

Decision Notice

Decision 009/2017: Ms Dorothy King and Mr Christopher J. Wybrew and the Chief Constable of the Police Service of Scotland

Speeding offences on A75 by heavy goods vehicles

Reference No: 201601302

Decision Date: 19 January 2017



Scottish Information
Commissioner

Summary

Police Scotland were asked for details of speeding offences by heavy goods vehicles (HGVs) on a section of the A75. The Commissioner was satisfied that complying would cost more than the £600 limit. This meant Police Scotland did not have to comply with the request.

Police Scotland were also asked for their policy on enforcing speed limit violations. The Commissioner was satisfied that disclosing the policy would harm the prevention and detection of crime and so Police Scotland did not have to disclose the information.

Although the Commissioner was satisfied with Police Scotland's compliance with FOISA, she has asked them to reflect on practice in relation to giving advice and assistance and records keeping.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 12 (Excessive cost of compliance); 35(1)(a) and (b) (Law enforcement)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost - prescribed amount)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 7 April 2016, Ms King and Mr Wybrew made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland). The information requested was:
 - (i) the total number and breakdown of alleged speed ranges of all Police Fixed Penalty Notices with respect of HGV [Heavy goods vehicles] 40 mph speed limit violations on the A75(T) west of the Drummore (Lochfoot) roundabout to its junction with the A751 (Cairnryan ferry road).
 - (ii) the total number and breakdown of alleged speed ranges of all Police Procurator Fiscal Reports made in respect of HGV 40 mph speed limit violations on that section of the A75(T).

Ms King and Mr Wybrew asked for the data for the period 1 February 2015 to 31 January 2016, broken down by month.

2. Ms King and Mr Wybrew also asked for information about the enforcement of speed limits:

“If the statistics provided do not disclose any data with respect to the alleged speed offences below 50mph we seek an explanation for this omission. Specifically, does Police Scotland/ COPFS [Crown Office and Procurator Fiscal Service] operate a policy of non-enforcement of alleged A75(T) HGV speed limit violations in the speed range 41-49 mph?”

3. Police Scotland responded on 5 May 2016. They refused to comply with the request as to do so would cost in excess of £600 and, in terms of section 12 of FOISA, they were not required to comply. Police Scotland estimated the cost of providing the information would be £1,942.50.
4. In relation to the additional request as set out in paragraph 2 above, Police Scotland referred to section 14(2) of FOISA and said the request was “vexatious”, as they had complied with a substantially similar request from the same applicants. Police Scotland referred to a previous response to Ms King which stated that they do not have a policy of non-enforcement and Police Scotland adhere to the Lord Advocate guidelines on “Enforcement Levels and Criteria in Respect of Speeding Offences.” Police Scotland said that these guidelines instruct the police on what action should be taken for certain speeds within set speed zones and that the Police act as agents for the Crown Office and are expected to follow this guidance.
5. On 6 May 2016, Ms King and Mr Wybrew wrote to Police Scotland requesting a review of the decision on the basis that they disagreed with the provisions cited by Police Scotland. Ms King and Mr Wybrew believed the information should be disclosed and disagreed strongly with Police Scotland’s initial response.
6. Police Scotland notified Ms King and Mr Wybrew of the outcome of their review on 3 June 2016. They maintained that they were not required to comply with the request because of the costs involved. They withdrew reliance on section 14(2) of FOISA in relation to the additional request, and instead withheld information relating to their speed limit enforcement policy under sections 35(1)(a) and (b) (Law Enforcement) and section 39(1) (Health, Safety and the Environment). Police Scotland believed the public interest favoured withholding the information.
7. On 20 June 2016, Ms King and Mr Wybrew applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms King and Mr Wybrew were dissatisfied with the outcome of Police Scotland’s review because they believed that the Police were wrong to say that the cost of providing the information would exceed £600. Ms King and Mr Wybrew also believed there was a considerable public interest in the disclosure of the withheld information on the speed limit enforcement policy.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Ms King and Mr Wybrew made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision.
9. On 29 July 2016, Police Scotland were notified in writing that Ms King and Mr Wybrew had made a valid application. Police Scotland were asked to send the Commissioner the information which had been withheld. Police Scotland provided the information and the case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and answer specific questions including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.
11. During the investigation, Ms King and Mr Wybrew were also invited to provide comments and did so (9 December 2016).

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all the withheld information and the relevant submissions, or parts of submissions, made to her by the applicants and Police Scotland. She is satisfied that no matter of relevance has been overlooked.
13. The Commissioner will first consider whether section 12 was correctly applied to part of the request. She will then consider whether Police Scotland were entitled to withhold information covered by the last part of the request.

Section 12 - Excessive cost of compliance

14. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. In terms of regulation 5 of the Fees Regulations, this is £600. Consequently, the Commissioner has no power to require the disclosure of information should she find that the cost of responding to a request exceeds this amount. If section 12(1) applies, there is no provision for taking account of any public interest considerations which may be relevant.
15. The projected costs a Scottish public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The authority may not charge for the cost of determining
 - (i) whether it actually holds the information requested or
 - (ii) whether or not it should provide the information.

The maximum rate a Scottish public authority can charge for staff time is set at £15 per hour.

16. Police Scotland submitted that to provide the information for part of the request would exceed the statutory maximum of £600. They were asked to explain how they had estimated the cost of providing the information.
17. Police Scotland explained that, regardless of whether the search involved Police Fixed Penalty Notices (FPNs) or reports to the Procurator Fiscal (PF), they would have to follow the same process to identify the relevant information. They would need to extract all speeding data from the Scottish Operational & Management Information System (ScOMIS) for the requested period. They would then need to isolate those data on the A75 (which amounted to 1,554 records for the period covered by the request) and filter out records which did not relate to the part of the road specified in the request. This would mean looking at each record and determining if the locus was within the parameters of the request.
18. Police Scotland said it would take five minutes for each of the 1,554 records. This time was required to check each report to confirm the involvement of a HGV in speeding offences on the specified section of the A75 over the requested period, and thereafter provide the total number and breakdown of alleged speed ranges of all:
 - FPNs issued with respect to the HGV speed limit and
 - PF Reports made.

- Police Scotland estimated it would take approximately 129.5 hours, and would cost approximately £1,942.50 to carry out this task.
19. Police Scotland explained that their estimate was based on a sample search for data from January 2016. This search of the ScOMIS database had identified 489 records relating to HGV speeding offences, of which 253 were found to have taken place on the A75. This initial search took 30 minutes. Each record then had to be checked to see whether it related to the section of the A75 specified in the request. This had to be done by accessing each record individually (Police Scotland checked some but not all of the 253 records). They found that in some cases the specific locus was not clear from the description entered on the record, and they had to check mapping software to confirm the exact location.
 20. Police Scotland said it took around five minutes to check records with sufficient locus detail and eight minutes to check those which required the use of mapping software. From looking at the results, Police Scotland estimated the work involved would be:
 - 150 records x 5 minutes = 12.5 hours
 - 103 records x 8 minutes = 13.5 hours
 21. Given the stretch of road covered by the request, Police Scotland estimated that around two-thirds of the 253 January 2016 records would be relevant (around 168 records). It would take a further five minutes to check each of these handwritten tickets to obtain the vehicle type and specific speed being travelled, adding another 14 hours to the time required to provide the information. Police Scotland concluded that this equated to just over 40 hours of work to produce one month's data.
 22. Ms King and Mr Wybrew also asked for the total number and breakdown of alleged speed ranges of all PF Reports. Police Scotland provided an explanation of why this information was not easy to compile, again because each record would have to be checked individually to establish whether each report to the PF was relevant to the request.
 23. Police Scotland were asked about search capabilities of the ScOMIS database, to establish whether searches could be limited in a way that would retrieve only records involving HGVs. Police Scotland confirmed this was not possible, and reiterated that the information requested could not be gathered without physical examination of crime reports. The Police Scotland Traffic Department and Analytical Unit had both confirmed that the requested data was not reported on by Police Scotland.
 24. Ms King and Mr Wybrew were given details of how the cost of complying with their request was calculated and invited to comment. They commented that they were:

“...frankly dismayed that Police Scotland see no operational reason to keep track of the number of HGV drivers detected speeding. They are admitting that they have no intelligence on this matter. They will therefore not know which routes and which parts thereof are most subject to speeding HGVs. They will certainly not know if this problem is confined to certain categories of vehicle, from certain origins, at certain times or that certain fleet operators vehicles are more commonly implicated than others. This missed opportunity means that there is no scope to feed hard data into targeted driver and operator educational programmes or the Scottish Safety Camera Programme or indeed the transport commissioners.”

25. The Commissioner has considered all the submissions carefully. While she notes Ms King and Mr Wybrew's view, their comments do not relate directly to the issue she is obliged to consider: was Police Scotland entitled to refuse their request on cost grounds?
26. Having considered Police Scotland's calculations and submissions, the Commissioner accepts (on the balance of probabilities) that the cost of providing the data requested by Ms King and Mr Wybrew would cost more than £600. Police Scotland were therefore not obliged to comply, as section 12(1) of FOISA applied. The Commissioner accepts that even if the time for checking each record was less than estimated, or if the proportion of records that needed to be checked against mapping software was lower than estimated, this would not bring the cost of providing the information below £600.

Section 15 – Advice and Assistance

27. Section 15 of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Examples of such advice and assistance are given in the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA¹ and include considering what information could be provided below the cost limit, and suggesting how the applicant might narrow the scope of their request accordingly.

28. The section 60 Code states (at paragraph 9.4.3):

“When refusing a request on cost grounds, it is good practice for the authority’s response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been exceeded. Any narrowed request would be a separate new request and should be responded to accordingly.”

(An earlier version of the section 60 Code² was in force at the time when Police Scotland were responding to the request from Ms King and Mr Wybrew, but the guidance on this point is unchanged.)

29. Police Scotland did not suggest that the applicants could narrow their request, nor what information, if any, could be provided within a cost limit: either initially or at review. In their submissions, they explained there was no way to assist Ms King and Mr Wybrew to narrow their request to bring it within the cost limit. They referred to the calculations carried out to estimate the cost of providing data for January 2016 to evidence this, and stated that the data they hold could not be manipulated to suit this particular request.
30. The Commissioner accepts that it is difficult to see how the request submitted by Ms King and Mr Wybrew could be narrowed in a way which would bring it within the cost threshold, given the search process required to identify the relevant records. This could have been made clearer to Ms King and Mr Wybrew, in Police Scotland's response to their request or request for review. Providing them with more detail about the search process might have enabled them to accept that the cost of providing the information would be excessive. The Commissioner does not find that this constitutes a failure to comply with section 15, but asks Police Scotland to reflect on its practice in this respect.

¹ <http://www.gov.scot/Resource/0051/00510851.pdf>

² <http://www.gov.scot/Resource/0046/00465757.pdf>

Records Management

31. Police Scotland's review indicated to Ms King and Mr Wybrew that their information recording systems were set up to record and extract information for policing purposes, and there were significant differences when it comes to researching information. Ms King and Mr Wybrew strongly disagreed with this and believed such information should be available to them, and also to the police.
32. The Scottish Ministers' Code of Practice on Records Management by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002³ ("the Section 61 Code"), states that:

"...records systems should be designed to meet the authority's operational needs and using them should be an integral part of business operations and processes".
33. Section 3 of Part 1 of the Section 61 Code states that "Authorities should ensure they keep the records they will need for business, regulatory, legal and accountability purposes" and (at paragraph 3.1) "Authorities should consider what records they are likely to need to document their activities..." although there is no explicit reference to FOI, it is, nevertheless, a statutory function and so falls within the remit of records they need for business, regulatory, legal and accountability purposes.
34. The Commissioner would encourage Police Scotland to reflect on this and on whether changes need to be made to their record keeping practice.

Section 35(1)(a) and (b) – Law enforcement

35. Police Scotland relied on sections 35(1)(a) and (b) to withhold information falling within the second part of the request (which asked for information about Police Scotland's policy on enforcement of speed limits).
36. In their review response, Police Scotland explained that they operate in line with guidelines issued by the Lord Advocate. They withheld the Lord Advocate's Guidelines to Police on the Operation of Police Conditional Offers of Fixed Penalty ("the guidelines") in terms of sections 35(1)(a) and (b) of FOISA. They explained that the information relates to the speed thresholds permissible before consideration of prosecution, as advised by the Lord Advocate. Where there are particular issues of road safety, the guidelines allow for downward variation of thresholds for action by local agreement between Area Procurators Fiscal and the Chief Constable.
37. The Commissioner accepts that some information in the guidelines falls within the applicants' request.
38. In their review response, Police Scotland argued that "*disclosure of the information regarding the speed thresholds would allow drivers to speculate on the possibility of being detected and would encourage speeding to these thresholds*". Disclosure would confirm the rationale in a driver's mind that it would be safe or permissible to drive at a certain speed above the maximum limit without fear of prosecution. This would lead to an increase in the speed limit beyond that stated on the road signs; this was not in the interests of crime prevention or road safety.

³ <http://www.gov.scot/Resource/Doc/933/0124124.pdf>

39. Section 35(1)(a) exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's guidance⁴ on this exemption highlights, the term "prevention or detection of crime" is wide ranging, encompassing any action taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could mean activities in relation to specific (anticipated) crime or wider strategies for crime reduction and detection.
40. Section 35(1)(b) exempts information if its disclosure would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders. As the Commissioner's guidance also states, there is likely to be a considerable overlap between information relating to "the apprehension or prosecution of offenders" and that relating to "the prevention or detection of crime". Section 35(1)(b) relates to all aspects of the process of identifying, arresting or prosecuting those suspected of being responsible for criminal activity. Again, this term could refer to the apprehension or prosecution of specific offenders or to more general techniques (such as investigative processes and the use of police intelligence).
41. There is no definition of "substantial prejudice" in FOISA, but the Commissioner is of the view that authorities have to be able to establish harm of real and demonstrable significance. The harm would also have to be at least likely, and more than simply a remote possibility. The exemptions in section 35(1) are also subject to the public interest test in section 2(1)(b) of FOISA.
42. Ms King and Mr Wybrew commented that:
- "Our observations are that the extreme secrecy in Scotland in relation to enforcement threshold is not mirrored in other jurisdictions such as England and Wales. There is no evidence provided to back the claim that disclosure of the Lord Advocate's guidelines on "Enforcement Levels and Criteria in Respect of Speeding Offences" would in any way impact on the prosecution system in Scotland, far less that the impact would be a negative one."*
43. The Commissioner is satisfied that the withheld information, as its title suggests, is used by Police Scotland in relation both to the "prevention or detection of crime" and "the apprehension or prosecution of offenders". This is the first requirement for sections 35(1)(a) and (b) to apply. The next question for the Commissioner is whether disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime, or the apprehension or prosecution of offenders.
44. The Commissioner accepts that disclosure of the withheld information would provide an indication of the Police Scotland's likely actions in respect of certain traffic offences. She is satisfied that the disclosure of the information would therefore assist those intent on criminal behaviour (i.e. speeding and committing the offence) in the manner described by Police Scotland. She accepts Police Scotland's suggestion that the only sure way to avoid prosecution in terms of dedicated speed is to remain within the statutory speed limits. Were any threshold or enforcement level to be publicised, the Commissioner accepts that a proportion of road users would drive in accordance with that criteria or level rather than to the statutory level or criteria.

⁴ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section35/Section35.aspx>

45. For this reason, the Commissioner accepts that the sections 35(1)(a) and (b) are engaged, because disclosure of the information would, or would be likely to prejudice substantially the prevention or detection of crime, or the apprehension or prosecution of offenders.

Public interest

46. The exemptions in sections 35(1)(a) and (b) are subject to the public interest test in section 2(1)(b) of FOISA. Having accepted that sections 35(1)(a) and (b) apply to the withheld information, the Commissioner must now consider the balance of the public interest.
47. Police Scotland acknowledged that disclosure of the withheld information would provide the public with greater understanding of the approach to speed limit enforcement advised by the Lord Advocate and followed by Police Scotland. Such disclosure would inform the debate around the subject of speeding and the action taken in relation to it. Police Scotland acknowledged that disclosure would support transparency and accountability in relation to national policy and speed enforcement, and would allow the public to scrutinise whether the approach is appropriate and proportionate.
48. In terms of factors favouring non-disclosure, Police Scotland highlighted that disclosure would allow the public to take action to frustrate the operational tactics adopted to enforce road traffic law and this would undermine the police's key function of preventing and detecting crime. Police Scotland explained that they act as agents for the Crown Office and are expected to follow the guidance and instructions which are given. Police Scotland highlighted that the Lord Advocate's Guidelines on this subject have never been released into the public domain and in their view such a disclosure, without the consent of the document's owner, could have significant negative impact on the prosecution system in Scotland and Police Scotland's relationship with the Crown Office. Police Scotland referred to the written answer⁵ (10 November 2004) by the then Lord Advocate Colin Boyd to a Parliamentary question:

"The Lord Advocate's Guidelines on the Operation of Police Conditional Offers of Fixed Penalty, that contain instructions on the relevant thresholds for speeding offences, are confidential. It would not be in the public interest for those who are intent on driving in excess of the speed limit to know at what levels and in what way the various speed limits are enforced. The guidelines do not set hard and fast rules, but allow for downward variation of thresholds for action by local agreement between Area Procurators Fiscal and Chief Constables where there are particular issues of road safety. It could therefore be misleading to motorists if normal thresholds were published, since these local agreements allow for enforcement at lower speeds."

49. Police Scotland concluded that disclosure would have a significant negative impact on Police Scotland's ability to prevent and detect speeding offences and would undermine the instruction of the Crown Office, which has overall responsibility for prosecutions in Scotland. Police Scotland strongly believed that the public interest in maintaining the exemptions outweighed the public interest in disclosure.
50. Ms King and Mr Wybrew provided a number of strong public interest arguments. Their first argument was that acknowledged by Police Scotland: accountability. They wished to know how road traffic law was being enforced in a specific area and in respect of a specific type of road user (HGV) so that they could assess whether this was being done appropriately. Ms King and Mr Wybrew commented that:

⁵ <http://archive.scottish.parliament.uk/business/pqa/wa-04/wa1110.htm> (S2W-11719)

“Our FOISA request and appeal have been motivated by seeking to establish why we have to endure a situation of very widespread gross breaking of the speed limits by HGV drivers. We knew that enforcement against them in our village was nil. We strongly suspected that laxity would be very likely also be the case on the open road where 40mph class speed limit applies. We based that expectation also upon the widespread disregard of that limit strongly suggesting that the vast majority of HGV drivers consider that there is no credible risk of detection and punishment.”

51. Ms King and Mr Wybrew pointed out the public interest in establishing information that related to safety of road users on the A75 and those living in the vicinity of the roads concerned. They said:

“We are highly critical of the fact that they [Police Scotland] have no interest in data which, as vulnerable road stakeholders suffering speed related traffic blight and existential threats at the hands of speeding HGV drivers, we are, in contrast, intensely interested in....It bears out long held our belief that there is a conspiracy of enforcement neglect here to achieve a de facto 50mph speed limit for HGVs on the open road and 40mph for all vehicle types in the A75 villages.”

52. Ms King and Mr Wybrew have therefore submitted several significant public interest concerns:

- (i) Scrutiny of the enforcement of a specific legislation (road traffic offences) to ensure that enforcement was proper and effective.
- (ii) Public safety, i.e. that the legislation on speeding offences was to protect those using, or living near, the A75.
- (iii) The applicants' concern about their safety as being affected by the A75.

53. The Commissioner recognises that there is a public interest in openness and transparency by public authorities. In this case, she notes that the applicants have a personal interest in the information. She also accepts that there is a wider public interest in members of the public having access to this information. The Commissioner notes that one of the purposes of road traffic legislation (and specifically speed limits) is to ensure safety. There is therefore significant public interest in the effective and proper enforcement of the speeding legislation.

54. Both parties hold the view that there is a strong public interest in achieving public safety through observation and enforcement of speed limits. Their disagreement is in how that public interest is best served.

- (i) The applicants believe the public interest is best served by transparency on enforcement, allowing public scrutiny of how the police enforce speed limits a particular stretch of road with respect to HGVs. In their view, this could enhance road safety on the stretch of the A75 as they believe such scrutiny would show that the speed limits are not properly enforced for HGVs.
- (ii) Police Scotland believe the proper enforcement of speed limits is best served by not disclosing information which they believe would result an increase in speeding and a concomitant effect on law enforcement.

55. The Commissioner has considered carefully all the public interest arguments she has received. She has accepted that disclosure of the information would be likely to encourage a proportion of the public to drive up to the limit at which they believe the police will take

enforcement action. The Commissioner is of the view that it is strongly in the public interest for crime to be prevented and detected, and for offenders to be apprehended, both in general and with particular respect to observation of speed limits.

56. With that in mind, on balance, the Commissioner has concluded that in all the circumstances of this case, the public interest in disclosing the withheld information is outweighed by that in maintaining the exemption in section 35(1)(a) and (b) of FOISA. Therefore, the Commissioner has concluded that Police Scotland were entitled to withhold the information in line with section 35(1)(a) and (b) of FOISA.
57. As the Commissioner is satisfied that the withheld information has been properly withheld in line with sections 35(1)(a) and (b) of FOISA, she is not required to go on to consider the application of the exemptions in section 39(1) of FOISA (which was also applied to this information by Police Scotland).
58. The Commissioner is aware that information about the speed limit enforcement policy operated by police in England and Wales is publicly available⁶, while information on this subject has not been published in Scotland. However, this does not affect her decision as to the possible harm should the information be disclosed or where the public interest lies.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland (Police Scotland) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms King and Mr Wybrew.

The Commissioner is satisfied that Police Scotland were not obliged to comply with the information request made by Ms King and Mr Wybrew, given that section 12(1) of FOISA was engaged. The Commissioner also finds that Police Scotland were entitled to withhold information under the exemptions in section 35(1)(a) and (b) of FOISA.

Appeal

Should either Ms King and Mr Wybrew or Police Scotland wish to appeal against this decision, they have the right to 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.

Rosemary Agnew
Scottish Information Commissioner

19 January 2017

⁶ http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_fixed_penalty_notices/#speed

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 –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

12 Excessive cost of compliance

- (1) Section 1(1) 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; and different amounts may be so prescribed in relation to different cases.

...

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;
- (b) the apprehension or prosecution of offenders;

...

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

Scottish Information Commissioner

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