter of the information requested, I accept that officials would have been likely to be aware of any relevant information held in their respective divisions.
19. I therefore accept that the Executive took all appropriate steps in the circumstances to establish whether or not it held the information requested by Mr Carberry, and I am satisfied that it has demonstrated that the information is not held by the Executive.



### **Did the Executive comply with FOISA in dealing with Mr Carberry's request?**

20. The Executive has acknowledged that it failed to deal with Mr Carberry's request according to the requirements of FOISA. The Executive has explained that Mr Carberry's requests for information were included in a series of questions which related to policy issues, which were not themselves requests for information, and that it failed to distinguish between the different types of question. Consequently, the way in which Mr Carberry's requests were dealt with fell short of the procedural standards required by FOISA (although it has submitted that it acted at all times in accordance with the spirit of FOISA).
21. I do not fully accept the Executive's explanation on this point, as Mr Carberry's second request (the housing tenure of registered sex offenders) was the sole subject of the email in which it was submitted. I also note that when Ms Anne Moffat repeated Mr Carberry's request in her letter of 11 April, she asked for the request to be treated under FOISA, but the implications of this seem to have been disregarded.
22. The Executive has acknowledged that the procedural shortcomings in dealing with Mr Carberry's requests were unacceptable, and has given consideration to ways of avoiding such lapses in future. I therefore do not require the Executive to take any further steps in relation to this matter.
23. I accept that the Executive provided Mr Carberry and Blochairn Housing Co-operative with advice and assistance regarding his requests for information, even though it failed to deal with his requests entirely in accordance with FOISA.



## **Decision**

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I find that the Scottish Executive was justified in advising Mr Carberry that the information he requested was not held by the Executive.

However, I find that the Executive did not deal with the applicant's request for information wholly in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), in that it failed to provide the applicant with a notice in compliance with sections 17 and 19 of FOISA.

I do not require the Executive to take any steps as a consequence of this Decision Notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**23 November 2005**