

Decision Notice



Decision 131/2012 Mr Tom Taylor and the Chief Constable of Strathclyde
Police

Correspondence regarding a neighbourhood watch association

Reference No: 201102405
Decision Date: 7 August 2012

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

This decision concerns two information requests made by Mr Taylor to the Chief Constable of Strathclyde Police (Strathclyde Police) for correspondence about East Renfrewshire Neighbourhood Watch. Strathclyde Police initially provided Mr Taylor with a summary of the correspondence. The Commissioner was critical of this approach, given that Mr Taylor had not asked for summaries.

After receiving the summaries, Mr Taylor asked Strathclyde Police for four of the items that had been summarised. Strathclyde Police disclosed them in redacted form. The Commissioner decided that Strathclyde Police had been entitled to withhold parts of the correspondence on the basis that they comprised either Mr Taylor's own personal data or was the personal data of third parties which, in this case, was exempt from disclosure. However, other parts of the correspondence were not exempt from disclosure and the Commissioner ordered Strathclyde Police to disclose these to Mr Taylor.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(e) (Effect of exemptions); 38(1)(a) and (b), 2(a)(i) and (b) and (5) (definitions of "data protection principles", "data subject" and "personal data") (Personal Information)

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

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

Request 1

1. On 17 October 2011, Mr Taylor emailed Strathclyde Police requesting (amongst other things) copies of correspondence regarding the East Renfrewshire Neighbourhood Watch (ERNHW), its website / forum / blog, or any derivation of these titles, between a named Strathclyde Police officer and East Renfrewshire Council (ERC) departments, officers or elected members, or between any Strathclyde Police officers or staff to either ERC or a named Strathclyde Police officer between 1 May 2011 and 17 October 2011.
2. Strathclyde Police responded on 3 November 2011. They referred to the Court of Session's judgment in the case of Glasgow City Council v the Scottish Information Commissioner 2009 CSIH 73¹ (the Court of Session judgment) and stated that, while FOISA gives a right to access to information, it does not follow that there is a right to access the documentation in which the information is contained.
3. Strathclyde Police provided Mr Taylor with information described as a summary of the requested correspondence. This comprised a table specifying the correspondence type, its subject matter, date and the sender and recipient. Senior Strathclyde Police officers were named as parties to correspondence; other parties were not named, but identified by their organisation or status (e.g. "consultancy", "Council" "constable G Division", ERC or ERNHW). In one case, an email was identified as being sent to "multiple".

Request 2

4. On 3 November 2011, Mr Taylor emailed Strathclyde Police requesting copies of four pieces of correspondence identified in the table disclosed in response to request 1.
5. Strathclyde Police responded on 7 November 2011. They referred again to the Court of Session judgment and indicated that a summary of the correspondence had been provided. They stated that they were not obliged to provide a copy of the correspondence. Strathclyde Police also indicated that the correspondence would be exempt from disclosure under section 38(1)(b) of FOISA.

¹ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



Review of requests 1 and 2

6. On 14 November 2011, Mr Taylor wrote to Strathclyde Police requesting a review of their decisions in relation to both requests. Mr Taylor considered that Strathclyde Police had taken too broad an interpretation of the Court of Session judgment and noted that, although the provision of documents is not required, many organisations still provide copies of documents. Mr Taylor expressed dissatisfaction with the summary provided by Strathclyde Police on 3 November 2011, and requested details of the sender and receiver of each piece of correspondence and reiterated his request for the four items specified in request 2.
7. Strathclyde Police notified Mr Taylor of the outcome of their review on 9 December 2011. They indicated that they had considered that the summary provided was the most helpful format to respond to Mr Taylor's request, but having received his request for review decided to disclose copies of the four items sought in request 2, subject to the redaction of certain parts. Strathclyde Police did not indicate which exemption in FOISA was being applied to the information being withheld.
8. On 21 December 2011, Mr Taylor 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.
9. The application was validated by establishing that Mr Taylor had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review their response to those requests.

Investigation

10. On 9 January 2012, Strathclyde Police were notified in writing that an application had been received from Mr Taylor and were asked to provide the Commissioner with any information withheld from him. Strathclyde Police responded with the information requested and the case was then allocated to an investigating officer.
11. 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.
12. Strathclyde Police responded and advised that the information that had been withheld within the four pieces of correspondence was considered to be exempt from disclosure under sections 38(1)(a) and 38(1)(b) of FOISA.
13. The investigating officer contacted Strathclyde Police and noted that, in Mr Taylor's application for decision, he had indicated that he still wished to know the sender and recipients of all of the correspondence that had been "summarised" in response to request 1.



14. Strathclyde Police were also asked to explain why they had decided to provide this summary rather than the information itself, and to comment in response to the investigating officer's initial view that this approach did not appear to be in line with FOISA or with the Commissioner's guidance.
15. A meeting was held between the Commissioner's staff and Strathclyde Police in which Strathclyde Police explained their rationale for providing the summary of the correspondence rather than the actual information therein.
16. Following that meeting, Strathclyde Police disclosed the correspondence requested by Mr Taylor (other than the four pieces of correspondence which had been disclosed in redacted form). Mr Taylor confirmed that this information could be excluded from the Commissioner's decision.
17. Mr Taylor's submissions were sought on the matters to be considered in the decision including why he considered that his legitimate interest associated with section 38(1)(b) of FOISA favoured disclosure.
18. The relevant submissions received from both Strathclyde Police and Mr Taylor will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

19. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr Taylor and Strathclyde Police and is satisfied that no matter of relevance has been overlooked.
20. Strathclyde Police withheld information within the four pieces of correspondence under sections 38(1)(a) and 38(1)(b) of FOISA.
21. Although Mr Taylor indicated that he did not require a decision as to whether Strathclyde Police were entitled to withhold the remaining correspondence sought in request 1, he did ask the Commissioner to consider whether the summary of this correspondence provided by Strathclyde Police in response to that request was a true summary.

Section 38(1)(a) - Personal information of the data subject

22. During the investigation, Strathclyde Police explained that they had responded to the requests made by Mr Taylor in the belief that they had been made on behalf of ERNHW. Once it was clarified during the investigation that Mr Taylor's application had been made on his own behalf, they indicated that they considered some of the information redacted within the four pieces of correspondence to be Mr Taylor's own personal data, and so exempt from disclosure under section 38(1)(a) of FOISA.



23. Section 38(1)(a) of FOISA contains an absolute exemption in relation to personal data of which the applicant is the data subject. The fact that it is absolute means that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
24. This exemption exists under FOISA because individuals have a separate right to make a request for their own personal data (commonly known as a "subject access request") under section 7 of the DPA. This ensures that such information is disclosed to the data subject (rather than to the world at large, which is the effect of disclosure under FOISA) under a regime designed for such purposes.
25. Personal data is defined in section 1(1) of the DPA as data which relates 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 (the full definition is set out in the Appendix). Having considered the withheld information and the submissions received from Strathclyde Police, the Commissioner is satisfied that parts of the withheld information fall within this definition, the individual to whom they relate being Mr Taylor, who is identifiable from that information.
26. In the circumstances, the Commissioner is satisfied that Strathclyde Police were entitled to withhold those parts of the requested information comprising Mr Taylor's personal data under section 38(1)(a) of FOISA.

Section 38(1)(b) – Personal information of third parties

27. Strathclyde Police confirmed that they considered the remaining withheld information to be exempt from disclosure under section 38(1)(b) of FOISA, on the basis that it was the personal data of individuals other than Mr Taylor, the disclosure of which would breach the first data protection principle.
28. Section 38(1)(b), read in conjunction with section 38(2)(a)(i) or (2)(b) (as appropriate), exempts personal data if its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles.

Is the information under consideration personal data?

29. The Commissioner has considered the information being withheld under this exemption together with the relevant submissions provided by Strathclyde Police and in the circumstances is satisfied that it falls within the definition of personal data (see paragraph 25). The information relates to living individuals who can be identified from the information.
30. The Commissioner will now go on to consider whether disclosure of the information would breach the first data protection principle.



The first data protection principle

31. The first data protection principle requires 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 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met. (The Commissioner is satisfied that none of the information withheld under this exemption is sensitive personal data.) The processing under consideration in this case is disclosure into the public domain in response to Mr Taylor's information request.
32. When considering the conditions in Schedule 2, the Commissioner has noted Lord Hope's comment in the case of *Common Services Agency v Scottish Information Commissioner [2008] UKHL 47*² that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information, but rather to protect personal data from being processed in a way that might prejudice the rights, freedoms or legitimate interests of the data subject.
33. Condition 1 of Schedule 2 permits personal data to be processed if the data subject consents to the data being processed. Strathclyde Police advised that they had not sought the data subjects' consent for disclosure as some were not aware that information had been recorded about them. Given the number and frequency of information transactions dealt with by Strathclyde Police, they considered it was not effective or appropriate to seek consent for processing data from individuals who would expect their information to be held and processed with a high degree of confidentiality or who are carrying out legitimate business pursuits.
34. In the circumstances, the Commissioner has concluded that condition 1 in Schedule 2 cannot be met in this case.
35. The Commissioner considers that the only other condition in Schedule 2 to the DPA which might apply in this case is condition 6. Condition 6 allows personal data to be processed if that 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.
36. There are, therefore, a number of tests which must be met before condition 6(1) can apply. These are:
 - Does Mr Taylor have a legitimate interest in obtaining these personal data?
 - If so, is the disclosure necessary to achieve those legitimate aims? In other words, is disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subjects (i.e. the individuals to whom the data relate)?

² <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm>



- Even if disclosure is necessary for Mr Taylor's legitimate interests, would disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects? As noted by Lord Hope in the *CSA* case (see paragraph 32), there is no presumption in favour of the release of personal data under the general obligation laid down in FOISA. Accordingly, the legitimate interests of Mr Taylor must outweigh the rights, freedoms or legitimate interests of the data subjects before condition 6 will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that Strathclyde Police was correct to refuse to disclose the personal data to Mr Taylor.

Does Mr Taylor have a legitimate interest?

37. There is no definition within the DPA of what constitutes a "legitimate interest", but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. In the Commissioner's published guidance on section 38 of FOISA³, it states:
- In some cases, the legitimate interest might be personal to the applicant – e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as the scrutiny of the actions of public bodies or public safety.*
38. In his submissions, Mr Taylor explained that he is Chair of the ERNHW, and that the ERNHW website had originally included microsites for each of ERC, Strathclyde Police and Strathclyde Fire and Rescue. He explained further that ERC asked for its logo to be removed and its microsite to be closed down after users of ERNHW forums voiced concerns and expressed criticism of elected members.
39. Strathclyde Police also subsequently withdrew from the ERNHW website, and Mr Taylor believed this followed representations being made to Strathclyde Police by an elected member of ERC.
40. Mr Taylor submitted that he needed to access the withheld information as he believed it would refer to the meeting at which representations were made, and provide evidence of the extent of collaboration between ERC and Strathclyde Police on this matter. He indicated that he had cause to believe that there had been malpractice, and that there was a public interest in this being explored.
41. Strathclyde Police accepted that Mr Taylor did have a legitimate interest in the information in understanding their opinion of the ERNHW website and why Strathclyde Police had withdrawn from it.

³<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&sID=133>



42. The Commissioner recognises that Mr Taylor as an individual and chair of ERNHW has a legitimate interest in understanding the correspondence about the ERNHW and Strathclyde Police's decision to withdraw from the website, in order to gain a fuller understanding of the reasons for that decision.

Is disclosure of the information necessary to achieve these legitimate interests?

43. The Commissioner must now consider whether disclosure of the withheld personal data is necessary for the legitimate interests identified above and in doing so he must consider whether these interests might reasonably be met by any alternative means.
44. In all the circumstances of this case, the Commissioner can identify no viable means of meeting Mr Taylor's legitimate interests which would interfere less with the privacy of the relevant data subjects than the provision of the withheld personal data. In the circumstances, she is satisfied that disclosure of those personal data is necessary to meet the legitimate interests in question.

Would disclosure cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects?

45. As the Commissioner is satisfied that disclosure of the withheld personal data would be necessary to fulfil Mr Taylor's legitimate interests, she is now required to consider whether that disclosure would nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects. As noted above, this involves a balancing exercise between the legitimate interests of Mr Taylor and the data subjects in question. Only if the legitimate interests of Mr Taylor outweigh those of the data subjects in question can the information be disclosed without breaching the first data protection principle.
46. In considering the rights, freedoms and legitimate interests of the data subjects, Strathclyde Police advanced certain arguments as to those individuals' expectations of privacy. They maintained that the individuals concerned would not anticipate there to be any reasonable expectation of disclosure into the public domain, given the purpose for which the information was held.
47. The Commissioner has considered these arguments carefully and has also taken into account the guidance on this point in the briefing on the section 38 exemptions⁴, which identifies relevant factors as including:
- whether the information relates to the individual's public or private life
 - the potential harm or distress that may be caused by disclosure
 - whether the individual has objected to disclosure
 - the reasonable expectations of the individual as to whether their information would be disclosed.

⁴ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=661&SID=133>



48. When considering the balancing exercise, the Commissioner has noted that the sender and recipient in each communication were acting in a professional capacity. Their correspondence concerning ERNHW does not relate in any way to their own personal lives. However, the withheld parts of the correspondence also include references to other individuals and matters which are relevant to their private lives and privacy.

Items 1 and 2

49. Within items 1 and 2, Strathclyde Police have withheld the identity of one party to the correspondence. However, the Commissioner considers that the disclosure of this individual's identity would not constitute an unwarranted intrusion into that individuals' private life, given their role within ERC and the nature of the correspondence.
50. The Commissioner has reached the same conclusion with respect to almost all of the third party personal data withheld within these emails. While she recognises that the parties to the correspondence might have had limited expectation that their communications would be disclosed, she does not consider that the information relates in any significant way to their private lives, or that disclosure would be likely to cause them damage or distress.
51. The Commissioner has balanced the legitimate interests of the data subjects mentioned in items 1 and 2 against the legitimate interests identified by Mr Taylor. Having done so, the Commissioner finds for the most part that Mr Taylor's interest outweighs any unwarranted prejudice that would be caused to the rights, freedoms or legitimate interests of the data subjects. The Commissioner is therefore satisfied that condition 6 of schedule 2 of the DPA can be met in this case.
52. The Commissioner considers that disclosure of most of the information withheld under section 38(1)(b) in these items would be fair, for the reasons already outlined in relation to condition 6 above. Whilst Strathclyde Police have not provided any separate submissions to argue that disclosure would be unlawful, the Commissioner, in any case, is unable to identify (having concluded that condition 6 of schedule 2 to the DPA can be met) any specific law forbidding disclosure.
53. The Commissioner therefore concludes that, for the most part, disclosure of the personal data of third parties within items 1 and 2 would not breach the first data protection principle. She accordingly concludes that the exemption in section 38(1)(b) was wrongly applied to that information.
54. However, the Commissioner recognises that public disclosure of the mobile telephone number of the sender of the email in item 2 could lead to intrusion into that person's private life, by prompting phone calls directed inappropriately to that individual, outwith their working hours.
55. Having conducted the legitimate interest balancing exercise in relation to that mobile phone number, the Commissioner concludes that Mr Taylor's legitimate interests do not outweigh the unwarranted prejudice that would be caused in this case to the rights and freedoms or



legitimate interests of the data subject. The Commissioner therefore concludes that condition 6 in Schedule 2 to the DPA cannot be met in relation to that particular information.

56. Having reached this conclusion, the Commissioner also concludes that disclosure of the mobile phone number would be unfair. As no condition in Schedule 2 to the DPA can be met, she would also regard disclosure as unlawful. In all the circumstances, therefore, the Commissioner's conclusion is that the first data protection principle would be breached by disclosure of the telephone number and that the number was properly withheld under section 38(1)(b) of FOISA.

Items 3 and 4

57. Within these items, Strathclyde Police has disclosed the identity of both parties to the correspondence. They have withheld the mobile phone number considered above, and the Commissioner is satisfied that it was correctly withheld for the same reasons. The remaining information to which section 38(1)(b) has been applied relates to other third parties and matters of concern to them.
58. Given the matters that are discussed in these emails, the Commissioner is satisfied that the third party personal data that has been withheld in items 3 and 4 is of a type that data subjects reasonably expect to be kept private. While she cannot provide details of the nature of that personal information in this decision, the Commissioner is satisfied that it relates to an individual's private life, as well as public and professional matters, and that its disclosure would be likely to cause harm or distress.
59. Having balanced the legitimate interests of the data subjects against those identified by Mr Taylor, the Commissioner finds that any legitimate interests served by disclosure would not outweigh the unwarranted prejudice that would be caused in this case to the rights and freedoms or legitimate interests of the data subjects. The Commissioner therefore concludes that condition 6 in Schedule 2 to the DPA cannot be met in relation to this information.
60. Having accepted that disclosure of the withheld personal data would lead to unwarranted prejudice to the rights and freedoms or legitimate interest of the data subjects as described above, the Commissioner must also conclude that its disclosure would be unfair. As no condition in Schedule 2 to the DPA can be met, she would also regard disclosure as unlawful. In all the circumstances, therefore, the Commissioner's conclusion is that the first data protection principle would be breached by disclosure of the information and that this information was properly withheld under section 38(1)(b) of FOISA.

Information to be disclosed

61. Within items 1 and 2, the Commissioner has concluded that some of the redacted information was correctly withheld under the exemptions in sections 38(1)(a) or (b). However, she has concluded that some parts are not exempt from disclosure under either of these provisions. Accordingly, the Commissioner now requires that information to be disclosed. She will provide a copy of these items to Strathclyde Police with this decision, marked to show which parts have been found to be properly withheld and which she requires to be disclosed.



62. The Commissioner finds that all of the information redacted within items 3 and 4 was correctly withheld under either section 38(1)(a) or 38(1)(b) of FOISA. The Commissioner therefore does not require any additional information from within these items to be disclosed to Mr Taylor.

“Summaries” provided in response to request 1

63. In his application, Mr Taylor commented that, although the information disclosed in response to request 1 was described as being a summary, he had not in fact been provided with a summary of the information.
64. As noted above, request 1 was for copies of correspondence between named parties on a specified topic. In response, Strathclyde Police disclosed a table specifying the correspondence type, its subject matter, date, sender and recipient (in some cases identified by status or organisation rather than an individual's name). With reference to the Court of Session judgment (see paragraph 2), Strathclyde Police advised Mr Taylor that, while FOISA gives a right to access information, there is no right to access the documentation in which the information is contained.
65. The Commissioner recognises that Strathclyde Police were correct to advise Mr Taylor that the right of access set out in section 1(1) of FOISA applies to information rather than to the documents that contain that information. Although people will often describe the information they are seeking by reference to specific documents, it is the information in the documents that they are entitled to receive, rather than copies of those documents.
66. The Commissioner has published guidance⁵ on the implications of the Court of Session judgment. The guidance makes it clear (paragraph 3.4) that an information request expressed as a request for copies of documents will be valid for the purposes of FOISA, provided that the applicant describes sufficiently clearly the information he/she wants to access. Reference to a specific document is a commonplace way of describing the information sought, and can be of assistance to the authority in locating the information.
67. In this case, Mr Taylor's request was very clearly specified, indicating the subject of and the parties to the correspondence of interest to him, along with a period of approximately six months. Given that Strathclyde Police were able to provide a list of relevant correspondence, it is clear that they were able to locate that information. The Commissioner therefore considers that Mr Taylor made a valid request for information for the purposes of FOISA, effectively seeking all information within the correspondence he specified.
68. With regard to the manner in which the information should be provided, the Commissioner's guidance states (paragraphs 4.1 to 4.3):

⁵ <http://www.itspublicknowledge.info/uploadedfiles/CourtofSessionGuidanceonValidity.pdf>



Applicants cannot insist on receiving copies of specific documents, but only on receiving information. However, unless the applicant has asked for the information to be provided in a digest or summary, the information provided must be a complete and accurate version of the information contained in the specified documents. This means that it may be easier for public authorities just to provide copies.

While the right to receive information under FOISA is not the same thing as a right to receive copies of documents, there is nothing to stop public authorities providing copies of documents in response to a request. In many cases, it will be easier for a public authority to provide copies of a document rather than to try to describe the information, copy the information into another document, or transfer it into another format.

Where a public authority chooses not to provide copies of the original documentation (as it has the right to do), it must ensure that any information which falls within the scope of the request and which is contained in the document is disclosed completely and accurately. So, a public authority will need to consider how it will convey information regarding annotations, highlighting in a document, manually underlined or deleted text, etc. It may be difficult to provide information in a complete and accurate form if it is visual material relevant to a request, e.g. charts and graphs, other than by providing a copy.

69. In this case, the “summary” provided by Strathclyde Police disclosed only part of the information within the correspondence to Mr Taylor. As such, it cannot be described as a complete and accurate version of the information contained in the documents.
70. By seeking copies of the documents, Mr Taylor made it clear that he wished to receive the information in full rather than a summary or digest. Strathclyde Police’s response neither provided the information requested, nor gave any proper notice to indicate why the information had been withheld.
71. As noted above, Strathclyde Police disclosed copies of the requested correspondence (excluding the four pieces of correspondence disclosed in redacted form and discussed above) during the investigation.
72. In the circumstances, the Commissioner finds that Strathclyde Police breached section 1(1) of FOISA by failing to disclose that information to Mr Taylor when responding to his request and subsequent request for review.



DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr Taylor.

Request 1

The Commissioner finds that, in disclosing some information drawn from the correspondence requested by Mr Taylor, Strathclyde Police complied with Part 1 of FOISA. However, she finds that Strathclyde Police failed to comply with section 1(1) of FOISA by failing to disclose all non-exempt information contained in the correspondence.

As the remaining information (other than the withheld parts of the four items considered separately in this decision) was disclosed to Mr Taylor during the investigation, the Commissioner does not require Strathclyde Police to take any action with respect to this failure.

Request 2

The Commissioner finds that by disclosing some parts of the four items of correspondence discussed in this decision, Strathclyde Police complied with Part 1 of FOISA. She finds also that Strathclyde Police were entitled to withhold certain information within these items on the grounds that it was exempt from disclosure in terms of section 38(1)(a) and (b) of FOISA.

However, the Commissioner has found that Strathclyde Police had incorrectly withheld certain information within items 1 and 2, which she has found not to be exempt from disclosure under either of the exemptions in section 38(1)(a) and (b) of FOISA. By withholding this information, she finds that Strathclyde Police failed to comply with section 1(1) of FOISA. The Commissioner requires Strathclyde Police to disclose this information as specified above by 21 September 2012.



Appeal

Should either Mr Taylor or 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.

Margaret Keyse
Head of Enforcement
7 August 2012



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.

...

- (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 –

- (a) the provision does not confer absolute exemption; and

....

- (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 –

...

- (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.

38 Personal information

- (1) Information is exempt information if it constitutes-

- (a) personal data of which the applicant is the data subject;

- (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.

...

(5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

Data Protection Act 1998

1 Basic interpretative provisions

(1) 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.

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.

...