



Scottish Information  
Commissioner

**Decision 136/2006 – Ms Sandra Uttley and the  
Chief Constable of Central Scotland Police**

*Request for information held by the Chief Constable of Central  
Scotland Police in relation to the incident at Dunblane Primary  
School on 13 March 1996*

**Applicant: Ms Sandra Uttley  
Authority: Central Scotland Police  
Case No: 200600549  
Decision Date: 17 July 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 136/2006 – Ms Sandra Uttley and Chief Constable of Central Scotland Police**

### ***Request for information held by the Chief Constable of Central Scotland Police in relation to the incident at Dunblane Primary School on 13 March 1996 – withheld on the basis of section 38 – personal information***

#### **Facts**

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Ms Uttley submitted three separate but related requests for information to the Chief Constable of Central Scotland Police (the Police) in relation to the investigation carried out by the Police into the incident at Dunblane Primary School on 13 March 1996, when 16 pupils and a teacher were killed by Thomas Hamilton. The subject of these three requests by Ms Uttley is a statement given by a member of the public about a car which was seen on the morning of the shootings.

This decision notice considers the second and third of the three requests which were submitted by Ms Uttley. These are:

- A request for a copy of all the documents pertaining to the action raised to trace and interview the person driving the car mentioned in the witness statement.
- A copy of a statement taken during the re-interview of the witness in question.

The Police provided some information to Ms Uttley, but withheld other information on the basis that the information is exempt in terms of section 38(1)(b) of FOISA (read in conjunction with section 38(2)(a)(i) of FOISA, i.e. that release of this information would breach the data protection principles contained in the Data Protection Act 1998 (the DPA)). The decision was upheld by the Police on review and Ms Uttley applied to the Commissioner for a decision.

#### **Outcome**

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The Commissioner found that the Police failed to comply with Part 1 of FOISA in responding to Ms Uttley's second information request.



He found that the Police failed to comply with Part 1 of FOISA in not responding to Ms Uttley's request for a review of her second information request within the 20 working days laid down in section 21 of FOISA. He requires the Police to consider Ms Uttley's second information request again and either provide Ms Uttley with the information that she has requested, or give notice in terms of section 16 (refusal of request) or section 17 (notice that information is not held) of FOISA (as appropriate), within 45 days of receipt of this decision notice.

The Commissioner found that the Police complied with Part 1 of FOISA in withholding information in relation to Ms Uttley's third information request. The exemption under section 38 of FOISA was relied on correctly by the Police and, as a result, section 1(1) was applied correctly.

## **Appeal**

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Should either Ms Uttley or the 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 of receipt of this notice.

## **Background**

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1. Ms Uttley has made a large number of separate requests to the Police for information held by them relating to the incident at Dunblane Primary School on 13 March 1996. As mentioned above, Ms Uttley made three separate but related requests for information relating to a witness statement about a car which had been seen on the morning of the incident. The second and third of these requests are being considered in this decision notice, although reference is also made to Ms Uttley's first request.

### **Identity of the driver of a vehicle**

2. On 20 October 2005, Ms Uttley asked the Police what enquiries were made by them to try and ascertain the name of the driver of a grey saloon car, and whether the driver's identity was established.



3. The Police responded to Ms Uttley on 17 November 2006. The Police provided some information to Ms Uttley, by explaining what action was taken to trace and interview the person driving the car. The Police also summarised the information contained in a witness statement in an effort to address Ms Uttley's request for information.
4. Ms Uttley did not submit any request for a review to the Police in relation to their response to this request.
5. This information request is therefore not being considered as part of this investigation.

#### **Action to trace and interview the person driving the car**

6. On 19 December 2005, Ms Uttley asked the Police for a copy of all the documents pertaining to the action raised to trace and interview the person driving the car mentioned in the witness statement.
7. The Police replied on 20 January 2006. The Police sought to provide some information to Ms Uttley, by way of an explanation of what actions were taken by the Police in terms of trying to trace the driver of the car. The Police also provided Ms Uttley with quotes taken from the witness statement of the witness Ms Uttley had referred to in order to outline how the identity of the driver of the car was established. The Police did not supply Ms Uttley with copies of any documents.
8. Ms Uttley was dissatisfied with the response from the Police and, on 20 January 2006, asked the Police to review their original decision. Ms Uttley re-iterated in her request for a review that she had been told by the person who had responded to her request that a trace was done to establish who the driver of the car was, and as such she was seeking a copy of the documents concerned.
9. The Police issued a review decision on 6 March 2006, upholding their original decision.

#### **Copy of statement taken during the re-interview of a witness**

10. On 20 January 2006, the day on which Ms Uttley asked the Police to review their second request, Ms Uttley asked the Police for a copy of a statement taken during the re-interview of a named witness.
11. The Police replied to Ms Uttley on 16 February 2006 and withheld the information from Ms Uttley on the basis of section 38(1)(b) (read in conjunction with section 38(2)(a)(i)) of FOISA.
12. Ms Uttley was dissatisfied with the response from the Police and asked the Police to review its decision on 17 February 2006.



13. The Police issued their review decision on 6 March 2006. The Police upheld their decision to withhold the information from Ms Uttley under section 38 of FOISA on the basis that the information is personal data and that release of the information would breach the data protection principles.
14. On 14 March 2006, I received an application from Ms Uttley for a decision on the two information requests that she had made to the Police. The cases were subsequently allocated to an investigating officer within my Office.

## **The Investigation**

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15. Ms Uttley's appeals were validated by establishing that she had made valid information requests to a Scottish public authority under FOISA (i.e. the Police) and had appealed to me only after requesting that the Police review their decisions.
16. Both of these information requests will be considered in this one decision notice.
17. A letter was sent by the investigating officer to the Police on 21 March 2006, asking for their comments on Ms Uttley's applications in terms of section 49(3) of FOISA. The Police were asked to provide:
  - A copy of the information withheld from Ms Uttley.
  - An explanation as to why this information was not disclosed by the Police to Ms Uttley.
  - An analysis of any exemptions relied upon under FOISA by the Police in not disclosing the information to Ms Uttley and an explanation of why the exemptions were relevant to the information withheld.
  - An analysis of the public interest test if applicable.
18. A full response was received from the Police on 12 April 2006.

## **Submissions from the Police**

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19. In its submissions, the Police cited the exemption under section 38(1)(b) of FOISA to justify withholding information from Ms Uttley.



20. I will consider the Police's reasoning for relying on this exemption further in the section on Analysis and Findings below.
21. In their submissions, the Police indicated that in their responses to Ms Uttley they sought to assist her by providing her with information without compromising the data protection principles.

## **The Commissioner's Analysis and Findings**

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22. Ms Uttley made three separate but related requests for information to the Police concerning the incident that occurred on the 13 March 1996 at Dunblane Primary School. Ms Uttley's requests followed on from her reading of witness statements about the movements of Thomas Hamilton on 13 March 1996. As has been indicated previously, only two of these information requests are considered in this decision notice.
23. During the investigation, the Police provided copies of information which they withheld from Ms Uttley in respect of her requests for information. The Police have also provided an explanation of the exemption that they are relying on in not disclosing this information to Ms Uttley.
24. The Police provided my Office with copies of witness statements which were taken from civilian witnesses in relation to the movements of Thomas Hamilton prior to the incident at Dunblane Primary School on 13 March 1996. The Police relied on the exemption in section 38(1)(b) for withholding the information.
25. The exemption under section 38 relates to personal information. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i), exempts information if it constitutes personal data, the disclosure of which to a member of the public would contravene any of the data protection principles. This particular exemption is an absolute exemption and where a public authority considers that information falls within the scope of this exemption, it is not required to consider the public interest in the disclosure or release of the information.

### **Ms Uttley's second request for information**

26. In her second information request, Ms Uttley asked the Police to provide her with all of the documents pertaining to the action raised to trace and interview the person driving the car mentioned in a named person's witness statement.



27. In their response to Ms Uttley, the Police sought to answer Ms Uttley's question by providing an explanation of the actions that they took to trace and interview the person driving the car. The Police also provided Ms Uttley with quotes taken from a witness statement. This witness statement was taken from a witness who the Police re-interviewed as part of their actions to trace the driver of the grey saloon car.
28. In Ms Uttley's request for information, she clearly stipulates that she is seeking access to all of the documents pertaining to the action raised to trace and interview the person driving the grey saloon car. I am not satisfied that the response from the Police has adequately addressed her request.
29. In their response to Ms Uttley, the Police do indicate that a witness was re-interviewed. However, they do not indicate whether the statement which was taken at this re-interview is being withheld from Ms Uttley. Also, the Police do not indicate whether there are any other documents which relate to the action to trace and interview the person driving the grey saloon car, nor do they cite any exemptions in relation to this information or why the necessary documents are not being provided to Ms Uttley in response to her request.
30. As mentioned earlier, Ms Uttley submitted a request for a review to the Police on 20 January 2006, in respect of their response to her request for information and the Police provided a response to Ms Uttley's request for a review on 6 March 2006.
31. I am not satisfied with the responses that the Police have provided to Ms Uttley in respect of her request for information. I am not satisfied that the Police have properly addressed Ms Uttley's request, as the response did not advise Ms Uttley whether the Police were withholding any documents from her and further what, if any, exemptions they were relying upon. In addition, in their response to Ms Uttley's request for review, the Police did not indicate what exemption under FOISA they are relying upon in not releasing the information to Ms Uttley.
32. I am not satisfied that the Police have complied with Part 1 of FOISA in responding to Ms Uttley's request. I therefore require the Police to go back and look at Ms Uttley's request again and respond to it, either by providing Ms Uttley with the information that she is seeking or by providing a notice under section 16 (refusal of request) or section 17 (notice that information is not held) (as appropriate) under FOISA.

### **The application of section 38 (1)(b) – personal information**

33. In the third information request submitted by Ms Uttley on this matter, Ms Uttley requested a copy of the statement taken at the re-interview of a particular witness, whom she names in her request to the Police.



34. In their response to Ms Uttley, the Police relied on the exemption in section 38(1)(b) (read in conjunction with section 38(2)(a)(i)) of FOISA for withholding this statement from her.
35. As has been explained previously, this exemption is an absolute exemption.
36. In order to rely on this exemption, the Police would have to show that the information which has been requested is personal data for the purposes of the DPA, and that disclosure of the information to a member of the public would contravene any of the data protection principles.
37. In this case, the Police have argued that release of the information contained in the witness statement of a particular witness would breach the first data protection principle. The Police argue that the processing of the information would be unfair. The first data protection principle states that the processing of data must be fair and lawful and, in particular, that information shall not be processed unless at least one of the conditions in Schedule 2 is met.
38. It should be noted that the first data protection principle also states that, in the case of sensitive personal data, at least one of the conditions in Schedule 3 of the DPA must be met. Having considered the definition of sensitive personal data in section 2 of the DPA, I am satisfied that the personal data in question is not sensitive personal data. Therefore I am not required to consider whether any of the conditions in Schedule 3 can be met.
39. In justifying their reliance on the exemption under section 38(1)(b) (read in conjunction with section 38(2)(a)(i)) in relation to Ms Uttley's third request, the Police have asserted that the identity of this particular witness was not disclosed at the Public Inquiry into the Dunblane shooting.
40. The witness statement also contains personal data about a third party.
41. In considering the application of the exemption, I first have to establish whether the information which has been withheld by the Police is personal data as defined in section 1(1) of the DPA.
42. Section 1(1) of the DPA defines personal data as "data which relate to a living individual who can be identified –
  - (a) from those data, or
  - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual".





43. If I am satisfied that the information which is being withheld from Ms Uttley in terms of the witness statement is personal data, as defined in section 1(1) of the DPA, I am then required to consider whether release of this information would breach any of the principles in the DPA.
44. I also have to bear in mind the effect that the Court of Appeal case of *Durant v Financial Services Authority* [2003] EWCA 1746 had on the interpretation of the definition of personal data under section 1(1) of the DPA. This case highlighted that for information to be personal information it must relate to an individual, be biographical in respect of the individual concerned to a significant extent and must have that individual at its focus – in short it must affect the individual's privacy.
45. In considering the information that has been withheld from Ms Uttley, I am satisfied that the information which is contained within the witness statement would constitute the personal data of the civilian witness who provided the Police with this statement and of the third party mentioned in the statement. I am satisfied that the information in this statement does contain information which is biographical about the witness and the third party, and which would lead to the identification of the witness and the third party. I am also satisfied that the witness and the third party are the focus of the information and therefore that this information comes within the definition laid down in section 1(1) of the DPA.
46. As I am satisfied that the information contained in the witness statement is personal data, I now have to go on to consider whether release of this information would breach any of the data protection principles. As mentioned previously, the Police have argued that release of the information would contravene the first data protection principle.
47. In determining whether release of the information contained in the witness statement would breach the first principle of the DPA, I have taken into account the conditions set out in Schedule 2 of the DPA. I have also taken into consideration the submissions that have been made by the Police. I accept the submission from the Police that the witness and third party have not given their consent to their personal data being processed.



48. I also accept the submissions from the Police that release of this information would lead to identification of the witness and the third party concerned. I am satisfied, that where the witness concerned would have an expectation that any statement that they provided to the Police would be used in any investigation carried out into the incident at Dunblane Primary School on 13 March 1996, the witness would not have an expectation that the statement given may be released as part of a response to an FOI request. I am also satisfied that the third party would not have an expectation that information about them would be released. I am satisfied, therefore, that release of this information under FOISA would amount to unfair processing. I am therefore satisfied that the exemption under section 38(1)(b) would apply to this information.

## **Decision**

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I find that the Chief Constable of Central Scotland Police (the Police) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Ms Uttley's second information request.

I find that the Police failed to comply with Part 1 of FOISA in not responding to Ms Uttley's request for a review of her second information request within the 20 working days laid down in section 21 of FOISA. I require the Police to consider Ms Uttley's second information request again and either provide Ms Uttley with the information that she has requested, or give notice in terms of section 16 (refusal of request) or section 17 (notice that information is not held) of FOISA (as appropriate), within 45 days of receipt of this decision notice.

I find that the Police complied with Part 1 of FOISA in withholding information in relation to Ms Uttley's third information request. The exemption under section 38 of FOISA was relied on correctly by the Police and, as a result, section 1(1) was applied correctly.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**17 July 2006**