



Scottish Information
Commissioner

**Decision 206/2006: Mr Michael Carberry and the Chief
Constable of Strathclyde Police**

*Post-code based information about the location of registered sex
offenders*

**Applicant: Mr Michael Carberry
Authority: The Chief Constable of Strathclyde Police
Case No: 200502623
Decision Date: 15 November 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 206-2006 – Mr Michael Carberry and the Chief Constable of Strathclyde Police

Request for information about the location of registered sex offenders based on the first four characters of a postcode and their housing tenure – some information not held (section 17) – section 12(1) excessive cost of compliance

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement); 12(1) (Excessive cost of compliance); 17(1) (Notice that information is not held).

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, regulations 3 and 5.

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

Facts

Mr Carberry asked the Chief Constable of Strathclyde Police (the Police) for information on the location of registered sex offenders. He made it clear that he did not seek information which would identify individual offenders, but required the information to be provided for each postcode area, as defined by the first four characters of the postcode (e.g. G21 2--). He also asked for a breakdown of the housing tenure of registered sex offenders.

The Police informed Mr Carberry that information relating to the housing tenure of registered sex offenders was not held.

The Police initially withheld the postcode-based statistical information under the exemptions in sections 35(1)(a), 36(2), 38(1)(b) and 39(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). However, during the investigation the Police advised that the cost of providing this information would exceed the limit of £600 prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).



The Commissioner found that the Police had provided sufficient evidence to support the statement that information about the housing tenure of registered sex offenders was not held by the Police.

The Commissioner found that the Police were able to provide sufficient evidence to support their estimate of the cost of providing the information requested. Accordingly, section 12(1) of FOISA constituted appropriate grounds for refusal to provide the information requested by Mr Carberry. This being so, the Commissioner did not consider the application of the exemptions cited by the Police.

Background

1. On 3 June 2005 Mr Carberry wrote to Strathclyde Police (the Police) asking for “non personal” information on the location of registered sex offenders. He asked for this information by postcode and housing tenure. He required the postcode-based information to provide figures to the fourth character of the postcode, for example G21 2--. Regarding the housing tenure information, he asked for a breakdown by local authority, housing associations, private lets, and owner occupation.
2. The Police replied on 30 June 2005, providing a figure for the total number of registered sex offenders in the Strathclyde Police area but refusing to provide the more detailed information requested by Mr Carberry. The Police informed Mr Carberry that this information was exempt from disclosure under sections 35(1)(a) and 39(1) of FOISA, and that the public interest in upholding the exemptions outweighed the public interest in disclosing the information.
3. On 6 July 2005 Mr Carberry asked the Police to review its response to his request. He disagreed with the view stated by the police that disclosure of the information would lead to the identification of individual sex offenders, pointing out that each postcode area would cover several thousand citizens and that around 125,000 housing association houses in Glasgow would be covered by the request for housing tenure information.
4. On 4 August 2005 the Police provided Mr Carberry with their review of the response to his request. They informed Mr Carberry that they did not hold information on the housing tenure of registered sex offenders within their area. Regarding his request for postcode-based information about the location of sex offenders, the police upheld their decision to withhold the information and provided some additional explanation of the reasons for applying the exemptions previously cited. The Police informed Mr Carberry that they also considered the information to be exempt under section 38(1)(b) (personal information) and section 36(2) (confidentiality) of FOISA.



5. Mr Carberry appealed to me for a decision on the matter on 19 September 2005. The case was allocated to an investigating officer and the application validated by establishing that Mr Carberry had made his request to a Scottish public authority and had appealed to me only after asking that authority to review its response to his request.

The investigation

6. A letter was sent to Strathclyde Police on 21 September 2005 informing them that an appeal had been received from Mr Carberry and seeking comments and information which would assist with the investigation, as required by section 49(3)(a) of FOISA.
7. The Police replied on 17 October 2005 in a letter which explained the rationale behind the original and review decisions of the Police and the evidence on which those decisions were based.
8. During the investigation the Police advised the investigating officer that the likely cost of complying with Mr Carberry's request had been calculated to be in excess of the £600 limit imposed by the Fees Regulations.
9. In such circumstances, section 12(1) of FOISA provides that a public authority is not obliged to comply with a request for information.

The Commissioner's Analysis and Findings

Information not held – housing tenure

10. Mr Carberry requested information about the housing tenure of registered sex offenders in the Strathclyde Police area. Initially the Police described this information as exempt from disclosure, but during the review of his request they concluded that in fact the information was not held. The review panel's decision was based on information about the new database where details of violent and sexual offenders were held.
11. The Police have provided my office with evidence to show that the police database used to record sex offenders' details does not include information about type of housing occupied by each individual. I accept that the Police do not hold information relating to this part of Mr Carberry's request.



Information not held – incomplete data

12. While gathering the information requested as part of the investigation into this case, the police discovered that the offender's postcode was not part of the mandatory information provided at the point of registration, although it was sometimes recorded by the officer accepting the registration. It would therefore not be possible to provide a full data set based on the postcodes of registered sex offenders. The Police stated that some of the information requested by Mr Carberry was therefore "not held" in terms of section 17 of FOISA.
13. I note that the registration form for sex offenders asks for the offender's "home address (including postcode)". However, I accept that if this information was not collected by the registering officer, and was therefore not held by the Police at the time of Mr Carberry's request, there would be no requirement under FOISA for the Police to obtain and consider supplying data which had not been provided on the registration form.
14. However, I also note that the Police have recently advised that their recording practices have improved during the last year, and that they are now confident that postcode information is recorded for the majority of registered sex offenders, albeit only a partial postcode in some instances.

Excessive cost of compliance

15. As noted above, during the investigation the Police advised that the cost of compliance with Mr Carberry's request would exceed the £600 limit laid down in the Fees Regulations.
16. Section 12 of FOISA relates to excessive cost of compliance, and states under section 12(1):

"Section 1(1) [of FOISA] does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers..."
17. The Scottish Ministers have, under regulation 5 of the Fees Regulations, set this prescribed amount at £600.
18. Section 12(1) of FOISA, read in conjunction with regulation 5 of the Fees Regulations, therefore states that public authorities are under no obligation to comply with requests for information where the cost of doing so would exceed this figure of £600. Consequently, as Commissioner, I have no power to force the release of information should I find that the cost of responding to any single request for information exceeds this amount.



19. Taking into account the fact that a Scottish public authority can, at any point (including during the course of an investigation) submit that the cost of supplying information that has been requested would exceed the £600 limit set out in the Fees Regulations, I am obliged to consider whether section 12(1) of FOISA would prevent me from ordering disclosure of the information in this case.

Would the cost of complying with the request exceed £600?

20. The Police found that postcode information about registered sex offenders' addresses could only be retrieved from their database by carrying out a series of individual searches for each individual postcode area (e.g. G1, G2, G3, etc.), and that the search would retrieve data relating to any registered sex offenders who had stayed within that postcode area at any time. The Police confirmed that the search facility could not be refined to identify registered sex offenders currently resident within a specific postcode area.
21. The Police explained that while each field in the database was searchable electronically, the functionality of the database was designed around its main purpose, which was to assist the Police to monitor offenders within the Force area. Although the search facility could identify individual offenders by a number of criteria such as name, description etc., the database was never intended to produce statistics to postcode level across the Force area. The geographical searches possible are therefore restricted to divisions and sub-divisions within the Force area, as these are the geographical areas used for policing purposes. As postcodes are not relevant in terms of policing, the search facility for the database was not designed to produce statistical reports based on postcode data.
22. The Police found that to provide the information requested by Mr Carberry, each record relating to a registered sex offender would have to be checked manually. The Police estimated that to interrogate each record would take at least 3 minutes and that, with approximately 1085 registered sex offenders within the force area, such a search would take in excess of 50 hours to complete. The sensitivity of the information would require the work to be undertaken by an appropriately vetted person, most likely a police officer, whose time would be costed at the maximum rate of £15 per hour permitted under the Fees Regulations (regulation 3).
23. The investigating officer obtained further information from the Police which confirmed this estimate, and I accept that a reasonable estimate of the cost of providing the information requested by Mr Carberry would be around £800, certainly in excess of the £600 limit laid down in the Fees Regulations.
24. This being so, I accept that section 12(1) of FOISA applies to Mr Carberry's request and therefore will not consider in this decision notice whether the exemptions cited by the Police should be upheld.



Decision

I find that the Chief Constable of Strathclyde Police was justified in advising Mr Carberry that some of the information he requested (i.e. the housing tenure figures and part of the postcode information) was not held by Strathclyde Police and therefore applied section 17 of FOISA correctly to the information in question.

I find that section 12(1) of FOISA constitutes appropriate grounds for refusal of Mr Carberry's request in the circumstances of this case.

I do not require the Chief Constable of Strathclyde Police to take any steps as a consequence of this Decision Notice.

Appeal

Should either Mr Carberry or the Chief Constable of Strathclyde Police wish to appeal against my decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
15 Novmeber 2006



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.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

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.



The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

Interpretation

2. - In these Regulations-

"the Act" means the Freedom of Information (Scotland) Act 2002;

"prescribed amount" means the amount prescribed in regulation 5; and

"projected costs" has the meaning set out in regulation 3.

Projected costs

3. - (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.

(2) In estimating projected costs-

(a) no account shall be taken of costs incurred in determining-

(i) whether the authority holds the information specified in the request; or

(ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and

(b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

Excessive cost – prescribed amount

5. The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.