

Decision Notice



Decision 146/2008 Alan and Joyce Beasley and Chief Constable of
Strathclyde Police

Investigation of fatal road collision and subsequent complaint

Reference No: 200800513
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Scottish Information Commissioner

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Summary

Mr and Mrs Beasley requested from the Chief Constable of Strathclyde Police (Strathclyde Police) information relating to the investigations of the road collision which had led to their son's death and their subsequent complaint against the police. Strathclyde Police responded by stating that some of the information requested was exempt under various sections of FOISA while the remainder was not held. Following a review, in which Strathclyde Police upheld their original decision substantially without amendment, Mr and Mrs Beasley remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Strathclyde Police had generally dealt with Mr and Mrs Beasley's requests for information in accordance with Part 1 of FOISA. However, he did not consider them to have acted in accordance with Part 1 in describing certain information as not held (although he went on to accept that the information in question was properly withheld under section 34 of FOISA).

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(6) (General entitlement); 2(1)(a) (Effect of exemptions); 17(1) (Notice that information is not held); 34(1)(a)(i) and (b) (Investigations by Scottish public authorities and proceedings arising out of such investigations); 35(1)(g) and (2)(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 16 July 2007, Mr and Mrs Beasley wrote to Strathclyde Police requesting the following information relating to the road collision on the A841 road on the Isle of Arran at 15:30 on 29 July 2003, which had led to the death of their son, Samuel Beasley:
 - (a) The initial Death Report submitted by Strathclyde Police to the Procurator Fiscal
 - (b) The Standard Production Release Note submitted by Strathclyde Police to the Procurator Fiscal



- (c) A copy of the documentation received by Strathclyde Police from the Procurator Fiscal authorising the release of a particular vehicle involved in the collision
 - (d) The Crash Investigators' report submitted to the Procurator Fiscal
 - (e) The Police Report into the investigation submitted to the Procurator Fiscal
 - (f) The investigating officer's formal misconduct complaint investigation report into Mr and Mrs Beasley's complaint against Strathclyde Police officers.
2. Strathclyde Police responded on 14 and 24 August 2007. In their responses Strathclyde Police informed Mr and Mrs Beasley they did not hold the information in respect of a number of Mr and Mrs Beasley's requests and applied sections 34, 35, 38 and 39 of FOISA (in various combinations) to withhold the information covered by their remaining requests.
 3. On 12 September 2007, Mr and Mrs Beasley wrote to Strathclyde Police requesting a review of its decision. In particular, Mr and Mrs Beasley raised concerns about Strathclyde Police's responses to requests (b), (d), (e) and (f). In respect of requests (b) and (e) Mr and Mrs Beasley were not satisfied that the information in question was not held, citing reasons why they believed it should be. In respect of request (d) and (f) they were not satisfied that Strathclyde Police had applied the public interest test appropriately.
 4. Strathclyde Police notified Mr and Mrs Beasley of the outcome of its review on 12 October 2007. In respect of requests (a), (b), (c), (e) and (f) Strathclyde Police upheld their original decision without amendment. In respect of request (d) Strathclyde Police upheld their original decision but also applied section 38(1)(b) of FOISA to the information withheld. They also attempted to provide further explanation in response to points raised by Mr and Mrs Beasley.
 5. On 8 April 2008, Mr and Mrs Beasley wrote to the Commissioner's Office, stating that they were dissatisfied with the outcome of Strathclyde Police's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
 6. The application was validated by establishing that Mr and Mrs Beasley 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

7. On 2 May 2008, Strathclyde Police were notified in writing that an application had been received from Mr and Mrs Beasley and asked to provide the Commissioner with any information withheld from the applicant. Strathclyde Police responded with the information requested and the case was then allocated to an investigating officer.



8. 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.
9. The Commissioner's remit is limited to requests (b), (d), (e) and (f), which formed the basis of Mr and Mrs Beasley's request for a review. The information covered by the remaining requests has, however, been considered in the course of the investigation, given its relationship to that covered by the requests listed (see the Commissioner's analysis and findings below).

Commissioner's analysis and findings

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

Background

11. As indicated above, Mr and Mrs Beasley's son was killed in the road collision to which their application relates. The driver of the car involved in the collision was subsequently charged with and found guilty of careless driving. Following the Sheriff Court judgement, Mr and Mrs Beasley made a complaint about the way in which the incident had been investigated by Strathclyde Police. Their request sought information relating to the incident and the subsequent complaint. The complaint led to an internal investigation into the matter by Strathclyde Police. Mr and Mrs Beasley then made a further complaint to Her Majesty's Inspectorate of Constabulary. The report on the Inspectorate's review of the case formed the basis of the Commissioner's decision *067/2008 Mr David Goldberg and Her Majesty's Inspectorate of Constabulary*.
12. Strathclyde Police provided a brief summary of the events in this case. They explained that matters were first reported to the Procurator Fiscal by Strathclyde Police in the relevant Report of Sudden Death. This was closely followed by subsequent information contained in the statements provided by the Road Traffic Department's Crash Investigators and in total this was the "report" of the initial circumstances surrounding the death of Samuel Beasley.
13. Subsequent to this, Strathclyde Police advised, Mr and Mrs Beasley complained to them about the circumstances surrounding the initial police actions at the incident and the then Assistant Chief Constable Operations charged the Divisional Commander with examining the management of the incident. This had been followed by a formal misconduct investigation, the report of the investigating officer in which was the subject of Mr and Mrs Beasley's request (f).



Request (b) – The Standard Production Release Note submitted by Strathclyde Police to the Procurator Fiscal

14. In response to this request, Strathclyde Police provided notice that they did not hold the information in terms of section 17 of FOISA. By way of explanation Strathclyde Police stated that a “production release note” was part of the production schedule (a case related document submitted to the Procurator Fiscal along with the standard police report). As there was no police report in this instance, it followed that there was no production schedule and therefore no “production release note” pertaining to this case. In their request for review, Mr and Mrs Beasley pointed out that that in terms of the Lord Advocate’s Guidelines 2002 (referred to in the ACPOS Road Death Investigation Manual) a standard production release note should be included as part of the sudden death report, which had been submitted to the Procurator Fiscal in this case (and therefore should be held by Strathclyde Police).
15. Within their submissions to the Commissioner’s Office, Strathclyde Police reiterated that they did not hold this document. They submitted that checks of the relevant records and the reporting officer had failed to identify any reference to a “standard production release note” or any documentation from the Procurator Fiscal authorising the release of the vehicle.
16. Strathclyde Police acknowledged that there were certain unusual aspects to this case. They noted that no standard police report was submitted to the Procurator Fiscal: all relevant records had been searched for one without success. Having liaised with the attending officers, Strathclyde Police explained that in some circumstances, following a fatal road crash, the sudden death report would be sent to the Procurator Fiscal along with all relevant witness statements. The Procurator Fiscal thereafter could make a decision to prosecute and might or might not ask for a police report in retrospect. In this instance, no police report was requested and therefore none was compiled. There being no police report written, there was also no production schedule and no production release note: this had been confirmed verbally by the reporting officer.
17. Strathclyde Police submitted that the Procurator Fiscal would have been aware of the productions in this case through the content of the statements and the sudden death report. They also advised that the most common way for a vehicle to be released was via a telephone call from the Procurator Fiscal. Noting in this case that the production book recorded the vehicle’s release being authorised by a particular police officer (as the individual concerned had confirmed verbally, confirming also that he had the Procurator Fiscal’s verbal authorisation for this), they suggested that confirmation of the relevant verbal authorisation might be held by or be obtainable from the Procurator Fiscal’s office.



18. Strathclyde Police acknowledged that according to the ACPOS Road Death Investigation Manual, a production schedule should accompany a sudden death report. They went on to explain, however, that while the publication of the Manual was scheduled for July 2003 a more specific publication date could not be identified. Strathclyde Police noted that their Sudden Death SOP (Standard Operating Procedure) contained the same requirement, but that this did not exist at the time of the incident and there was no equivalent requirement in the then current Force Procedures Manual. They explained that following this particular fatality and the subsequent complaint against the police, several road death procedures were changed.
19. From the documentation and explanations provided, it appears clear that Strathclyde Police do not (and did not at the time of Mr and Mrs Beasley's request) hold a document which could be considered to be a "standard production release note". Although the situation is described as unusual, verbal authorisation of release by the Procurator Fiscal appears to be normal practice and in fact to be what happened in this case. In the circumstances, therefore, the Commissioner concludes that Strathclyde Police were correct to give notice to the applicant under of section 17 of FOISA in response to request (b).

Request (d) – The crash investigators' report submitted to the Procurator Fiscal

20. In response to this request, Strathclyde Police stated that the information was exempt from disclosure under sections 34(1)(a)(i), 34(1)(b), 35(1)(g) read in conjunction with 35(2)(e) and 38(1)(b) of FOISA.

Section 34(1) – Investigations by Scottish public authorities and proceedings arising out of such investigations

21. Section 34(1)(a)(i) of FOISA provides that information is exempt information where it has at any time been held by a Scottish public authority for the purposes of an investigation which the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence.
22. Section 34(1)(b) of FOISA provides that information is exempt information where it has at any time been held by a Scottish public authority for the purposes of an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the Procurator Fiscal to enable it to be determined whether criminal proceedings should be instituted.
23. Both of these exemptions were applied by Strathclyde Police to the information requested by Mr and Mrs Beasley in request (d).
24. Strathclyde Police explained that the role of a crash investigator is to attend and investigate, with a view to reconstructing road deaths and serious road crashes, where there is a likelihood of death or extensive media coverage. They are qualified and required to draw conclusions on the cause of the accident which may include the actions of the persons involved and against whom criminal proceedings may then be instigated. In this case the crash investigation report, along with the sudden death report and witness statements, were submitted to the Procurator Fiscal who, in light of all the circumstances, elected to initiate criminal proceedings.



25. The Commissioner is satisfied that this document comprises information gathered for the purposes of an investigation which Strathclyde Police had a duty to conduct, with a view to identifying potentially criminal conduct and, as appropriate, making a report to the Procurator Fiscal (as in fact happened in this particular case). The Commissioner is therefore satisfied that section 34(1)(a)(i) and (b) have been applied appropriately to this document.
26. The exemptions in section 34(1)(a)(i) and (b) are qualified exemptions, which means that their application is subject to the public interest test contained in section 2(1)(b) of FOISA.

Consideration of the public interest

27. Mr and Mrs Beasley, within their request for review to Strathclyde Police, submitted that the crash investigators' evidence was heard at length in court and that it was upon the crash investigators' "compelling" evidence that the sheriff said he based his verdict. Mr and Mrs Beasley argued that as the evidence of the crash investigators and witnesses had already been heard in a public forum the public interest was not a valid argument for the retention of this document. They also referred to the BrakeCare Road Death advice leaflet, which advised that the police crash investigators' report could be requested after the conclusion of any criminal proceedings.
28. In the circumstances, taking account of the expert nature of the testimony, Mr and Mrs Beasley believe it to be reasonable that the report should be released into the public domain.
29. In considering the public interest, Strathclyde Police submitted that they took into consideration the accountability of the force, recognising that release of the information requested would hold the police accountable for the thoroughness and effectiveness of the crash investigation which took place. They also took into consideration justice to the individual, recognising that Mr and Mrs Beasley had raised serious concerns over the quality and effectiveness of the police investigation into their son's death. Strathclyde Police recognised that release of the information requested might assist Mr and Mrs Beasley to hold Strathclyde Police accountable for their investigation.
30. However, Strathclyde Police also took into account a number of factors which they considered to favour retention of the information requested. In particular they stated that the information requested contained evidence and opinion provided by the witnesses to the incident and identified an expectation that witness statements provided to the police would remain confidential. They suggested that the future flow of information to the force would be inhibited in the absence of such expectations.
31. In addition, Strathclyde Police submitted that disclosure would have an impact on the effective conduct of the force. They explained that should there be a reluctance to provide the police with full and frank witness statements for fear that the information would be released into the public domain, the effectiveness of the force in conducting enquiries would be greatly reduced.



32. Strathclyde Police also took into account fair treatment of the individual. The accused in this case had been to court and been punished for the offence committed. They submitted that it was for the court to weigh up all available evidence and decide on the guilt or innocence of an accused person.
33. In conclusion, Strathclyde Police submitted that the public interest favoured the retention of the information in question, stating that the greater public interest lay in the police continuing to achieve the most effective, efficient and thorough investigation possible in such circumstances.
34. The Commissioner recognises that there is a strong public interest in maintaining the exemptions contained in section 34(1) where they are applied to police reports and related information pertaining to criminal investigations, potentially even where the information concerned (as is in this case) no longer relates to ongoing investigations or proceedings. There are generally compelling arguments for such information being considered only by the Procurator Fiscal in a dispassionate and objective setting, followed where appropriate by proper criminal proceedings (as have taken place in this case). As the Commissioner has indicated in a number of previous decisions, it is generally impossible to guarantee the fair treatment of any of those who might be involved in the absence of the safeguards afforded by due legal process, and consequently in most cases it will not be appropriate to permit consideration of information of this kind outwith such an environment. Given the nature of the report under consideration here, the Commissioner believes there is a strong general public interest that will be served by the maintenance of the exemption in this case.
35. The Commissioner has also considered whether any significant public interest would be served by the disclosure of the report under consideration. It would provide information about Strathclyde Police's handling of the case, which would allow scrutiny and promote accountability, and would therefore be in the public interest. The Commissioner does not, however, consider that disclosure would contribute further to the resolution of a matter of public concern, for example the prevention or detection of crime or the apprehension or prosecution of offenders.
36. Information of the general variety contained in the investigators' report could contribute to public safety and enhance public debate on these subjects. However, in this case the Commissioner is not satisfied that the content of this particular investigators' report would increase road users' awareness of the matters of public safety that led to or arose from the specific incidents concerned. The Commissioner notes the advice provided in the BrakeCare document, which states that relatives of victims may be able to obtain a copy of this kind of report once the proceedings are concluded. This must be distinguished from its provision under FOISA, which would be releasing it into the public domain rather than only to specific (and directly involved) individuals.



37. The Commissioner is therefore satisfied that Strathclyde Police acted correctly in applying the exemptions in section 34(1)(a)(i) (b) in response to request (d). Having balanced the respective arguments favouring disclosure and the maintenance of the exemption, he is also satisfied that in all the circumstances the public interest in disclosure is outweighed by that of maintaining the exemption. Consequently, the Commissioner satisfied that the information in question was correctly withheld under these exemptions and is not required to consider the other exemptions cited by Strathclyde Police in withholding the crash investigators' report.

Request (e) - The Police Report into the investigation submitted to the Procurator Fiscal

38. In response to this request, Strathclyde Police advised Mr and Mrs Beasley in terms of section 17 of FOISA that they did not hold the information. By way of explanation, Strathclyde Police referred to the ACPOS Road Death Investigation Manual, which states "Police Officers must not charge an accused in a fatal road accident until they are instructed to do so by the procurator fiscal". They had submitted the sudden death report, witness statements and crash investigation report in relation to this incident for consideration by the Procurator Fiscal, who had then made the decision to initiate criminal proceedings but did not request that a police report be submitted in retrospect. Therefore, no police report was compiled in relation to this incident and none was held by Strathclyde Police.
39. In their request for review, Mr and Mrs Beasley listed various occasions and pieces of correspondence where they believed such a police report was alluded to. Mr and Mrs Beasley also referred to extracts from the ACPOS Road Death Investigation Manual which suggested that such a report should exist.
40. As indicated above in relation to request (b), Strathclyde Police advised that there was no standard police report submitted in this case and described the searches carried out with a view to locating one. Their explanation of what appears to have gone to the Procurator Fiscal in this case is set out more fully above, in the analysis relating to that request. While the absence of a standard police report has been described as "unusual", the explanation provided by Strathclyde Police in fact suggests that the situation was far from unique.



41. Strathclyde Police's provided more than one explanation of their references to a "police report" in various items of correspondence highlighted by Mr and Mrs Beasley, depending on the context of the particular reference. The Commissioner does not consider these explanations to be of particular significance in the circumstances, however. Having taken account of Mr and Mrs Beasley's request for review, it appears perfectly clear to the Commissioner that by this request they were seeking the information (whether in the form of a single "report" or not) submitted to the Procurator Fiscal by Strathclyde Police, to enable the Procurator Fiscal to determine whether or not criminal charges should be brought as a consequence of the incident in question. Clearly these documents existed and were held by Strathclyde Police: in fact, Strathclyde Police were able to identify them as being the death report, the crash investigation report and the witness statements. The Commissioner does not consider it to have been either accurate or helpful, therefore, for Strathclyde Police to have placed so narrow an interpretation on the term "police report" and to go on to assert that the information was not held. In the circumstances they should, while explaining that a single document described as a "police report" had not been compiled in this particular case, the relevant information did exist and was held in the form of a number of documents. If appropriate, they should then have gone on to refuse the request under section 16 of FOISA, specifying the relevant exemptions and the reasons why they were considered to apply.
42. The Commissioner does not, therefore, accept Strathclyde Police's arguments that the appropriate response to request (e) was a notice in terms of section 17 of FOISA that the information was not held. He has, however, confirmed with Strathclyde Police that they would apply the same exemptions to the remaining information submitted to the Procurator Fiscal as they have to the crash investigators' report requested under request (d), for substantially the same reasons. The Commissioner accepts that the arguments considered in relation to section 34(1)(a)(i) and (b) for the purposes of request (d) apply with equal force to the other information submitted to the Procurator Fiscal as a result of the fatal collision. The information was held by Strathclyde Police for the same purpose and the Commissioner would (while acknowledging Mr and Mrs Beasley's own particular interest in knowing what evidence was passed to the Procurator Fiscal following the death of their son) consider the balance of the public interest arguments in relation to the information to be substantially the same. As a consequence, he finds that Strathclyde Police were entitled to withhold all of this information under section 34(1)(a)(i) and (b) of FOISA.

Request (f) – The investigating officer's formal misconduct complaint investigation report

43. In response to this request, Strathclyde Police stated that the information requested was exempt from disclosure under sections 35(1)(g) (read in conjunction with section 35(2)(b)), 38(1)(a) and 38(1)(b) of FOISA.



Section 35(1)(g) read in conjunction with section 35(2)(b) – Law enforcement

44. Section 35(1)(g) exempts information the disclosure of which would, or would be likely to, substantially prejudice the exercise (by any public authority) of a function for any of the purposes listed in section 35(2). Strathclyde Police believe that the disclosure of the information in the investigation report would, or would be likely to, prejudice substantially their ability "to ascertain whether a person is responsible for conduct which is improper", which is the purpose listed under section 35(2)(b).
45. Investigations into allegations of misconduct by police officers below the level of Assistant Chief Constable are governed by the Police (Conduct) (Scotland) Regulations 1996 (the Conduct Regulations). It is clear from the Conduct Regulations that their application in relation to officers of Strathclyde Police is a "function" of Strathclyde Police, a required condition before the exemption in section 35(1)(g) can be applied. The purpose of an investigation and any necessary subsequent procedure under the Conduct Regulations would be to ascertain whether a particular police officer had been responsible for conduct amounting to misconduct, in other words conduct which was improper. The Commissioner is satisfied, therefore, that information derived from such an investigation would fall within the scope of section 35(1)(g), read with section 35(2)(b).
46. Strathclyde Police submit that this report contains all the evidence gathered from witnesses, both police and civilian, including the officers complained about and also the investigating officer's conclusions on the matters under investigation.
47. Strathclyde Police submit that the release of this information would have substantial repercussions in the future as it would inhibit the conduct of future enquiries. During the course of such an investigation, Strathclyde Police gather evidence from any person who can assist them. They argue that it is imperative that this evidence and opinion from both police officers and civilian witnesses is given candidly and frankly in order that the full circumstances of the case are gathered as far as reasonably possible. This, Strathclyde Police submit, allows the investigating officer to make a sound judgement in relation to the allegations and what further action, if any, should be taken (which in turn allows the Deputy Chief Constable, to whom matters of discipline and misconduct are ultimately reported, to make a fair decision in respect of all parties concerned). Strathclyde Police suggest that should such information be released, witnesses would be reluctant to provide frank and candid statements of evidence in the future in fear that the information that they provide would be made available to the public and to the officers complained against. They suggest that witnesses would be reluctant to cooperate with Strathclyde Police as their faith and trust in the force would falter, ultimately hindering the effectiveness and thoroughness of future investigations.
48. Having considered these arguments and the content of this report, the Commissioner accepts Strathclyde Police's argument that the release of these documents could reasonably be expected to prejudice substantially the conduct and effectiveness of future investigations, in particular by inhibiting to a significant extent the freedom and frankness with which views were expressed. For this reason, the Commissioner accepts that the information in this document is exempt under section 35(1)(g).



Consideration of the public interest

49. The exemption in section 35(1)(g) is subject to the public interest test set out in section 2(1)(b) of FOISA. This means that, even although the Commissioner is satisfied that the disclosure of the report would, or would be likely to, prejudice substantially the carrying out by Strathclyde Police of the relevant function, he must still order the report to be disclosed unless he is satisfied that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.
50. Mr and Mrs Beasley highlight their concerns in relation to the independence, openness and transparency of the complaint investigation, arguing that the report should be available for scrutiny if the public are to have confidence in a force that investigates itself. While acknowledging that Her Majesty's Inspectorate of Constabulary (HMIC) have reviewed Strathclyde Police's handling of their complaint, they note that this review was based on information provided by Strathclyde Police.
51. Strathclyde Police acknowledge that accountability and public awareness favour the release of the report in question. In particular, they acknowledge that the release of the information would hold the police accountable for the thoroughness and impartiality of their internal investigation into complaints against the police.
52. However, Strathclyde Police also note that the document in question contains police and civilian statements. It includes complaints made against individual police officers, many of which are unsubstantiated. They submit that it would not be in their interest to release the information, while the civilian witnesses would not expect the content of their statements to be released. Strathclyde Police also suggest that if the information were released the ability of the force to conduct effective misconduct investigations would be hampered. They explain that they rely on being able to gather as much information as possible from witnesses and being able to provide frank recommendations and opinions in the content of such reports. They submit that this contributes towards a fair investigation for all concerned and appropriate conclusions being reached. They also suggest that should such information be released, witnesses would be reluctant to provide the police with information which may assist them in their enquiries.
53. On balance, Strathclyde Police argue that they are required to maintain a robust disciplinary system in order that complaints against the police are investigated effectively and appropriate action taken, and consequently that it is in the public interest that Strathclyde Police are able to gather as much information as possible and report as frankly as possible. Strathclyde Police concluded that the public interest favoured retention of the information requested.



54. In this case, having considered all relevant arguments, the Commissioner can identify no general or specific public interest in disclosure of this report which would outweigh the strong public interest arguments in ensuring that such investigations can be conducted without significant inhibition. Consequently, the Commissioner is satisfied that Strathclyde Police were justified in withholding the information under section 35(1)(g) of FOISA, read in conjunction with section 35(2)(b). In reaching this conclusion, he has considered information provided to Mr and Mrs Beasley already in respect of the investigation of the complaint and notes the extent to which they have been informed of its findings and conclusions.
55. As the Commissioner is satisfied that Strathclyde Police were correct to withhold the information requested in Mr and Mrs Beasley's request (f) under section 35(1)(g) of FOISA (read in conjunction with section 35(2)(b)), he is not required to consider the other exemptions cited by Strathclyde Police in withholding this information.

DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police (Strathclyde Police) generally acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr and Mrs Beasley.

However, in giving the applicants notice in terms of section 17 of FOISA in response to their request (e), where on a reasonable interpretation of the request the information was held, Strathclyde Police failed to deal with that request in accordance with Part 1 of FOISA.

Given that Strathclyde Police were in any event entitled to withhold the information requested in request (e) under section 34(1)(a)(i) and (b) of FOISA, the Commissioner does not require Strathclyde Police to take any action in response to this failure.

Appeal

Should either Mr and Mrs Beasley 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.

Kevin Dunion
Scottish Information Commissioner
24 November 2008



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 –

...

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

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...



34 Investigations by Scottish public authorities and proceedings arising out of such investigations

- (1) Information is exempt information if it has at any time been held by a Scottish public authority for the purposes of-
- (a) an investigation which the authority has a duty to conduct to ascertain whether a person-
 - (i) should be prosecuted for an offence; or
 - ...
 - (b) an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted; or
 - ...

35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-
- ...
 - (g) the exercise by any public authority (within the meaning of the Freedom of Information Act 2000 (c.36)) or Scottish public authority of its functions for any of the purposes mentioned in subsection (2);
 - ...
- (2) The purposes are-
- ...
 - (b) to ascertain whether a person is responsible for conduct which is improper;
 - ...