



Scottish Information
Commissioner

**Decision 145/2007 The Press and Journal and the
Chief Constable of Grampian Police**

Requests for copies of reports relating to two fatal road accidents

**Applicant: The Press and Journal
Authority: Chief Constable of Grampian Police
Case No: 200600910
Decision Date: 21 August 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 145/2007 The Press and Journal and the Chief Constable of Grampian Police

Requests for copies of reports made in relation to two fatal road accidents-information withheld-Commissioner upheld decision of Grampian Police.

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002: (FOISA) sections 1 (General entitlement); 2 (Effect of exemptions); 34(1)(a) and (b), (2)(b), (Investigations by Scottish public authorities and proceedings arising out of such investigations)

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

Facts

The Press and Journal newspaper requested copies of reports compiled in relation to two fatal road accidents from the Chief Constable of Grampian Police (Grampian Police). Grampian Police refused to supply the information requested citing sections 34, 35 and 38 of FOISA. The Press and Journal was not satisfied with this response and asked Grampian Police to review its decision. Grampian Police carried out a review and, as a result, notified The Press and Journal that it upheld its original decision. The Press and Journal remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Grampian Police had dealt with The Press and Journal's request for information in accordance with Part 1 of FOISA.



Background

1. A reporter acting on behalf of The Press and Journal (the reporter) made two requests for information to Grampian Police on 9 and 13 February 2006. These sought copies of any reports into two fatal accidents which occurred on 14 February 2005 and 27 February 2003. The accident identified as having taken place on 14 February 2005 actually took place on 14 October 2005, but Grampian Police were able to identify the correct incident on the basis of the other information supplied within the information request.
2. On 8 March 2006, Grampian Police wrote to the reporter in a combined response to both of his requests for information. Grampian Police refused to supply the information on the basis that it was exempt from disclosure under sections 34(1)(a) and (b), 34(2)(b), 35(1)(a) and (b) and 38(1)(b) of FOISA.
3. On 30 March 2006, the reporter wrote to Grampian Police requesting a review of its decision. In particular, the reporter questioned Grampian Police's application of the public interest in withholding this information.
4. On 25 April 2006, Grampian Police wrote to notify the reporter of the outcome of its review. In its response Grampian Police upheld its original decision to withhold the information without amendment.
5. On 12 May 2006, the reporter wrote to my Office, stating that he was dissatisfied with the outcome of Grampian Police's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that the reporter had made requests for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to those requests. The case was then allocated to an investigating officer.

The Investigation

7. On 29 June 2006, Grampian Police was notified in writing that an application had been received from the reporter and was asked to provide my office with specified items of information required for the purposes of the investigation.



8. On 13 July 2006, Grampian Police responded to my office supplying the information which had been withheld from the reporter, a detailed analysis of the application of the exemptions and further information about how the review was carried out. Grampian Police also included a copy of one of its policy documents entitled “Fatal Road Collisions” to provide further context to the reporter’s request.
9. The information withheld includes reports relating to the two accidents which detail the circumstances around these, evidence gathered at the scene and analysis of this evidence. The reports in each case include witness statements provided by both police officers and those present at the scene.
10. Grampian Police confirmed that their investigations into one of the accidents had led to a decision by the procurator fiscal to prosecute one of the drivers involved in the collision. This matter had yet to come before the court at the time of the reporter’s request for information about the accident. No prosecution had been instigated in relation to the second accident

The Commissioner’s Analysis and Findings

11. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both The Press and Journal and Grampian Police and I am satisfied that no matter of relevance has been overlooked.
12. In withholding the reports requested by The Press and Journal, Grampian Police have claimed that these are exempt from disclosure under the terms of sections 34(1)(a), (b) and (2)(b); 35(1)(a), (b) and (c) and section 38(1)(b) of FOISA.

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

13. Section 34(1)(a) 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 or if a person prosecuted for an offence is guilty of it.



14. 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.
15. Section 34(2)(b) provides that information is exempt if it is held by a Scottish public authority for the purposes, other than that of a Fatal Accident Inquiry (FAI), being carried out by virtue of a duty to ascertain or for the purpose of making a report to the procurator fiscal as respects, the cause of death of a person.
16. All three of these exemptions contained within section 34 of FOISA were applied by Grampian Police to the information withheld from the reporter.
17. In Scotland, where a fatality has occurred as a result of a road traffic accident, a FAI may take place. This is not held as a matter of course following every death. The Lord Advocate has the final decision as to whether a FAI is in the public interest. The circumstances under which such an inquiry is held are defined within the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976. These apply equally to road traffic fatalities and to other sudden or violent deaths.
18. In this instance, the reports requested by The Press and Journal form the basis of reports made to the procurator fiscal by Grampian Police. The procurator fiscal considers such reports and decides whether criminal proceedings should take place or if a FAI should be held.
19. I am satisfied that these two sets of documents reflect information which has been held by Grampian Police for the purposes of an investigation which I am satisfied that Grampian Police had a duty to conduct. I am satisfied that the purposes of these investigations include all three of those that are relevant for the exemptions in section 34(1)(a), (b) and 2(b).
20. Having considered the information withheld and the submissions provided to me by Grampian Police. I am therefore satisfied that Grampian Police correctly applied the exemptions contained in sections 34(1)(a), (b) and 34(2)(b) of FOISA in withholding both sets of information withheld from The Press and Journal.

Consideration of the public interest

21. The exemptions in section 34(1)(a), (b) and 34(2)(b) are qualified exemptions, which means that their application is subject to the public interest test contained in section 2(1)(b) of FOISA.



22. I must therefore now go on to consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions in sections 34(1)(a), (b) and 34(2)(b) outweighs the public interest in disclosure of the information. If the two are evenly balanced, the presumption should always be in favour of disclosure. Information should only be withheld where the public interest in doing so outweighs that in disclosure.
23. The reporter submitted on behalf of The Press and Journal that it is in the public interest, particularly for road users, that any factors that may have contributed to the accidents are made known. He highlighted that both accidents were covered in the press and several allegations concerning the conditions of the roads, nearby verges and signage have been made.
24. In its response to The Press and Journal's requests, Grampian Police acknowledged the public interest in release to assess whether Grampian Police was fulfilling its duties effectively and that it would be in the public interest to understand more fully how investigations are carried out and that the release of such information may contribute to the quality of public debate.
25. However, Grampian Police submitted that the public interest in maintaining the exemptions outweighed these considerations.
26. The Police also argued that a high degree of confidentiality had traditionally been attached to police reports and statements, both before and after criminal proceedings. Grampian Police argued that the rationale for maintaining confidentiality in respect of reports by the police and other investigating agencies is based on public policy grounds.
27. Grampian Police submitted that this argument is particularly relevant to the set of reports relating to one of the accidents where the procurator fiscal decided to prosecute one of the drivers involved in the incident. They submitted *inter alia* that it would be contrary to the public interest for the police to release information, outwith their recognised functions, which may prejudice the right to a fair trial or the outcome of criminal proceedings.
28. Grampian Police also argued that the release of these reports would inhibit the flow of information that leads directly to a more effective police response, and would make it difficult for the Police Service to carry out investigations to the highest standard.
29. Having considered the substance of the information withheld and the arguments presented by both Grampian Police and The Press and Journal, I find that the public interest in maintaining the exemptions that I have found to apply outweighs that of disclosure in this instance.



30. Where an investigation or prosecution remains ongoing, there will be a significant public interest in non-disclosure of police reports concerning the investigation or prosecution in order that the right to a fair trial, and the overall administration of justice, is not prejudiced. As the reporter made one of the requests under consideration while a prosecution in relation to the accident concerned had yet to be completed, I have found in relation to this request that the public interest in maintaining the exemptions outweighed the public interest in the disclosure of the information concerned.
31. I consider that there is a strong public interest in maintaining the exemptions contained in section 34 where they are applied to police reports, even where the information concerned (as is the case in respect of this second request) no longer relates to ongoing investigations or proceedings. It is of considerable public interest that the public remains willing to co-operate with the criminal justice system by providing witness statements and other assistance to police in the course of their investigations. I am satisfied that such willingness would be diminished were witness statements to be disclosed routinely under the terms of FOISA.
32. However, some parts of the reports requested by The Press and Journal do not contain any information provided to the police by members of the public or about members of the public. Rather, these parts include descriptions and analysis of the scene of an accident provided by specialist police officers. I am not persuaded by Grampian Police's arguments that these specialist officers would be inhibited from offering their analysis should the specific content of these reports be disclosed.
33. However, given the nature of the reports on a matter of sensitivity following a death I believe that there is a general public interest that will be served by the maintenance of the exemptions in this case. In balancing this public interest with that favouring disclosure, I have considered whether any significant public interest would be served by the disclosure of the particular reports under consideration in this case.
34. I agree with The Press and Journal that there would be some public interest in disclosure should the reports held by the police reveal matters relating to the safety of the roads, adequacy of signage and so on. Such information could contribute to public safety, and enhance public debate on these subjects. However, in this case, having considered the contents of the relevant reports, I have concluded that disclosure of their contents would not provide information that would serve the public interest in the manner suggested by The Press and Journal. I do not believe that the contents of these reports would increase road users' awareness of matters of public safety and concern that led to the specific accidents concerned.



35. For this reason, I have come to the view that the public interest in maintaining the exemptions that I have judged to apply is outweighed by the public interest in maintaining the exemptions in sections 34(1)(a), (b) and 34(2)(b) in relation to all of the information requested in The Press and Journal's two information request.
36. In reaching this conclusion I have taken into account the timing of The Press and Journal's information requests - particularly in regard to the reports relating to the accident that has led to prosecution, and the substance of the documents as whole. I am not persuaded that release of the information contained within these documents would contribute to the public safety as suggested by The Press and Journal, and have found there to be no significant public interest factors favouring disclosure of the information requested.

Other exemptions

37. I am satisfied that the information sought by the reporter on behalf of The Press and Journal engages the exemptions contained within sections 34(1)(a), (b) and 34(2)(b) of FOISA and that the public interest favours maintaining these exemptions. Consequently, I am not required to consider the application of the additional exemptions cited by Grampian Police in relation to this information and will not do so.

Decision

I find that the Chief Constable of Grampian Police (Grampian Police) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by The Press and Journal.

I find that Grampian Police acted correctly in citing sections 34(1)(a), 34(1)(b) and 34(2)(b) of FOISA in withholding the information requested by The Press and Journal. I also find that the public interest in maintaining these exemptions outweighs that in disclosure of the information requested.



Appeal

Should either The Press and Journal or Grampian 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 decision notice.

Kevin Dunion
Scottish Information Commissioner
21 August 2007



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.

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.

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
 - (ii) prosecuted for an offence is guilty of it;
 - (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
- (2) Information is exempt information if-
[...]



- (b) held at any time by a Scottish public authority for the purposes of any other investigation being carried out-
 - (i) by virtue of a duty to ascertain; or
 - (ii) for the purpose of making a report to the procurator fiscal as respects,

the cause of death of a person.