



Scottish Information
Commissioner

**Decision 141/2006 – Ms Sandra Uttley and the
Chief Constable of Northern Constabulary**

All documentation held relating to an ongoing murder investigation

**Applicant: Ms Sandra Uttley
Authority: Northern Constabulary
Case No: 200600893
Decision Date: 27 July 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 141/2006 – Ms Sandra Uttley and Northern Constabulary

*Request for information held relating to an ongoing murder inquiry – section 12(1)
Excessive cost of compliance – refusal upheld*

Facts

Ms Uttley requested from the Chief Constable of Northern Constabulary (referred to in this decision as the Police) copies of all documents held in relation to an ongoing murder inquiry. The Police refused Ms Uttley's request, initially citing 15 separate exemptions.

Following Ms Uttley's application to the Commissioner, the Police also informed the Commissioner that they believed they were entitled to refuse the request under section 12(1) of FOISA (Excessive cost of compliance).

Outcome

The Commissioner found that the Police acted in accordance with Part I of FOISA in refusing to respond to Ms Uttley's information request, in that section 12(1) of FOISA constituted appropriate grounds for refusal in the circumstances of the case.

Appeal

Should either Ms Uttley or the Police wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any such appeal must be made within 45 days of receipt of this notice.



Background

1. Ms Uttley submitted an information request to the Police on 19 January 2006. In this request, Ms Uttley sought the following:

“Copies of all the documents relating to the inquiry into the murder of Alastair Wilson on 28 Nov 2004.”
2. The Police responded to this request on 23 February 2006. In this response, the Police informed Ms Uttley that her information request would be refused under FOISA. The Police cited the following exemptions in their refusal:
 - **Section 26(a)** – *Prohibitions on disclosure*
 - **Section 30(b)(i), 30(b)(ii) and 30(c)** – *Prejudice to the effective conduct of public affairs*
 - **Section 34(1)(a)(i), 34(1)(a)(ii); 34(1)(b) and 34(1)(c)** – *Investigations by Scottish public authorities and proceedings arising out of such investigations*
 - **Section 35(1)(a), 35(1)(b) and 35(1)(c), along with section 35(1)(g) (read in conjunction with 35(2)(a) and 35(2)(b))** – *Law enforcement*
 - **Section 36(2)** – *Confidentiality*
 - **Section 38(1)(b)** – *Personal information*
 - **Section 39(1)** – *Health, safety and the environment*
3. On 17 March 2006, Ms Uttley emailed the Police to request that they review their decision to withhold the requested information. In this request for review, Ms Uttley provided comment in relation to each of the exemptions cited by the Police, briefly setting out why she considered that the exemption did not apply.
4. The Police’s response, received by Ms Uttley on 20 April 2006, upheld the initial decision to withhold the requested information on the grounds of the exemptions cited above.
5. Ms Uttley submitted an application for decision to me on 6 May 2006. The case was assigned to an investigating officer.



The Investigation

6. Ms Uttley's appeal was validated by establishing that she had made a request for information to a Scottish public authority (the Police) and had appealed to me only after asking the authority to review its response to her request.
7. My investigating officer contacted the Police for their submissions in relation to this case. The Police was asked, in the first instance, to make full submissions only in relation to those exemptions it considered to be the 'primary' exemptions – that is, those overarching exemptions which it considered to apply to most or all of the information falling within the scope of Ms Uttley's request. The Police was informed by my investigating officer that he would subsequently request submissions in relation to any 'secondary' exemptions which it considered applied to specific documents if it became clear during the course of the investigation that a submission in relation to those additional exemptions was required.
8. The Police provided their initial submissions on 13 June 2006. In these submissions, the Police stated that 7,890 documents had been identified as falling within the scope of the request. The Police identified the following exemptions as 'primary' in relation to those documents:
 - **Section 38(1)(b)** – *Personal information*
 - **Section 34(1)(a)(i) and 34(2)** – *Investigations by Scottish public authorities and proceedings arising out of such investigations*
 - **Section 35(1)(a) and (b)** – *Law enforcement*
 - **Section 39(1)** – *Health, safety and the environment*
 - **Section 37** – *Court records*

The Police made a supplementary submission on 26 June 2006. In this submission, the Police stated that it considered that the information requested by Ms Uttley should also be considered to be exempt under section 12(1) of FOISA (Excessive cost of compliance).

The Commissioner's analysis and findings

9. As set out above, during the early stages of this investigation, the Police informed my investigating officer that it considered that section 12 of FOISA applied to the information requested.



10. Section 12 of FOISA relates to excessive cost of compliance, and states the following under section 12(1):

“Section 1(1) [of FOISA] does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers...”
11. The Scottish Ministers have, under regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) set this prescribed amount at £600.
12. Section 12(1) of FOISA, read in conjunction with regulation 5 of the Fees Regulations, therefore sets out that public authorities are under no obligation to comply with requests for information which exceed this figure of £600. Consequently, as Commissioner, I have no power to force the release of information should I find that the cost of responding to any single request for information exceeds this amount.
13. The initial issue to be considered in relation to this case, therefore, is that of whether the Police were in fact correct in their assertion that the cost of responding to Ms Uttley’s request would exceed the prescribed limit of £600. If it can be concluded that the cost of complying with the request would indeed exceed this prescribed limit, it will not then fall to me to consider the exemptions applied by an authority, for the reason that the Police have legitimately and appropriately refused to respond to the request on the grounds of section 12(1) of FOISA.

Will the cost of complying with the request exceed £600?

14. In their submissions in relation to this case, the Police have stated that 7,890 documents are held which fall within the scope of Ms Uttley’s request. These documents comprise various statements, questionnaires, investigative forms, communications and other documentation. The Police also stated that these 7,890 documents have been entered into their internal computer system, and that this computer system also contained details of 7727 ‘actions’, with an ‘action’ being a instruction, logged on the computer system, to complete a task.
15. The Police provided a detailed estimate of the minimum cost of extracting information falling within the scope of Ms Uttley’s request. In summary, the Police estimated that the cost to provide copies of each document held in relation to the case would be at least £1209.35. The Police suggested that if Ms Uttley’s request was also read to include details of the ‘actions’ held in relation to the case, there would be an additional cost of at least £772.70.



16. The Police also suggested that the costs provided constituted a very conservative estimate, and did not include estimates of associated costs for, for example, the redaction of personal information from documents considered for release, or the subsequent copying of those documents which had been redacted.
17. Having considered in detail the submissions made by the Police in favour of the application of section 12(1) to the requested information, I am satisfied that the cost of complying with Ms Uttley's request would indeed exceed the upper limit of £600 prescribed by the Fees Regulations.
18. As such, I am satisfied the Police acted correctly in refusing to respond to Ms Uttley's information request, on the grounds that to do so would exceed the upper limit of £600 prescribed within the Fees Regulations.

Technical breaches

19. I note that in responding to Ms Uttley's request and request for review, the Police took longer than 20 working days to respond in breach of section 10(1) and section 20(1) of FOISA respectively.

Decision

I find that the Chief Constable of Northern Constabulary (the Police) acted in accordance with Part I of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to respond to Ms Uttley's information request of 19 January 2006.

I find that section 12(1) of FOISA constitutes appropriate grounds for refusal in the circumstances of this case.

I also note, however, that the Police breached Part 1 of FOISA in failing to comply with section 10(1) and section 20(1) in responding to Ms Uttley's request and request for review. I do not require the Police to take any remedial steps in relation to these breaches.

Kevin Dunion
Scottish Information Commissioner
27 July 2006