



Scottish Information
Commissioner

**138/2006 Ms Sandra Uttley and the University of
Edinburgh**

Information about Thomas Hamilton's post mortem

**Applicant: Ms Sandra Uttley
Authority: The University of Edinburgh
Case No: 200503288
Decision Date: 25 July 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 138/2006 Ms Uttley and the University of Edinburgh

Request for information about Thomas Hamilton's post mortem – whether the information is held for the purposes of the Freedom of Information (Scotland) Act 2002 by the University of Edinburgh – information not held

Facts

Ms Uttley asked Professor Anthony Busuttil for information about a post mortem which he had carried out on Thomas Hamilton, following the shootings at Dunblane Primary School in 1996. When the request was made, Professor Busuttil was an employee of the University of Edinburgh (the University). The University declined Ms Uttley's information request on the basis that it did not hold the information. The University upheld its decision following Ms Uttley's request for review.

Outcome

Following an investigation, the Commissioner found that the information was not held by the University.

The Commissioner also found that the University failed to comply with Part 1 of FOISA in responding to Ms Uttley's information request in that the University breached sections 10(1), 17 and 21(1) of FOISA in dealing with the request, as set out below.

Appeal

Should either Ms Uttley or the University wish to appeal against this decision, there is a right to 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

1. On 17 November 2005, Ms Uttley made an information request under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) to Professor Busuttil. Ms Uttley was aware that Professor Busuttil had carried out a post mortem examination on Thomas Hamilton in the aftermath of the shootings at Dunblane Primary School in 1996 and wished to know whether Thomas Hamilton's brain had been maintained and, if so, where it was. Ms Uttley also asked how many exit wounds there were from Hamilton's head.
2. Ms Uttley did not receive a response, and subsequently wrote again to Professor Busuttil, asking him to carry out a review in terms of section 20(1) of FOISA.
3. On 23 December 2005, the University wrote to Ms Uttley to advise her that any information of the type which she had requested would be the responsibility of the Crown Agent and suggested that she refer her request to the Crown Office.
4. Ms Uttley was dissatisfied with this response and made an application to the Scottish Information Commissioner for a decision as to whether the University had dealt with her request for information in terms of FOISA. Ms Uttley was of the view that as she had made a formal information request to Professor Busuttil, he was obliged to answer her questions.
5. The case was allocated to an investigating officer.

The investigation

6. Ms Uttley's information request was validated by establishing that she had made a request for information to a Scottish public authority (i.e. the University) and had applied to me for a decision only after asking the authority to review its response to her request.
7. Following a telephone call to the University, the officer formally contacted the University in writing on 28 February 2006 in terms of section 49(3)(a) of FOISA, asking it to comment on the application as a whole. On the same day, the officer also contacted the Crown Office to ask it for its comments on the application made to the University.



8. A response was received from the University on 3 April 2006. The University explained that at the time the post mortem was conducted, the University had a relationship with the Crown Office and Procurator Fiscal Service for the provision of forensic pathology services. The Procurator Fiscal in Stirling instructed Professor Busuttil to conduct the post mortem. As Professor Busuttil had acted for the Procurator Fiscal in the matter, and not for the University, Professor Busuttil had suggested to Ms Uttley that she contact the Crown Office for the information she required.
9. The University provided me with a copy of the Agreement between the University and the Crown Office, which was in force when Professor Busuttil carried out the post mortem. This Agreement regulates the payment by the Crown Office of grant-in-aid to the University for forensic pathology services and makes it clear that the Department of Pathology, whilst a University Department, carries out forensic pathology services on behalf of the Crown Office.
10. The University also advised me that the work carried out by Professor Busuttil was not carried out in Edinburgh. The post mortem report for Thomas Hamilton was typed by Central Scotland Police and the University has no recorded information on paper or computer relating to it.
11. As post mortem reports are confidential reports to the Procurator Fiscal and are not "University business", the only members of University staff with access to the reports are Professor Busuttil and his secretary. As a result of Ms Uttley's information request, Professor Busuttil's secretary searched their files and confirmed that there are no copies of this report in hard format. Professor Busuttil's secretary also confirmed that Professor Busuttil did not hold any information about Thomas Hamilton in electronic format. Given the high profile of this case, Central Scotland Police, who led the investigation, took steps to ensure at the time that all computer records were generated and held only on their computers.
12. A response was also received from the Crown Office. The Crown Office confirmed that the work carried out by Professor Busuttil was carried out on behalf of the Crown Office and that the post mortem report was prepared on its behalf. The Crown Office also noted that the post mortem report is available to the public (albeit with names redacted) at the National Archives of Scotland.



The Commissioner's Analysis and Findings

13. The question to be considered here is whether the information is held by the University in terms of FOISA. The information request was made to Professor Anthony Busuttil, who, at the time of the request, was Regius Professor of Forensic Medicine at the University. However, it is clear that Professor Busuttil carried out a number of other roles, during his time as Regius Professor. For example, Professor Busuttil carried out forensic pathology work for the Crown Office, was a police surgeon and was also instructed as an expert witness.
14. The different roles carried out by Professor Busuttil were relevant to the investigation. Section 3(2)(a)(i) states that for the purposes of FOISA information is held by an authority if it is held by the authority otherwise than on behalf of another person. This means that even if the University had in its possession the information requested by Ms Uttley, it was possible that the information would not have been "held" by the University for the purposes of FOISA.
15. Professor Busuttil was instructed to carry out the post mortem by the Crown Office. I am satisfied that Professor Busuttil was not instructed to carry out this work as an employee of the University, but on behalf of the Crown Office. This means that any information which the University had in its possession would not have been held in terms of section 3(2)(a)(i) of FOISA.
16. However, in any event, it became clear during the investigation that the University did not have any of the information which Ms Uttley had requested in its possession. As a result, I am satisfied that the University was not required to provide Ms Uttley with the information which she requested. As suggested by University, I would recommend that Ms Uttley make a request for the information to the Crown Office instead.

Technical breaches of FOISA

17. It would appear that the University did not recognise Ms Uttley's information request of 17 November 2005 as an information request under FOISA. This led to a number of technical breaches of FOISA in the way in which the University dealt with the information request.



18. The University failed to respond to Ms Uttley's information request within the 20 working days set down by section 10(1) of FOISA and did not issue Ms Uttley with a notice that the information was not held in line with section 17 of FOISA.
19. From the correspondence with the University which Ms Uttley supplied me with, I am not satisfied that the University ever carried out a review of the manner in which it had dealt with Ms Uttley's information request in line with section 21(1) of FOISA. The University did, however, advise Ms Uttley that she had a right to appeal to me.

Decision

I find that the information requested by Ms Uttley is not held by the University and that the University was therefore not under a duty to provide Ms Uttley with the information she had requested.

However, I also find that the University failed to comply with Part 1 of FOISA in responding to Ms Uttley's information request. I find that the University breached sections 10(1), 17 and 21(1) of FOISA in dealing with the request, as set out above. I do not require the University to take any remedial steps in relation to these breaches, but would suggest that the University take steps to ensure that all of its employees are aware of the procedures which it has put in place for dealing with information requests made to it under FOISA.

Kevin Dunion
Scottish Information Commissioner
25 July 2006