

# Decision Notice



Decision 034/2009 Glasgow & District Pistol Club and the Chief Constable of Strathclyde Police

Information regarding the Glasgow & District Pistol Club

Reference No: 200800361  
Decision Date: 26 March 2009

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## Summary

The Secretary of the Glasgow & District Pistol Club (the Pistol Club) requested from the Chief Constable of Strathclyde Police (Strathclyde Police) all the information Strathclyde Police held concerning the Pistol Club. Strathclyde Police withheld some of the information under a number of exemptions in Part 2 of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, the Pistol Club remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Strathclyde Police had mostly dealt with the Pistol Club's request for information in accordance with Part 1 of FOISA. The Commissioner found that Strathclyde Police were correct to withhold the personal data in the documents under section 38(1)(b) of FOISA and that much of the information which had been withheld was exempt under section 35 of FOISA, which deals with law enforcement. He considered that some of the information should have been disclosed and this information is listed in Appendix 2 to the decision.

The Commissioner also found that Strathclyde Police had failed to comply with section 21(1) of FOISA, which requires that a request for review be dealt with within 20 working days.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions); 21(1) (Review by Scottish public authority); 25(1) (Information otherwise accessible); 35(1)(a), (b) and (g) and (2)(c) and (d)(ii) (Law enforcement) and 38(1)(b), (2)(a)(i) (Personal information)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions – definition of personal data); 2 (Sensitive personal data) and 4(4) (The data protection principles); Part 1 of Schedule 1 (The data protection principles - the first data protection principle) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data – condition 6)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Appendix 1 forms part of this decision.

The Scottish Ministers' Code of Practice on Records Management under the Freedom of Information (Scotland) Act 2002 (the Section 61 Code)



## Background

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1. On 14 January 2007, the Pistol Club wrote to Strathclyde Police requesting copies of all the information Strathclyde Police held concerning the Pistol Club.
2. Strathclyde Police responded on 14 February 2007. They released some information and withheld the remaining information under exemptions in sections 34, 35 and 38 of FOISA.
3. On 1 May 2007, the Pistol Club wrote to Strathclyde Police requesting a review of their decision. Correspondence between the Pistol Club, Strathclyde Police and the Commissioner continued over the next months. It is clear that there was some confusion between the Pistol Club and Strathclyde Police as to whether the request was a subject access request made by the Secretary under section 7 of the DPA or an information request made under section 1 of FOISA. This led to Strathclyde Police disclosing the Secretary's personal data to the Secretary, but it became clear that this was not the information which the Secretary wanted to access.
4. As a result of the involvement of the Commissioner, Strathclyde Police notified the Pistol Club of the outcome of their review on 25 February 2008. For the most part, the review upheld their initial response.
5. On 7 March 2008, the Pistol Club wrote to the Commissioner, 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. In the application, the Pistol Club commented that they had some concerns over whether the information held by Strathclyde Police was as comprehensive as it should have been. The Pistol Club also commented on the fact that Strathclyde Police had withheld information under various exemptions in section 38 (personal information) and questioned whether this type of information should be held in Strathclyde Police's file on the Pistol Club at all. The Pistol Club also commented that information could be redacted in such a way that members of the public would not be able to identify members of the Pistol Club.
6. The application was validated by establishing that the Pistol Club 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

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7. On 17 March 2008, Strathclyde Police were notified in writing that an application had been received from the Pistol Club and were asked to provide the Commissioner with the information which had been withheld from the Pistol Club. Strathclyde Police responded with the information requested and also provided copies of their decision logs which detailed how they had handled the Pistol Club's request. The case was then allocated to an investigating officer.
8. Following correspondence between the investigating officer and the Pistol Club, the Pistol Club asked the investigating officer to omit the name of the Pistol Club from any correspondence with any member, given the sensitivity of this information.
9. Given the large number of documents which fell within the scope of the Pistol Club's request and, given the concerns of the investigating officer that much of the information was information which the members of the Pistol Club might not normally expect to be disclosed into the public domain (particularly given the request by the Pistol Club that even correspondence with the Pistol Club should omit any reference to the Club), the investigating officer wrote to the Pistol Club (with the permission of Strathclyde Police) on 30 May 2008 with a list of the types of documents withheld. This was with the aim of finding out whether the scope of the investigation into the Pistol Club's application could exclude documents such as documents relating to individual members of the Pistol Club. However, the Pistol Club responded on 3 June 2008, requesting that all withheld information should be considered in the Commissioner's decision and noting that personal details could be redacted prior to release.
10. On 10 June 2008, the investigating officer contacted Strathclyde Police, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Strathclyde Police were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested.
11. The investigating officer also wrote to the Pistol Club on 11 June 2008 inviting them to provide their submissions on why they considered that the public interest in disclosure of the information outweighed the public interest in withholding the information, and what they considered to be the legitimate interests in the release of third party personal data. The Pistol Club responded on 13 June 2008. The Commissioner notes that the Pistol Club's concerns now appeared to be whether much of the information held by Strathclyde Police in their file on the Pistol Club should be in the file at all, rather than in members' personal files. This point is addressed below.



12. On 30 June 2008, Strathclyde Police provided detailed submissions as to why they considered the exemptions relied on to withhold information from the Pistol Club should be upheld by the Commissioner. Strathclyde Police confirmed that they were relying upon sections 25(1), 34(1)(a), 35(1)(a), 35(1)(g) (in conjunction with 2(c) and 2(d)(ii)) and 38(1)(b) (as read with section 38(2)(a)(i)). Strathclyde Police confirmed that they no longer wished to rely on the exemption in section 38(1)(a) of FOISA as they now considered the applicant to be the Pistol Club itself, rather than any of its individual members. Consequently, they considered that the exemption in section 38(1)(a) (personal data of which the applicant is the data subject) was not relevant.
13. On 11 July 2008, Strathclyde Police released two documents to the Pistol Club which had previously been withheld on the basis of the exemption in section 25(1) of FOISA. Strathclyde Police had redacted what they considered to be personal information from these two documents prior to release. The Pistol Club confirmed on 12 July 2008 that they had received these documents.
14. As noted earlier, the Pistol Club had indicated in its submission of 13 July 2008, that it did not want any personal details released under FOISA. In an attempt to clarify what the Pistol Club considered to be personal information, the investigating officer wrote to the Pistol Club on 14 July 2008 enclosing copies of three withheld documents (again, with the permission of Strathclyde Police). On 17 July 2008, the Pistol Club responded and provided redacted versions of the three documents indicating what they considered to be personal information. The personal information redacted from the three documents also included details of firearms and ammunition.
15. The investigating officer subsequently met with a representative from Strathclyde Police on 10 September 2008 to discuss the case and to verify that the schedule of documents was a true reflection of the information being withheld.
16. On 11 September 2008, Strathclyde Police advised the investigating officer that section 38(1)(b) had been applied to records of firearms including serial numbers of the firearms owned by named individuals. The serial number is unique to the firearm and Strathclyde Police use a database in which the firearm serial number and owner are recorded. In addition Strathclyde Police wished to rely upon section 35(1)(a) and (b) of FOISA to withhold the type, description and/or serial number of firearms recorded in the withheld information. Strathclyde Police also commented that it was not in the public interest for this information to be released as it could pose a threat to public safety and the safety of the individual holding the firearms, and such information may be of assistance to offenders if disclosed.
17. On 26 September 2008, the investigating officer emailed Strathclyde Police requesting additional submissions on their reliance on section 38(1)(b) of FOISA. Strathclyde Police had made passing reference to the first and second data protection principles in their previous submission, but detailed submissions on both principles had not been provided. Strathclyde Police emailed the investigating officer on 2 October 2008 with their submissions on both of these data protection principles.



18. The investigating officer emailed Strathclyde Police on 1 October 2008 to seek clarification of their reasons for withholding nine of the documents (these nine documents contained general information about the Pistol Club). Strathclyde Police reconsidered these documents and advised the investigating officer the same day that they no longer wished to withhold these documents from the Pistol Club. Strathclyde Police released the nine documents to the Pistol Club on 1 October 2008.

### **Commissioner's analysis and findings**

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

#### **Information withheld**

20. The Commissioner's decision will consider the information which has been withheld by Strathclyde Police in response to the Pistol Club's request and which has not subsequently been released in response to the initial request, request for review or during the Commissioner's investigation.
21. The withheld information is contained within 187 documents and consists of the following types of information:
- Club member correspondence (from/to) either on behalf of the Pistol Club or themselves.
  - Police check(s)/internal memoranda on club members/applications/approvals
  - Completed firearm application(s) and certificates
  - Club member and gun club lists
  - Application and approval of the Pistol Club
  - Police report(s) on club member(s) and club
  - Handwritten notes
  - Firearms and ammunition lists
  - Notification of sale/transfer of firearms
  - Police documents regarding firearms
  - Police documents regarding changes in the Pistol Club
  - Change in legislation regarding firearms
  - Police internal memoranda



### Who is the applicant in this case?

22. The Pistol Club is an unincorporated association. The secretary of the Pistol Club made the request for information to Strathclyde Police on behalf of the Pistol Club using the Pistol Club's letter headed paper. (The actual wording of the request is, "we wish to obtain a copy of all data – in whatever media – you may have concerning our club".) The Commissioner is therefore satisfied that the applicant is the Pistol Club, rather than the secretary. This is relevant when considering the exemptions under section 38 of FOISA.

### Information held by Strathclyde Police and their records management responsibilities

23. As noted above, the Pistol Club have expressed dissatisfaction with the information held by Strathclyde Police in the 'Pistol Club' file and, in particular, are dissatisfied that this file contains personal information. The Pistol Club considers that personal information regarding their past and current members should be held within separate personal files.
24. As stated in *Decision 073/2006 Mr Connolly and the University of Glasgow*, although FOISA gives a person the right to receive information if it is held by the authority, the Commissioner does not have the power to require an authority to reorder its system of records management in a way that ensures information is held in a certain way. The Commissioner accepts that Strathclyde Police are responsible for deciding what information is held in the Pistol Club file and how long these records should be retained for, according to need and the guidance that is available. He also notes that the Pistol Club asked for all of the information which Strathclyde Police holds concerning the Pistol Club. Given the breadth of this request, the Commissioner considers that Strathclyde Police were correct to include information personal to members of the club in interpreting the request.
25. In conclusion, the Commissioner can only consider the matters raised by the Pistol Club that relate to whether or not Strathclyde Police complied with the requirements of Part 1 of FOISA in responding to their requests for recorded information. FOISA does not prescribe what information should be held in recorded form and in which file by a public authority.

### Information falling outwith the scope of the request

26. Some of the documents withheld by Strathclyde Police include information about other pistol clubs. Strathclyde Police presumably considered this to be within the scope of the request because the information was in the Pistol Club file. However, the information request was for information concerning the Pistol Club and the Commissioner considers that information about other clubs is outwith the scope of the Pistol Club's request. Consequently, this information will be excluded from the Commissioner's decision.



### Section 25 – Information otherwise accessible

27. Strathclyde Police have withheld four documents under section 25 of FOISA, consisting of two police documents and two Pistol Club documents. Strathclyde Police provided a web link for the first two documents and explained that the Pistol Club held the other two documents (blank application form and blank attendance register). The Commissioner is content that the Pistol Club can reasonably obtain this information other than by requesting it under FOISA, and that the exemption in terms of section 25(1) has been correctly applied to the information in these documents. The exemption in section 25(1) is absolute and therefore the Commissioner is not required to consider the public interest test contained in section 2(1)(b) of FOISA.

### Section 38(1)(b) – personal information

28. Despite the fact that it is the Pistol Club which made the application to the Commissioner, the Commissioner must take account of the fact that any information released under FOISA is considered to be available to the general public and not only to the Pistol Club.
29. Strathclyde Police submitted that the documents withheld from the Pistol Club included information which is exempt from disclosure under section 38(1)(b) of FOISA because it is personal data relating to living individuals, and disclosure would contravene the first and second data protection principles.
30. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), exempts information if it is personal data and its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles laid down in Schedule 1 to the DPA.

#### *Is the information under consideration personal data?*

31. The first consideration in respect of section 38(1)(b) is whether the information constitutes personal data for the purposes of the DPA. “Personal data” is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (see the full definition in the Appendix).
32. Having considered the information withheld, which relates to firearms licensing of the Pistol Club and its members, the Commissioner is satisfied that all of the documents withheld by Strathclyde Police contain at least some information which comprises personal data. Individuals can clearly be identified from the information and the information in question has the individuals as its focus and is biographical. (Information which is not deemed to personal data will be considered in relation to the other exemptions applied by Strathclyde Police.)



33. As noted above, Strathclyde Police have advised the Commissioner that a firearm's serial number is unique to the firearm and that they use a database in which the firearm serial number and owner are recorded. In addition, the firearm serial number is noted when a firearm is transferred or sold along with the seller's details; this information is held by the firearms dealer or other receiving party. The Commissioner accepts that the information held by Strathclyde Police regarding firearms serial numbers is information by which an individual can be identified and is also satisfied that this information clearly relates to the individuals in question. He is therefore satisfied that this information also falls within the definition of personal data in the DPA.

*Would disclosure of the information breach the first data protection principle?*

34. The first data protection principle requires that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 (of the DPA) is met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 (again, of the DPA) is also met.

*Sensitive personal data*

35. Having considered the information being withheld by Strathclyde Police, the Commissioner is satisfied that a small number of the withheld documents contain sensitive personal data. Sensitive personal data is defined in section 2 of the DPA. The Commissioner notes that some of the personal data consists of information as to the racial or ethnic origin of a data subject (section 2(a)) and the commission or alleged commission by a data subject of any offence (section 2(g)).
36. Given the additional restrictions which surround the disclosure of sensitive personal data, the Commissioner will first of all consider whether this is exempt under FOISA. As noted above, for the disclosure of sensitive personal data to be fair and lawful, at least one of the conditions in each of schedule 2 and schedule 3 to the DPA must apply.
37. The Commissioner has examined the conditions in Schedule 3 (and other legislation made under schedule 3 which sets out the conditions under which sensitive personal data can be disclosed) and is not satisfied that any of the conditions are, or can be, met in the circumstances of this case.



38. The Commissioner has recently issued updated guidance on the interpretation of the exemption in section 38.<sup>1</sup> In that guidance, he notes that for the purposes of section 38 of FOISA, it is likely that only conditions 1 and 5 of schedule 3 will be relevant, given that the other conditions in schedule 3 are very restrictive. It is clear that the data subjects have not given their explicit consent to the personal data being disclosed in response to the freedom of information request (condition 1 of schedule 3) – the question of consent is discussed in more detail below – and it is also clear that the information has not been made public as a result of steps deliberately taken by the data subject (condition 5 of schedule 3). The Commissioner has, of course, considered all of the other conditions in schedule 3, but remains satisfied that there are no conditions which would allow the information to be disclosed.
39. As the Commissioner is satisfied that there are no conditions in Schedule 3 which would permit the release of the information, he is not required to go on to consider whether any of the conditions in Schedule 2 can be met in relation to these documents or whether the disclosure of the sensitive personal data would otherwise be fair and lawful. He therefore finds that the sensitive personal data is exempt from disclosure in terms of section 38(1)(b) of FOISA.

*Non-sensitive personal data*

40. As noted above, the disclosure of non-sensitive personal data will breach the first data protection principle (and therefore be exempt under section 38(1)(b) of FOISA) unless it can be shown that the disclosure of the information is fair and lawful and, in addition, that there is a condition in schedule 2 to the DPA which would permit the personal data to be disclosed.
41. In most cases, where the subject of personal data has consented to the disclosure of information under FOISA, the disclosure is likely to be fair (condition 1 of schedule 2 to the DPA also permits (non-sensitive) personal data to be disclosed where the data subject has consented to the processing; there is clearly a difference between what is expected by way of consent in condition 1 of schedule 2 and explicit consent in condition 1 of schedule 3, which deals with sensitive personal data).
42. Given the way in which the information request was made, the Commissioner considered the question of consent first of all. As noted above, the Commissioner is satisfied that the request was made by the Pistol Club rather than by the Secretary of the Pistol Club who signed the letter. However, the letter did not indicate whether some or all of the members of the Pistol Club had agreed to such a request being made or whether some or all of the individual members were happy for their personal data to be released as a result of the FOISA request. Since no indication has been given throughout the request (or, indeed, during the Commissioner's investigation) that the Pistol Club members have consented to the information held about them being disclosed into the public domain, the Commissioner has concluded that he cannot assume that the Pistol Club members have agreed to such a release of information.

<sup>1</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section38/Section38.asp>



43. This is given additional weight by the fact that the Pistol Club indicated in their submissions on 17 July 2008, that information contained within letters, police forms, club members lists and firearms and ammunition details should be considered as personal data and should be withheld under FOISA. In this submission, the Pistol Club also submitted that release of the personal information under FOISA would compromise members' security, a view which was strengthened by an earlier statement by the Pistol Club, that when corresponding, the name of the Pistol Club should be omitted from any address.
44. Having considered all of the information withheld under section 38(1)(b), the Commissioner has found that the disclosure of the information would contravene the first data protection principle on the basis that the disclosure would be unfair. He considers that disclosure would be contrary to the reasonable expectations of the Pistol Club members on the basis that disclosure of the information would cause unnecessary or unjustified distress or damage to the subjects of the information. Given that public authorities are under a duty to comply with the data protection principles (section 4(4) of the DPA), the Commissioner must also find that the disclosure of the personal data would be unlawful.
45. The Commissioner has therefore concluded that the disclosure of the personal data would breach the first data protection principle and that the personal data is therefore exempt under section 38(1)(b) of FOISA.
46. As noted above, Strathclyde Police have argued that the disclosure of the personal data would also breach the second data protection principle (which requires that personal data shall be obtained only for one or more specified lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes). Given that the Commissioner has found that disclosure would breach the first data protection principle, he is not required to go on to consider whether disclosure would also breach the second data protection principle.

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

47. Strathclyde Police have relied upon the exemptions in sections 35(1)(a) and (b) to withhold certain information from disclosure.
48. In order for an exemption under section 35(1)(a) and/or (b) to apply, the Commissioner has to be satisfied that the disclosure of the information would, or would be likely to, prejudice substantially the prevention or detection of crime and/or the apprehension or prosecution of offenders. There is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers that for an authority to be able to show that disclosure of the information would, or would be likely to lead to substantial prejudice, it would need to show that there was a real risk or likelihood of actual harm being caused by disclosing the information at some time in the near (certainly the foreseeable) future, not simply that harm was a remote possibility. The authority would also have to show that the harm caused by such a release would (or would be likely to) be of real and demonstrable significance.

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49. As outlined in his *Decision 013/2007 Mr D and the Chief Constable of Strathclyde Police*, with regard to the exemption under section 35(1)(a), the Commissioner is of the view that the term "the prevention or detection of crime" encompasses any action taken to anticipate or prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could include activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and prevention.
50. The Commissioner considers that section 35(1)(b) has a narrower scope than section 35(1)(a), although there is likely to be a considerable overlap between the two exemptions. The Commissioner considers that 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 the investigative processes used).
51. Strathclyde Police argued in this case that when conducting enquiries relating to the granting or renewal of firearms certificates, the police rely upon the free and frank opinions and statements of third parties. Strathclyde Police believe that if this information were to be released, it would deter third parties from providing this type of information and could lead to individuals evading detection of a crime or to a firearms certificate being granted to an individual who is not a fit and proper person.
52. Without going into the details of the withheld information or any more detailed arguments put forward by Strathclyde Police (because to do so would result in disclosure of elements of that withheld information), the Commissioner is satisfied, in the circumstances, having fully considered the subject matter and content of the information, that the information contained with most of the documents withheld under section 35(1)(a) and (b) of FOISA is sufficiently closely linked to the relevant requirements of policing and law enforcement that its disclosure would, or would be likely to, prejudice substantially both the prevention or detection of crime and the apprehension or prosecution of offenders.
53. However, the Commissioner considers that the exemptions in section 35(1)(a) and (b) do not apply to the information withheld in all of the documents. These documents include standard correspondence regarding firearms licensing and the Commissioner is satisfied that, once the personal data is removed from these documents, the remaining information would not and would not be likely to, prejudice substantially either the prevention or detection of crime or the apprehension or prosecution of offenders.
54. Section 35(1)(a) and (b) of FOISA are both qualified exemptions, which means that their application is subject to the public interest test set out in section 2(1)(b) of FOISA. The Commissioner will go on to consider the public interest arguments for the documents he has found to be exempt under sections 35(1)(a) and/or (b) after considering the application of the exemption in section 35(1)(g) of FOISA.



### Section 35(1)(g) (in conjunction with 2(c) and 2(d)(ii)) of FOISA - Law Enforcement

55. Strathclyde Police have withheld information contained within a number of documents under the exemption in section 35(1)(g), read in conjunction with section 35(2)(c) or 35(2)(d)(ii). The Commissioner will not consider this exemption in relation to information already found to be exempt from disclosure under section 38(1)(b) of FOISA.
56. Under section 35(1)(g) of FOISA, information is exempt if its disclosure would, or would be likely to, prejudice substantially the exercise by any public authority (as defined by the Freedom of Information Act 2000) or Scottish public authority (as defined by FOISA) of its functions for any of the purposes listed in section 35(2) of FOISA. Strathclyde Police consider that their ability to ascertain whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise (section 35(2)(c)) or their ability to ascertain a person's fitness or competence in relation to any profession or other activity which the person is, or seeks to become, authorised to carry on (section 35(2)(d)(ii)) would, or would be likely to be, prejudiced substantially if the information in question were to be disclosed.
57. The exemptions contained within section 35 are all qualified exemptions in that they are subject to the public interest test required by section 2(1)(b) of FOISA.
58. When considering the use of the exemption in section 35(1)(g), the Commissioner must therefore consider three separate matters. First of all, he must consider whether Strathclyde Police have a function in relation to the purposes mentioned in section 35(2)(c) or section 35(2)(d)(ii). If he is satisfied that they do, he must go on to consider whether disclosure of the information would, or would be likely to, prejudice substantially Strathclyde Police's ability to exercise those functions. Even where he is satisfied that it would, he must go on to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information. Unless he finds that it is, he must order the information to be disclosed.
59. The Commissioner is satisfied that Strathclyde Police is required to carry out the functions in both section 35(2)(c) and section 35(2)(d)(ii), as a result of the duties placed on them by the Firearms Act 1968 and other associated legislation. The Commissioner also accepts that the withheld information has been created and used to assist Strathclyde Police in exercising those functions, in relation to the granting and approval of firearms licensing associated with clubs such as the Pistol Club.
60. Strathclyde Police stated that the information they hold in relation to the Pistol Club itself is covered by section 35(2)(c), whilst regulatory action concerning individual club members and firearms certificates is covered by section 35(2)(d)(ii). This information enables them to check whether regulatory action is required and whether clubs – and their members – are fit to possess and use firearms. Strathclyde Police have commented that the legislation and guidance in place is designed to ensure that the rights of individuals to enjoy the sport are protected, while ensuring public safety, and that to dilute or endanger the effective application of such regulatory provisions would lead to serious doubts over the safety of the public and the efforts of the police to ensure this.



61. The Commissioner has come to the conclusion that a number of the documents withheld under section 35(1)(g) are similar to that under consideration in *Decision 038/2006 Mr T and the Chief Constable of Grampian Police*. In that decision, at paragraph 28, he accepted that police officers must be able to make comprehensive and unreserved statements to assist with the processes of law and order and that it is likely that if such documents were routinely disclosed, this would have the effect of inhibiting officers' comments and, as a result, would, or would be likely to, prejudice substantially the ability of the Police to exercise the relevant functions. Consequently, the Commissioner considers that the disclosure of these documents is exempt under section 35(1)(g) of FOISA.
62. However, the Commissioner also considers that a small number of the documents withheld under section 35(1)(g) (in conjunction with 35(2)(c) or 35(2)(d)(ii)), do not contain information which would, or would be likely to, prejudice substantially the ability of Strathclyde Police to carry out its functions as detailed above. These documents fall into the category of the verification/input of individual's details or standard letters discussing the current status with regard to the Pistol Club. Consequently, the Commissioner cannot uphold the reliance on section 35(1)(g) (in conjunction with 35(2)(c) or 35(2)(d)(ii)) and orders that these documents released (subject to the redaction of other information which he has already found to be exempt).
63. The Commissioner will now go on to consider the public interest test in relation to the information he has found to be exempt under the exemptions in section 35.

### **The public interest test**

64. As noted above, the exemptions in section 35 of FOISA are subject to the public interest test required by section 2(1)(b) of FOISA. This means that, although the Commissioner is satisfied that the disclosure of the information would, or would be likely to, prejudice substantially Strathclyde Police's ability to prevent or detect crime etc., he must still order the information to be disclosed unless he is satisfied that, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs that in disclosure of the information.
65. Strathclyde Police provided a consolidated submission on the public interest test to support their reliance on the exemptions in sections 35(1)(a), 35(1)(b) and 35(1)(g). Strathclyde Police advanced the following points in favour of releasing the information:
  - Accountability — Release of the information would hold Strathclyde Police responsible for the manner in which they monitor Firearms Certificate holders and provide an insight to the Pistol Club as to why certain questions are raised by the Licensing Board when granting an application.
  - Public debate — Firearms and licensing issues are emotive subjects, frequently the subject of public debate.
  - Justice to an individual — Strathclyde Police believe that members of the Pistol Club feel aggrieved by their actions in relation to the Pistol Club. Release of the information may assist in clarifying matters to them.



66. The Pistol Club also submitted arguments in support of the first and third of these arguments as to why the public interest favours the release of the withheld information.
67. Strathclyde Police advanced the following arguments against release of the information:
- Criminal investigations — the nature of the investigations within this file favour non-disclosure of the information.
  - Interests of third parties — the information contains details of third parties in terms of committee members, past and present, applicants, referees etc.
  - Flow of information to the police— the information contains intelligence submitted by third parties. If this were made public it would have an extremely detrimental effect on the amount and quality of intelligence submitted to the police. This is an essential part of the policing process.
  - Fair treatment of an individual — the information contains details of intelligence regarding individuals and personal details of individuals which would be unfair to release into the public domain.
  - Public safety — If the police are not able to assess firearms certificates and applications accurately, then the public is at risk of an unfit person being granted such a certificate and allowing them to possess a lethal weapon.
68. Notwithstanding the arguments in favour of release detailed above, the public interest arguments in favour of withholding the information and maintaining the exemptions are strong and, on balance, the Commissioner considers that these should prevail. Consequently, where the Commissioner has found exemptions in section 35 to apply to the information withheld from the Pistol Club, he is satisfied that, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemptions.

#### **Technical breach of FOISA – section 21**

69. Section 21(1) of FOISA requires a Scottish public authority to comply with a requirement for review not later than the twentieth working day after receipt by it of the requirement. Strathclyde Police responded to the Pistol Club's request for review some ten months after its receipt, and only after an Information Notice was issued by the Commissioner.
70. The Commissioner therefore finds that Strathclyde Police failed to comply with section 21(1) of FOISA in this case.
71. Since Strathclyde Police did respond to the request for review, albeit belatedly, the Commissioner does not require Strathclyde Police to take any action in respect of this particular breach.



## DECISION

The Commissioner finds that the Chief Constable of Strathclyde Police (Strathclyde Police) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Glasgow & District Pistol Club (the Pistol Club).

The Commissioner finds that the personal data in the documents is exempt under section 38(1)(b) and that much of the remaining information is exempt under one or more of the exemptions in section 35. In withholding this information, the Commissioner finds that Strathclyde Police complied with Part 1 of FOISA.

However, the Commissioner also finds that some of the information withheld by Strathclyde Police was not exempt under the exemptions in section 35. In failing to disclose this information to the Pistol Club, the Commissioner finds that Strathclyde Police failed to comply with section 1(1) of FOISA. The Commissioner therefore requires Strathclyde Police to disclose the information identified in Appendix 2 of this decision to the Pistol Club by 11 May 2009.

In addition, in failing to respond to Strathclyde Police's request for review within 20 working days, the Commissioner finds that Strathclyde Police failed to comply with section 21(1) of FOISA. The Commissioner does not require Strathclyde Police to take any action in relation to this failure, for reasons set out above.

## Appeal

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Should either the Pistol Club 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**  
**26 March 2009**



## Appendix 1 – Relevant statutory provisions

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### 1 General entitlement

(1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

(...)

(6) This section is subject to sections 2, 9, 12 and 14.

### 2 Effect of exemptions

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

(a) the provision does not confer absolute exemption; and

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

(...)

### 21 Review by Scottish public authority

(1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

### 25 Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section (1) is exempt information.

### 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 and detection of crime;

(b) the apprehension or prosecution of offenders;

[...]

(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-

[...]

(c) to ascertain whether circumstances, which would justify regulatory action in pursuance of any enactment exist or may arise;

(d) to ascertain a person's fitness or competence in relation to-

[...]

(ii) any profession or other activity which the person is, or seeks to become, authorised to carry on;



### 38 Personal information

- (1) Information is exempt information if it constitutes-  
[...]
  - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;  
[...]
- (2) The first condition is-
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
    - (i) any of the data protection principles; or
    - (ii) [...]
  - (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.  
[...]

## DATA PROTECTION ACT 1998

### 1 Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires –  
[...]  
"personal data" means 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  
[...]

### 2 Sensitive personal data

- In this Act "sensitive personal data" means personal data consisting of information as to—
- (a) the racial or ethnic origin of the data subject,
  - (b) his political opinions,
  - (c) his religious beliefs or other beliefs of a similar nature,
  - (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
  - (e) his physical or mental health or condition,
  - (f) his sexual life,
  - (g) the commission or alleged commission by him of any offence, or
  - (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.



#### **4 The data protection principles**

- ...
- (4) Subject to section 27(1), it shall be the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.

### **SCHEDULE 1 THE DATA PROTECTION PRINCIPLES**

#### **PART I THE PRINCIPLES**

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
- (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

#### **SCHEDULE 2**

#### **CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA**

- 6.
- (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.



## Appendix 2 – Schedule of documents to be disclosed

<b>Main Club File</b>			
<b>No</b>	<b>Document</b>	<b>Exemptions cited</b>	<b>Comments</b>
8	Letter of 7 December 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
9	Letter of 2 December 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
10	Letter of 2 December 2006	38(1)(b) 35(1)(g)	38(1)(b) upheld 35(1)(g) not upheld Release with personal information redacted
11	Letter of 10 November 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
12	Email of 9 November 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
20	Letter of 2 November 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
21	Letter of 31 October 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
23	Letter of 26 October 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
24	Letter of 24 October 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
25	Letter of 22 October 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
26	Letter of 21 October 2006	38(1)(b) 35(1)(g)	38(1)(b) upheld 35(1)(g) not upheld - Release with personal information redacted
27	Letter of 18 October 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
30	Letter of 16 October 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
31	Letter of 8 October 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
34	Letter of 29 August 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
35	Letter of 22 August 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
36	Letter of 17 July 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
37a	Letter of 6 July 2006	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
37b	Letter of 14 November 2005	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
37c	Letter of 1 July 2006	38(1)(b)	38(1)(b) upheld – Release with personal information

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<b>Main Club File</b>			
<b>No</b>	<b>Document</b>	<b>Exemptions cited</b>	<b>Comments</b>
			redacted
46	Letter of 4 April 2004	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
47a	Scottish Ministers Approval of 17 June 2004	38(1)(b) 35(1)(g)	38(1)(b) upheld 35(1)(g)(2)(d)(2)(d) not upheld Release with personal information redacted
47b	Licensing of 8 June 2004	38(1)(b) 35(1)(g)	38(1)(b) upheld 35(1)(g) not upheld Release with personal information redacted
47d	Report re renewal of 25 May 2004	38(1)(b) 35(1)(g)	38(1)(b) upheld 35(1)(g) partially upheld Release with personal information redacted and with final 7 words of paragraph 2 redacted
47e	Subject Report re renewal of approval 14 April 2004	38(1)(b) 35(1)(g)	38(1)(b) upheld 35(1)(g) not upheld Release with personal information redacted
71	Letter of 25 January 1962	38(1)(b) 35(1)(a)&(b) 35(1)(g)	38(1)(b) upheld 35(1)(a), (b) and (g) not upheld Release with personal information redacted
75	Subject Report and attached letter of March 1961	38(1)(b) 35(1)(a)&(b) 35(1)(g)	38(1)(b) upheld 35(1)(a), (b) and (g) not upheld Release with personal information redacted

<b>Personal File 1</b>			
<b>No</b>	<b>Document Spreadsheet</b>	<b>Exemptions Cited</b>	<b>Comments</b>
13	Letter of 12 July 1990	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
14	Memorandum of 26 June 1990	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
15	Letter of 17 January 1990	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
22	Memo re change in president of 29 November 1989	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
23	Undated letter re changes in club	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
24	Memo re changes in club of 20 November 1989	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
25	Undated copy of postcard	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
34	Email of 14 June 2005	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
35	Letter of 10 June 2005	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
38	Letter 11 April 2005	38(1)(b)	38(1)(b) upheld – Release with personal information

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<b>Personal File 1</b>			
<b>No</b>	<b>Document Spreadsheet</b>	<b>Exemptions Cited</b>	<b>Comments</b>
			redacted
39	Emails of 13 and 14 June 2005	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
43	Notes – 6 pages of 23 July 1998 to 23 June 2004	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
47	Letter of 17 January 1990	38(1)(b)	38(1)(b) upheld – Release with personal information redacted

<b>Personal file 2</b>			
<b>No</b>	<b>Document Spreadsheet</b>	<b>Exemptions</b>	<b>Comments</b>
13	Fax of 12 December 2002	38(1)(b)	38(1)(b) upheld – Release with personal information redacted

<b>Personal File 3</b>			
<b>No</b>	<b>Document Spreadsheet</b>	<b>Exemptions</b>	<b>Comments</b>
4	Letter dated 5 July 1999	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
9	Glasgow & District Pistol Club Letter FAC C021 - Renewal of 14 October 2001	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
23	Letter of 21 June 1998	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
24	Letter of 16 June 1998	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
25	Memo of 28 April 1998	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
27	Scottish Office Letter of 30 April 1998	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
28a	Letter of 8 April 1998	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
29	Letter of 22 March 1998	38(1)(b)	38(1)(b) upheld – Release with personal information redacted
48	Letter dated 1 July 1999	38(1)(b)	38(1)(b) upheld – Release with personal information redacted