

Decision Notice

Decision 143/2017: Mr X and the Chief Constable of the Police Service of Scotland

Operational policing procedures for specified football fixtures

Reference No: 201700818

Decision Date: 4 September 2017



Scottish Information
Commissioner

Summary

Police Scotland were asked for operational policing procedures for specified SPFL football fixtures.

Police Scotland refused, withholding information under several exemptions, but later (during the investigation) disclosed redacted versions of the operational orders for all the matches. Some information remained withheld for law enforcement reasons.

The Commissioner found that Police Scotland should have disclosed the redacted operational orders in responding to the request or the requirement for review, although she was satisfied that Police Scotland had correctly withheld the remaining information.

Relevant statutory provisions

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

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 22 February 2017, Mr X made a request for information to the Chief Constable of the Police Service of Scotland (Police Scotland), in which he asked for Operational Matchday Procedures for the following Scottish Premier Football League (SPFL) matches:
 - (i) Saturday 4 February - Rangers v Ross County
 - (ii) Sunday 5 February - St Johnstone v Celtic
 - (iii) Sat 18 February - Celtic v Motherwell
 - (iv) Sat 18 February – Partick Thistle v Hamilton
2. Police Scotland asked Mr X for clarification (2 March 2017), explaining that other than for the St Johnstone game, the information was not held in report format. Mr X was asked by Police Scotland to describe the specific information he was looking for.
3. On 3 March 2015, Mr X provided his clarification to Police Scotland. He explained that he wanted the policing instructions for the games specified, in whatever format they came, including the report for the St Johnstone game.
4. Police Scotland responded on 21 March 2017, withholding all the information requested. Police Scotland cited section 35(1)(a) and (b) (Law enforcement) which relate respectively to the prevention or detection of crime and the apprehension or prosecution of offenders. Police Scotland also withheld information under section 39(1) of FOISA (Health, safety and

the environment) as they believed disclosure would, or would be likely to, endanger the physical health or safety of an individual.

5. On 28 March 2017, Mr X wrote to Police Scotland, requesting a review of its decision. He contended that sharing the information for past games would not jeopardise Police Scotland's ability to manage future ones, given that football matches were policed on an individual basis, taking into account different factors. Given what he believed was a very subjective focus by Police Scotland on groups intent on causing disorder, he also challenged the assessment of where the public interest lay in this case, noting the level of importance he attached to public understanding of how these matches were policed.
6. Police Scotland notified Mr X of the outcome of their review on 25 April 2017. They upheld their original response without modification.
7. On 9 May 2017, Mr X wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr X stated he was dissatisfied with the outcome of Police Scotland's review, because he did not accept that disclosure of the information he sought would cause the type and level of harm identified by Police Scotland. He highlighted what he considered to be the public interest in disclosure.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Mr X made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
9. On 18 May 2017, Police Scotland were notified in writing that Mr X had made a valid application. They were asked to send the Commissioner the information withheld from Mr X. 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, focusing on the exemptions applied by Police Scotland.
11. During the investigation, Police Scotland reconsidered the withheld information and disclosed redacted versions of the four operational orders to Mr X. Mr X confirmed he was not interested in the names of individual officers or direct dial telephone numbers, so the Commissioner need not consider the information withheld under those exemptions. Mr X stated that he wished to obtain the remaining information withheld under sections 35 and 39 of FOISA.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the information still withheld from Mr X. She has also considered the relevant submissions, or parts of submissions, made to her by both Mr X and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

Disclosed information

13. As noted above, Police Scotland initially withheld all the information caught by the request but, during this investigation, changed its position and disclosed redacted versions of four documents (known as “operational orders”) to Mr X. It did not explain why the information could be disclosed during the investigation but could not be disclosed at the time of Mr X’s information request or his requirement for review.
14. Without such an explanation, the Commissioner must conclude that Police Scotland was not entitled to withhold the information disclosed during the investigation. In doing so, the Council failed to comply fully with section 1(1) of FOISA.

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

15. Police Scotland continued to rely on the exemptions in section 35(1)(a) and (b) of FOISA to withhold the redacted information in the four documents.
16. Section 35(1)(a) exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime, while section 35(1)(b) provides exemption where disclosure would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders. As the Commissioner’s guidance on these exemptions¹ states, the term “prevention of detection of crime” is wide ranging. It encompasses 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.
17. 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”. She considers 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).
18. 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.
19. The exemptions in section 35(1) are also subject to the public interest test in section 2(1)(b) of FOISA.
20. Police Scotland submitted that the withheld information provided insight into the number of police officers who would be in attendance, as well as specific detail as to when, where and how they would be deployed. Police Scotland recognised that it is widely known, and indeed expected, that police officers will be deployed inside and around stadiums on match days, in the hours leading up to and following a match: this, they submitted, reflects a main strategic priority of maximising public safety and minimising disorder.
21. Police Scotland considered this visible police presence to provide a deterrent effect, detailing how this was achieved and describing the effect on potential offenders of its methods. Police Scotland also emphasised the importance of maintaining a tactical advantage through this

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section35/Section35.aspx>

deterrent effect. It believed this advantage would not be maintained if it disclosed the number of officers, how they would be deployed or when.

22. Police Scotland stated that “any tactical advantage provided to criminals substantially prejudices the ability of Police Scotland to detect offences.” By extension, their ability to apprehend offenders would be substantially diminished.
23. In his review request to Police Scotland, Mr X did not accept Police Scotland’s reasons for withholding the information. In his application, Mr X said he did not believe that sharing policing instructions for a past game would jeopardise Police Scotland’s ability to manage future games. The response to his request appeared, in his view, to focus too much on groups intent on causing disorder or crime. He felt this was a subjective interpretation of football fans by Police Scotland and that it was not, in his view, backed up by facts. He submitted that “it is disputable whether there are organised groups who attend football matches with the explicit intent to cause disorder”. Mr X submitted that this would render the exemptions claimed by Police Scotland void.
24. Mr X identified a wider public interest in releasing information on how past matches were policed, although he accepted that it would not be appropriate to obtain future plans under FOISA.
25. The investigating officer asked Police Scotland what consideration it had given to the timing of the request, given that the matches had already taken place when Mr X submitted his request. Police Scotland confirmed it did take timing into account but that it made a distinction between operational planning for “one off” events and those matches which will be repeated (requiring a police response on each occasion.)
26. Police Scotland stated that the level of resource allocated to a particular football match would always be intelligence led. In the event that a particular risk was identified, resource levels and/or the range of tactical options available to police officers in attendance would be adjusted to suit. On the other hand, many factors (such as locations, the nature of the support and particular rivalries between clubs) would remain the same, and learning from previous matches would have a direct influence on the planning of subsequent ones.
27. Police Scotland also argued that there was still ample evidence of the risk of criminal behaviour at football matches, highlighting the importance of the deterrent effect of a police presence and of maintaining a tactical advantage if such behaviour was to not manifest itself. They emphasised, with reference to examples, that football was not immune from the ongoing terrorist threat.
28. The Commissioner has considered carefully all of Police Scotland’s and Mr X’s submissions, as well as the information still withheld under these exemptions. She acknowledges that the matches had taken place at the time Mr X submitted his request. He has not asked for a whole [complete] series of matches, and he has not asked for data involving future matches. The matches in question were all played in February 2017, just before the request was submitted. The Commissioner notes that the date of the request is within three weeks of all of the matches taking place, so the information being sought is by no means in the distant past and is virtually contemporaneous with the request.
29. The Commissioner has also considered the issues arising from the way in which the information itself is structured and the fact that the request is for a small group of matches. In the Commissioner’s view, the redacted passages of text, if disclosed, would allow numbers of officers and patterns of deployment to become public knowledge. These would

clearly be of relevance to the policing of the relevant grounds and the surrounding areas for future fixtures. While other factors will become relevant from time to time, it is not unreasonable to presume that there will be a norm for the challenges presented for policing a particular fixture in a particular place.

30. The withheld passages of text also enable anyone to make comparisons between the four matches. If, as Mr X appears to suggest, he wishes to assess how the resources have been allocated at each match, and presumably how proportionate that use of resources is in the circumstances, this is exactly the information required. Disclosure would not just be to him, however. It is to the public at large, which must (inevitably) include those intent on committing crime or otherwise causing harm at or in the vicinity of football matches. The risks of such harm may not be the same as they were in the 1970s, as Mr X has submitted, but the Commissioner is satisfied from Police Scotland's submissions that they still exist.
31. From the submissions she has received, the Commissioner is satisfied that disclosure of the remaining withheld information would enable the public to establish patterns of deployment and resourcing emerging which would be of relevance to future similar fixtures, and thus identify where any potential weaknesses in the police deterrent may be. There is no means the Commissioner can see of providing any of the remaining withheld information without divulging something of future value relating to the strategies and operational considerations involved.
32. The Commissioner is satisfied in the circumstances that the likely effects of disclosure are correctly stated by Police Scotland here. She is satisfied that the disclosure of this withheld information would remove, or at least seriously compromise, any tactical advantage Police Scotland presently has in dealing with criminality at comparable events. This would, in the Commissioner's view, be at least likely to prejudice substantially both the prevention and detection of crime and the apprehension and prosecution of offenders.

The public interest test

33. As the Commissioner has found that the exemptions in section 35(1)(a) and (b) were correctly applied to the withheld information, she is required to consider the public interest test in section 2(1)(b) of FOISA. She has therefore considered whether, in all the circumstances of the case, the public interest in disclosing the withheld information would be outweighed by that in maintaining the exemptions.
34. Police Scotland recognised a public interest in public awareness and debate on this issue. It accepted that disclosure of the withheld information would better inform the public of the approach taken to policing football matches, in terms of the factors taken into account as part of the planning process and the resulting resource levels or particular arrangements put in place.
35. Police Scotland also noted the importance of accountability for public finances. It acknowledged that it is widely known that football clubs pay a contribution towards the policing of each individual match and that these figures, specific to each match, are routinely disclosed in response to information requests. Police Scotland stated that these figures represent a recharge for policing inside the stadium only and recognised an argument that the public have a right to information showing any other financial impact on Police Scotland.
36. In support of withholding the information, Police Scotland commented on the efficient and effective conduct of the service. It submitted that disclosure of the withheld information would serve to undermine its ability to prevent and detect offences at matches and

apprehend any offenders. Police Scotland identified a significant public interest in ensuring it is as efficient and effective as possible, in pursuance of its duty to prevent and detect crime. This, it submitted, extended to ensuring every tactical advantage possible. Police Scotland reiterated that although the public were aware that officers would be deployed to football matches, they were unaware of the specific details of those deployments and the resource levels particular matches would engage.

37. When balancing the arguments set out above, Police Scotland gave some weight to its statutory duty to prevent and detect crime. It argued that it is essential that any information which could encourage or facilitate offending behaviour is not disclosed. On one hand, there were benefits if the public were better informed of police deployments in their communities but, on the other hand, Police Scotland had to ensure that offenders are not privy to information which could influence their behaviour to the extent that crime and disorder increases or that the chances of being detected and apprehended are reduced.
38. On balance, Police Scotland concluded that the public awareness arguments favouring disclosure are outweighed here by the need to prevent and detect crime and the apprehend offenders.
39. In Mr X's view, there was strong enough public interest here to warrant disclosure of the information under FOISA, to promote transparency and trust. He submitted that Police Scotland should have given more weight to the arguments favouring disclosure. He remained of this view after information was disclosed to him during the investigation. Although he accepted that there may be arguments for withholding intelligence information, he remained of the view that the public interest here was best served by disclosing resourcing information, to give a clearer picture of police priorities in policing football matches.
40. As indicated above, Police Scotland and Mr X clearly differ on the risks of disruption and behaviour likely to cause harm at and around football matches. The Commissioner has previously accepted that organised groups and criminal elements operate in that environment, although the nature of the risks may have changed over the years. In *Decision 071/2008 Mr S and Strathclyde Police*², for example, the Commissioner noted that football violence might be declining, but also accepted police arguments to the effect that a number of active groups of hooligans remained, continued to work in certain ways and were capable of using – and likely to use – information on police organisation and planning to their advantage.
41. Based on all the submissions here, the Commissioner accepts that hooligan and criminal elements continue to target football matches and that this cannot be said to be a thing of the past. The “severe” security threat level noted by Police Scotland must also be factored into the equation at present. It is evident that the policing of football matches is based on current assessed risk and not simply on historical precedent. That assessment will take account of individual factors particular to each fixture, but clearly there will also be a number of recurring factors which carry similar weight when preparing for similar fixtures. As discussed above, the relevance of the withheld information to future fixtures cannot readily be discounted. All of these factors weigh heavily in favour of maintaining the exemptions, in the interests of effective policing and, by extension, protecting the public.

² <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2008/200700484.aspx>

42. Clearly, there is also a public interest in being assured that the policing of events of this kind is being resourced effectively and efficiently. To some extent, that public interest is met by the visible police presence. The information disclosed during the investigation contributes further to that public interest – and, as noted above, that disclosure should have been made in response to Mr X’s request or his requirement for review. As noted above, however, the effective and efficient use of police resources will not necessarily demand transparency – other factors may well be relevant and, if they are (as identified in the preceding paragraphs, for example), will need to be taken into account in the balancing exercise.
43. Having balanced the public interest for and against disclosure, the Commissioner has concluded that the arguments against disclosure should prevail in this particular case. The information under consideration is detailed planning and deployment information which she is satisfied is likely to be of future relevance. In the circumstances, she is satisfied that the public interest in disclosing the information is outweighed by that in maintaining the exemptions in section 35(1)(a) and (b) of FOISA.
44. Consequently, the Commissioner finds that Police Scotland were entitled to withhold the remaining withheld information under these exemptions. Having reached this conclusion, she is not required to consider Police Scotland’s application of the exemption in section 39(1).

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Chief Constable of the Police Service of Scotland (Police Scotland) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr X.

The Commissioner finds that Police Scotland correctly applied the exemptions in section 35(1)(a) and (b) of FOISA to some information, and in so doing it complied with Part 1.

However, the Commissioner also finds that Police Scotland failed to comply with Part 1 (and in particular section 1(1)) by not disclosing the remaining information earlier, at the time of responding to the request or the requirement for review.

Appeal

Should either Mr X 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.

Margaret Keyse
Acting Scottish Information Commissioner
4 September 2017

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.

...

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;

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info