

Decision Notice



Decision 079/2010 Mr Joe Hands and the Chief Constable of Strathclyde
Police

Unmarked police vehicles

Reference No: 200902088
Decision Date: 1 June 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr Joe Hands requested from the Chief Constable of Strathclyde Police (Strathclyde Police) details of the make and model of Police vehicles. Strathclyde Police provided the requested information relating to marked vehicles, but withheld it where it related to unmarked police vehicles, claiming that it was exempt from disclosure under sections 35(1)(a) and (b), and 39(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). These exemptions apply where disclosure would or would be likely to substantially prejudice the prevention and detection of crime, or the apprehension and prosecution of offenders, or where disclosure would or would be likely to endanger the health or the safety of any person.

Following an investigation, the Commissioner found that Strathclyde Police had dealt with Mr Hands' request for information in accordance with Part 1 of FOISA, by correctly applying the exemptions in section 35(1)(a) and (b). He did not require Strathclyde Police to take any action.

Relevant statutory provisions and other sources

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

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

Background

1. On 2 October 2009, Mr Hands wrote to Strathclyde Police requesting the following information:
 1. the number of traffic vehicles that the force currently owns;
 2. their make and model;
 3. their registration numbers or year of manufacture, and
 4. the fastest speed a traffic vehicle has had to do on the roads in the last 12 months.



2. Strathclyde Police responded on 30 October 2009, explaining that they had interpreted Mr Hands' reference to "traffic vehicles" as to mean the vehicles used to police the roads by Strathclyde Police's Road Policing Department.
3. Strathclyde Police provided the information sought in parts 1, 2 and 3 of Mr Hands' request in relation to marked vehicles only. Strathclyde Police advised Mr Hands that they considered that where it related to unmarked police vehicles, this information was exempt from disclosure in terms of sections 35(1)(a) and (b), and 39(1) of FOISA. Strathclyde Police maintained that disclosure would compromise covert tactics for the prevention and detection of crime and the apprehension and prosecution of offenders. It also maintained that disclosure would endanger the physical or mental health of individuals.
4. In relation to part 4 of his request, Strathclyde Police advised Mr Hands that the information was not held, in terms of section 17 of FOISA.
5. On 8 November 2009, Mr Hands wrote to Strathclyde Police requesting a review of their decision to withhold the information sought in parts 1, 2 and 3 of his request in relation to unmarked police vehicles.
6. Strathclyde Police notified Mr Hands of the outcome of their review on 3 December 2009. They upheld their earlier decision to withhold information relating to unmarked police vehicles in full.
7. On 7 December 2009, Mr Hands wrote to the Commissioner, stating that he was dissatisfied with the outcome of Strathclyde Police's review and applying for a decision in terms of section 47(1) of FOISA. Mr Hands disputed that the release of the withheld information would jeopardise law enforcement.
8. The application was validated by establishing that Mr Hands had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

9. On 18 December 2010, Strathclyde Police were notified in writing that an application had been received from Mr Hands and were asked to provide the Commissioner with any information withheld from Mr Hands. Strathclyde Police responded with the information requested and the case was then allocated to an investigating officer.
10. The investigating officer subsequently contacted Strathclyde Police, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Strathclyde Police were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested.



11. Strathclyde Police provided submissions on 3 February 2010 and, subsequently, in response to further questions put by the investigating officer.
12. Mr Hands provided submissions on the matters raised by this case within his application to the Commissioner. The investigating officer emailed Mr Hands on 26 February 2010, providing him with an opportunity to make further submissions from him, but nothing further was received.
13. Submissions made by both Mr Hands and Strathclyde Police are summarised where relevant below.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and all the submissions made to him by both Mr Hands and Strathclyde Police and is satisfied that no matter of relevance has been overlooked.

Information under consideration

15. The information under consideration in this case is that specified in parts 1, 2 and 3 of Mr Hands' request, where it relates to unmarked police traffic vehicles. Strathclyde Police maintain that the exemptions in sections 35(1)(a) and (b), and section 39(1) of FOISA apply to this information.

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

16. Section 35(1)(a) exempts information the disclosure of which would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's guidance on this exemption¹ 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 a specific (anticipated) crime or wider strategies for crime reduction and detection.

¹ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2678&sID=125>



17. Section 35(1)(b) exempts information the disclosure of which 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'. The Commissioner considers, however, that 'apprehension or prosecution of offenders' has a narrower scope, relating to all aspects of the process of identifying, arresting or prosecuting anyone suspected of being responsible for unlawful activity. Again, this term could refer to the apprehension and prosecution of specific offenders, or to more general techniques (such as investigative processes used, information received or guidance given) and strategies designed for these purposes.
18. Authorities seeking to rely on these exemptions need to show that disclosure would, or would be likely to, prejudice substantially the relevant activities. They should be able to demonstrate that the risk of harm being caused by disclosing the information in question is real or very likely, not simply a remote possibility. The harm caused, or likely to be caused, must be of some real and demonstrable significance, not simply marginal, and it would have to occur, or be likely to occur, in the near (certainly the foreseeable) future, rather than in some unspecified distant time. Authorities should therefore consider disclosing information unless it would (or would be likely to) cause real, actual and significant harm.
19. Strathclyde Police explained that unmarked police vehicles are utilised where it is considered that the use of covert tactics is necessary to detect or prevent crime, or the use of an unmarked vehicle is operationally the best option. They provided examples of the types of situations in which such vehicles would be likely to be deployed. Disclosure of the information requested, they argued, would reveal the identity of these vehicles and would compromise the use of such covert or operational tactics.
20. Strathclyde Police further argued that release of the withheld information would also indicate their numeric capability and capacity, both in terms of vehicle type and vehicle numbers. They maintained that the availability of this information would be useful for persons involved in criminality as they would be able to plan and conduct their activities accordingly in order to avoid being detected.
21. In his application, Mr Hands indicated that he did not believe that disclosure would jeopardise law enforcement. He noted that the identity of police vehicles would be known to garages, where members of the public were employed.
22. Mr Hands also stated that (in a telephone conversation with Strathclyde Police) it had been suggested to him that with access to the information withheld, a person would be able to track police vehicles, identifying their registration numbers through observation of police stations. He did not accept this point, noting that he had not sought the registration numbers of the vehicles concerned (Mr Hands had asked for the registration numbers or year of manufacture), but he believed that such monitoring would be possible without access to the information he had requested.



23. Strathclyde Police responded to these particular points made by Mr Hands. They noted a person closely observing the vehicles at police station would be likely to attract the attention of the police. They emphasised that they would not proactively publish details of sensitive operational equipment in the public domain where there is prejudicial harm to the Force or likely harm to police officers arising from such disclosure.
24. With respect to the availability of information to garages working on vehicles, Strathclyde Police considered this to be a necessary part of any contract with those garages. However, it noted that any disclosure of information about those vehicles to other parties would be a very serious matter.
25. The Commissioner has considered all of the points made by Strathclyde Police and Mr Hands. He recognises that there is considerable strategic and operational benefit to Strathclyde Police in the number and nature of its unmarked traffic vehicles not being generally known. He notes that unmarked vehicles play an important role in both the detection and prevention of crime, and the apprehension and prosecution of offenders, and that the role they play depends in significant part on these vehicles not being generally known as police vehicles.
26. While these vehicles may be visibly present around police offices, or in events in which police are involved, the information that can be gleaned from observation would be quite different from a list of all unmarked vehicles, including their make and model. Such disclosure would confirm Strathclyde Police's capacity with respect to unmarked vehicles, and enable informed speculation as to the identity of all of those vehicles.
27. In the circumstances, the Commissioner accepts that disclosure of this information to Mr Hands and (as a consequence) the general public would be likely to significantly undermine Strathclyde Police's ability to prevent and detect crime in situations where the use of unmarked vehicles is beneficial.
28. The Commissioner has therefore concluded that disclosure of the information withheld would, or would be likely to, prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders.
29. The Commissioner has therefore concluded that Strathclyde Police were justified in applying the exemptions in sections 35(1)(a) and (b) of FOISA to the withheld information.
30. Section 35(1)(a) and (b) of FOISA are both qualified exemptions, which means that their application is subject to the public interest test set out in section 2(1)(b) of FOISA. Therefore, having decided that the information is exempt under section 35(1)(a) and (b), the Commissioner must go on to consider whether, in all circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.



Public interest test

31. Mr Hands did not respond to an invitation to provide submissions on the public interest to inform the Commissioner's consideration of this case. However, in his application, he submitted that the withheld information should be made available publicly because of what he described as the "complete waste of public money on flash police vehicles".
32. Strathclyde Police identified some factors which favoured disclosure, including the proportional allocation of their budget to traffic vehicles. In terms of the accountability of budgets and of the Chief Constable, Strathclyde Police also noted that there are other, existing processes for ensuring these factors.
33. However, they identified several factors which favoured the withholding of the information. These included the usefulness of the information for persons involved in criminality. They maintained that disclosure would enable such persons to circumvent policing including road safety legislation, and would give individuals determined to break the law an unfair advantage in terms of planning activities to avoid detection, by identification of police vehicles.
34. Strathclyde Police added that the identification of the police vehicles in question would run the risk of retribution against the police, which would reduce the capabilities of the force in terms of public protection, and crime detection or prevention. This could not be in the public interest, they concluded.
35. The Commissioner has determined that there is some degree of public interest in disclosure of the withheld information, in that it would allow some insight into the level of expenditure of public money on traffic vehicles. However, he considers there is a greater public interest in maintaining the operational effectiveness of Strathclyde Police's unmarked police vehicles. Having accepted that disclosure would be harmful to that effectiveness, he has concluded that the public interest in favour of maintaining the exemptions in section 35(1)(a) and (b) outweighs that in favour of disclosure of the withheld information in this case.
36. The Commissioner has therefore concluded that Strathclyde Police were correct to withhold the information under the exemptions in section 35(1)(a) and (b) of FOISA. He notes that, as a result, it is not necessary to consider the exemption in section 39(1) of FOISA which was also cited by Strathclyde Police.



DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Hands.

Appeal

Should either Mr Hands or Strathclyde Police 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 made within 42 days after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
1 June 2010



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.

...

- (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 –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

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;

...