



Scottish Information
Commissioner

**Decision 168/2006 - Sandra Uttley and the Chief
Constable of Central Scotland Police**

Request for 1994 incident report

Applicant: Sandra Uttley

Authority: Chief Constable of Central Scotland Police

Case No: 200600636

Decision Date: 6 September 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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Decision 168/2006 – Sandra Uttley and the Chief Constable of Central Scotland Police

Request for a copy of a 1994 incident report – Police advised that the report was not held – following an investigation, the Commissioner found that the Police were correct to say that the report was not held

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and section 17(1) (Information not held).

The full text of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Ms Uttley asked the Chief Constable of Central Scotland Police (the Police) for a copy of an incident report from 1994. The Police responded by saying that they did not hold a copy of the report. Ms Uttley asked the Police to carry out a review and provided them with a copy of a newspaper article from 2001, which made reference to the incident. The Police upheld their decision on review and Ms Uttley applied to the Commissioner for a decision. Following an investigation, the Police found that the Police had complied with Part 1 of FOISA in advising Ms Uttley that the information she sought was not held by them.

Background

1. On 28 December 2005, Ms Uttley wrote to the Police, asking them to provide her with a copy of an incident report from 1994 in relation to an investigation carried out by the Police into complaints over the use of certain toilets by homosexuals.



2. The Police responded on 20 January 2006 with a notice under section 17 of FOISA stating that they did not hold a copy of the incident report and that they were therefore unable to provide her with a copy of the report.
3. Later the same day, Ms Uttley asked the Police to carry out a review of their decision. With her request for review, Ms Uttley submitted a copy of an article from The Sunday Mail in 2001. The article alleged that a certain person, who had subsequently been found guilty of sexual assault, had been the subject of an earlier investigation by the Police in 1994 in relation to the incident Ms Uttley was interested in.
4. On 3 February 2006, the Police advised Ms Uttley of the outcome of the review. They confirmed that the information was not held by the Police and that their original decision was therefore correct.
5. Ms Uttley made an application to my Office on 8 February 2006 for a decision as to whether the Police had dealt with her information request correctly. In her application, she stated that, having had many dealings with the media, she did not believe that they would assert that such an inquiry had taken place if that was inaccurate. She also commented that the Police had not objected to this apparent factual inaccuracy at the time.
6. The case was allocated to an investigating officer. The application was validated by establishing that Ms Uttley had made a valid information request under FOISA to a Scottish public authority and had appealed to me only after asking the authority to review its response to her request.

The investigation

7. The investigating officer wrote to the Police on 31 March 2006, giving notice that an application had been received and that an investigation into the matter had begun. The letter invited comments from the Police as required by section 49(3)(a) of FOISA. In the letter, the Police were asked to confirm what steps had been taken by them to try to locate the incident report and a specific reference was made to the article in The Sunday Mail referred to by Ms Uttley.
8. A detailed response was received from the Police on 15 May 2006.
9. The Police confirmed to me that they do not hold, and have never held, the incident report in question.



10. The Police advised me that, in 1994, they used a computerised crime and incident recording system called "TRACE". This system kept records of all crimes, offences and incidents requiring police attendance, which were reported as occurring within the Central Scotland Police area.
11. Although TRACE was succeeded by an updated computerised recording system in 1999, all crime, offence and incident records recorded under TRACE have been retained for reference purposes and are searchable by trained personnel within the Force. The "incidents" referred to relate to requests for police assistance to attend at, primarily, ongoing incidents, but do not necessarily include details of other matters perhaps notified to the Police by letter, fax or verbally, or those which require a less urgent response.
12. The Police advised me that TRACE was searched by a police constable who is experienced and trained in such systems for reports of any offences, crimes or incidents which occurred within the geographical area of the toilets referred to by Ms Uttley in 1994. The search was corroborated by the Police's freedom of information officer.
13. During the search, several key words relevant to Ms Uttley's query were utilised. The search revealed no record of any complaint or investigation into the incident referred to by Ms Uttley.
14. The Police comment that, given the nature of the incident in which Ms Uttley is interested, it is unlikely that it would generate a request for immediate or short-term police attendance and that experience suggests that this is a matter which would raise concern with the body responsible for the toilets, which might report it to local officers, requesting a visit to discuss the matter or which might submit a letter of concern. As a consequence, this would be a longer term approach and would not necessarily be recorded on TRACE.
15. Outwith these computerised databases, there would appear to be no obvious depository for "incident reports" of the likely nature referred to by Ms Uttley. According to the Police, if any person had been reported for any offences or crimes arising from any such investigation, then this would be recorded on the TRACE system under crime reports.
16. The Police also commented that, given the reference in the newspaper article to the person in question being caught on camera in 1994, they checked with their Confidential Unit and Special Branch to establish if they had records dating back to 1994 that may cover any requests for "directed surveillance" in relation to the incident in question. However, a search of their archived records did not reveal anything pertinent and, in any event, no records dating back to 1994 were available.



17. The Police confirmed that they had examined the police report relating to a later incident by the individual named in the newspaper article. Within that later report, there was a reference to an investigation carried out by the security staff of another body in 1994/5. According to the Police, they were not involved in this investigation and only became involved in 1995 following a complaint in relation to a different individual from the person referred to in the article in The Sunday Mail.
18. Given the detailed search which has been carried out by the Police, I am satisfied, on balance of probabilities, that the incident report requested by Ms Uttley is not held by the Police. I note Ms Uttley's concerns that the newspaper would not have asserted that such an inquiry had taken place if that was inaccurate. I note too the Police's view that the statement is not attributed and that it would appear to be a piece of "media licence." I am not in a position to comment on the accuracy of the report in the newspaper. Rather it is my role to consider whether the report is held by the Police or not. In this case, I am satisfied that the report is not held.

Decision

I find that the Chief Constable of Central Scotland Police complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the request by Ms Uttley by issuing a notice under section 17(1) on the basis that the incident report is not held.

Appeal

Should either the Chief Constable of Central Scotland Police or Ms Uttley 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 lodged within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
6 September 2006



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.

17 Notice that information is not held

- (1) Where –
- (a) a Scottish public authority receives a request which would require it either –
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 21,if it held the information to which the request relates; but
 - (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.