



Scottish Information  
Commissioner

**Decision 178/2006 – Mr John Rowbotham of the Hamilton  
Advertiser and the Chief Constable of Strathclyde Police**

*Statistical information about Registered Sex Offender in North and South  
Lanarkshire*

**Applicant: Mr John Rowbotham of the Hamilton Advertiser  
Authority: Chief Constable of Strathclyde Police  
Case No: 200600079  
Decision Date: 28 September 2006**

**Kevin Dunion  
Scottish Information Commissioner**

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## **Decision 178/2006 Mr John Rowbotham and the Chief Constable of Strathclyde Police**

### ***Statistical information about registered sex offenders with addresses in North and South Lanarkshire***

#### **Relevant Statutory Provisions and other Sources**

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 35(1)(a) (Law enforcement ); 36(2) (Confidentiality); 39(1) (Health, Safety and the Environment).

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

#### **Facts**

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Mr Rowbotham asked Strathclyde Police to provide statistical information about registered sex offenders with addresses in North Lanarkshire and South Lanarkshire at the time of his request and during the previous year. He also asked for a male / female breakdown for both sets of figures.

Strathclyde Police (the Police) refused to provide the information, citing the exemptions in sections 35(1)(a), 36(2), and 39(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following an investigation, the Commissioner did not accept that the information was exempt under any of these provisions.



## Background

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1. On 1 September 2005 Mr John Rowbotham of the Hamilton Advertiser made an email request for data relating to sex offenders in Lanarkshire. He asked for:
  - the latest information on the number of sex offenders with addresses in North and South Lanarkshire
  - the number of people with Lanarkshire addresses who had been on the Sex Offenders' Register in the previous year
  - a male / female breakdown for both sets of figures
2. The Police refused to supply the information requested, citing the exemptions in sections 35(1)(a), 36(2), and 39(1) of FOISA. Mr Rowbotham requested a review of this response and the Police upheld their decision in a letter dated 9 November 2005.
3. Mr Rowbotham applied to me for a decision in a letter received by my Office on 6 January 2006. The case was assigned to an investigating officer and the application validated by establishing that Mr Rowbotham had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to his request.

## Investigation

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4. The Police were notified of the application made by Mr Rowbotham and their comments were invited in terms of section 49(3)(a) of FOISA.
5. Mr Rowbotham was invited to provide his views on the public interest in disclosure of the information he had requested, and did so in an email dated 2 February 2006. He also clarified his request for "the number of people with Lanarkshire addresses who had been on the Sex Offenders' Register in the previous year", explaining that he wished to obtain the figure for the month of September 2004.
6. The Police advised the investigating officer that police forces throughout the UK would only release statistics about registered sex offenders relating to each police force area as a whole, and would not provide any more detailed statistics.



## The Commissioner's Analysis and Findings

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### **Section 36(2) - Confidentiality**

7. Section 36(2) of FOISA allows a public authority to refuse to provide information obtained from a third party if its disclosure by the public authority would constitute a breach of confidence actionable in court. This is an absolute exemption which does not require the public authority to consider whether it is in the public interest to disclose the information.
8. For an actionable breach of confidence to arise there are three factors to consider: a) whether the information has the necessary quality of confidence b) whether the information was received in circumstances which impose an ongoing obligation to maintain confidentiality c) whether disclosure has happened without authorisation by the person who communicated the information, causing damage to that person.
9. Sex offenders are obliged to provide the police with details of their address when registering. The Police have argued that they have an obligation to treat this information confidentially to ensure that the safety of the individual is not compromised. The Police consider that the release of any information which would identify the specific area in which a registered sex offender resides could place the offender at risk of retaliation, as there will be speculation about the identity of the individuals involved. Should an offender be attacked following the release of the information requested by Mr Rowbotham, the Police believe that the offender would then have recourse to civil action for breach of confidence.
10. In considering this exemption, the Police took into account the case of *Swinney v. Chief Constable of Northumbria Police Force (No.2)* (1991) 11 Admin. L.R. 811, which found that it was arguable that a special relationship arose between the plaintiff and the police through the assumption by the police of responsibility to preserve the confidentiality of information supplied by the first plaintiff, disclosure of which was likely to expose the plaintiffs to a risk greater than the ordinary risk to the general public. However, I note that the information disclosed in this case was the plaintiff's full name, address and telephone number rather than purely statistical data.
11. The statistics themselves were not provided by any person to the Police, although they are derived from information supplied by the offenders during registration. In the circumstances, I have difficulty accepting that the statistics, as opposed to the details provided by the offenders directly, meet the basic requirement of section 36(2)(a) that they be information obtained by the Police from another person.



12. In any event, I do not accept that the Police have shown that the statistical information requested would, if disclosed, provide grounds for a breach of confidence action. The information Mr Rowbotham asked for is not sufficiently detailed to reveal the identity of any individual offender within North or South Lanarkshire, and disclosure of the statistics would not reveal personal information relating to an identifiable individual.
13. It would be extremely difficult to prove that any vigilante attack on an offender was the direct result of disclosure of general statistical information, and I do not accept that a breach of confidence action could be sustained on the basis of this information being released. The information therefore does not have the necessary quality of confidence to be exempt under section 36(2), and the Police have no obligation to any individual to keep the information confidential.
14. I have therefore found that the Police were wrong to withhold the information requested by Mr Rowbotham under the exemption in section 36(2).

**Section 39(1)**

15. Section 39(1) of FOISA allows public authorities to withhold information if disclosure would, or would be likely to, endanger the physical or mental health or the safety of an individual.
16. The Police submitted that police forces across the UK have found that speculation about the number of registered sex offenders within even a relatively large geographic area will encourage members of that community to try to identify them. This has sometimes led to attacks on those individuals suspected of being offenders, or attempts to hound them from the area. The Police believe that disclosure of the information requested by Mr Rowbotham would be likely to lead to disorder within the community, which would be harmful to public safety.
17. All police forces in Scotland release statistics about the total numbers of male and female registered sex offenders within their force area, and evidently take the view that it is safe to do so. Any request for the figures to be broken down further has met with a refusal.



18. I find it difficult to accept this as the final word on the matter, as this position clearly has no statistical basis: the 8 police forces in Scotland vary considerably in geographical area and population size. For example, around 148,000 people live in the Dumfries and Galloway force area, while 2.3 million people (or around 44% of the Scottish population) are resident in the Strathclyde force area. The size and nature of the area varies too: Central Scotland Police cover 1024 square miles while the Northern Constabulary force area is approximately 10 times bigger. I am reluctant to accept a police operational area “one size fits all” approach to the safe disclosure of statistical information about registered sex offenders.
19. The central question in this case is whether public safety might be threatened by disclosure of the information requested. In considering this question and the potential effects of disclosing the information, I have to take into account the characteristics of the areas for which the information was requested.
20. During the investigation the Information Commissioner issued a decision under the Freedom of Information Act 2000 which ordered the release of registered sex offender statistics at divisional or command level in the Sussex Police Force area (Decision Notice FS50069091). North and South Lanarkshire form two of the divisions within Strathclyde Police Force. I compared North and South Lanarkshire to some of the police divisions in Sussex, and found that there were similarities in terms of size and population.
21. Sussex Police released statistics about the numbers of registered sex offenders at divisional level on 9 June this year. Since then, they have not received any reports of vigilante attacks or noted any other impact on the community.
22. I note that North and South Lanarkshire each have larger populations than the entire Dumfries and Galloway police force area, about which statistics are released. North and South Lanarkshire each contain a number of sizeable towns, so it could not be assumed that the figures would relate only to one community within the area.
23. The police have put forward strong arguments for withholding statistical information where this could lead to disquiet within a community and the possible de-stabilisation of offenders living under police supervision and monitoring arrangements. I take these arguments seriously. As previously noted, I do not accept that the information requested by Mr Rowbotham would, on its own, lead to the identification of any individual. However, I accept that disclosure of the information and any subsequent publicity may serve to increase suspicions about individuals in the area who may or may not be sex offenders. The question is whether this possibility is sufficient to make endangerment “likely”.



24. The word “likely” is open to interpretation. It may mean ‘more probable than not’, or it may mean ‘more than fanciful’. The general legal principle was explained by Chadwick LJ (in *Three Rivers District Council v Governor and Company of the Bank of England (No 4)* [2002] EWCA Civ 1182, [2003] 1 WLR 210) when he said that “‘likely’ does not carry any necessary connotation of ‘more probable than not’. It is a word which takes its meaning from context.” In other judgements ‘likely’ has been taken to mean ‘may well’, or it has been held that ‘likely’ implies a substantial rather than a merely speculative possibility, a possibility that cannot sensibly be ignored.
25. Given the size and nature of North and South Lanarkshire, I do not consider that the anticipated endangerment to individuals is likely. I do not believe that disclosure of the statistical information for these large areas would assist anyone attempting to identify individual offenders living within the area, or lead offenders to believe that they are likely to be identified by members of the community in which they are living.
26. I have also taken into account the fact that names, photographs and locations of sex offenders are frequently broadcast or published in the news media, and that serious vigilante attacks of the type highlighted by the police are relatively rare following such disclosures.
27. I therefore do not accept that disclosure of the information in this case would, or would be likely to, endanger the physical or mental health or the safety of an individual. I have therefore found that the Police were wrong to apply the exemption in section 39(1) of FOISA.

### **Section 35(1)(a)**

28. Section 35(1)(a) exempts information if its disclosure under FOISA would, or would be likely to, prejudice substantially the prevention or detection of crime. The prejudice (harm) must be substantial, and it must be actual or likely. The public interest in disclosure must be considered before deciding to withhold information under section 35(1)(a).
29. The Police have put forward several different reasons for withholding the information under section 35(1)(a). In coming to my decision I have considered each argument carefully, but will only discuss a couple in detail in this decision notice. In general I have found that the arguments advanced become less compelling when considered in relation to areas with the size and population of North and South Lanarkshire.



30. As noted in paragraph 16 above, the Police believe that disclosure of the information would lead to increased speculation about the identity of the sex offenders represented by the statistics, making it likely that attempts would be made to harm suspected offenders or to hound them out of the area. This would create public disorder within the community. The Police highlighted several cases in England where disclosure of the identity of a sex offender, or speculation about their identity and location, had led to individuals being physically attacked or murdered, or driven to take their own lives through fear of identification.
31. I have looked into the incidents cited by the police, but do not support the view that disclosure of the statistical information requested by Mr Rowbotham would be likely to lead to the same type of vigilante attack or other consequences identified by the Police. I have already shown that I do not consider the statistical information in question to be sufficiently detailed to allow identification of an individual offender with any degree of certainty. Several of the attacks or other incidents targeted individuals who were already known by their local community to have convictions for sexual offences, or whose identities had been published in a newspaper campaign.
32. The information requested by Mr Rowbotham simply provides the numbers of registered sex offenders who were living in North and South Lanarkshire in September 2004 and September 2005. I consider it unlikely that the communities of North and South Lanarkshire would be unaware that sex offenders lived within those areas, and I do not believe that the statistical information based on those areas is detailed enough to encourage speculation about the identities of individual offenders.
33. The Police also warned that if offenders were driven underground by fear of their identities being made known, there would be an increased likelihood that they will re-offend. This would substantially prejudice the ability of the police to prevent such crimes by maintaining a relationship with the offender.
34. Again, I believe that the areas of North and South Lanarkshire are sufficiently large and populous to minimize this risk, and the numbers of registered sex offenders are high enough to prevent any individual offender from feeling that their anonymity within the community would be significantly threatened by disclosure of the statistical information in question.
35. I therefore do not consider that the harm anticipated by the Police on this score would be a “likely” outcome of disclosure, and I do not accept this argument in support of the exemption in section 35(1)(a).



36. After considering all the arguments put forward by the Police I have found that they were not justified in applying the exemption in section 35(1)(a) to the information requested. As the exemption was wrongly applied, I am not required to consider whether the public interest in disclosure would outweigh the public interest in maintaining the exemption.

### **Conclusion**

37. As I have not found that any of the exemptions applied by the Police could be upheld, I require the Police to provide Mr Rowbotham with the information he has asked for. The Police may also choose to provide him with some additional commentary or explanation about what is represented by the statistics and the context in which they should be placed.

### **Decision**

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I find that the Chief Constable of Strathclyde Police (the Police) failed to comply with Part I of the Freedom of Information (Scotland) Act 2002 (FOISA), in particular section 1(1), by wrongly withholding information under section 35(1)(a), section 36(2) and section 39(1) of FOISA.

I require the Police to provide Mr Rowbotham with the information he requested, within 45 days of receipt of this notice.

### **Appeal**

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Should either Mr Rowbotham or the Chief Constable of Strathclyde Police wish to appeal the 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.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**28 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.

##### **35 Law enforcement**

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-

- (a) the prevention or detection of crime;

##### **36 Confidentiality**

...

(2) Information is exempt information if-

- (a) it was obtained by a Scottish public authority from another person (including another such authority); and  
(b) its disclosure by the authority so obtaining it to the public (otherwise than under this Act) would constitute a breach of confidence actionable by that person or any other person.

##### **39 Health, safety and the environment**

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.