



Scottish Information
Commissioner

**Decision 036/2007 Ms Sandra Uttley and the Chief
Constable of Central Scotland Police**

Thomas Hamilton's clothing etc.

Applicant: Ms Sandra Uttley

Authority: Chief Constable of Central Scotland Police

Case No: 200600014

Decision Date: 1 March 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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Decision 036/2007 Ms Uttley and the Chief Constable of Central Scotland Police

Request for information about Thomas Hamilton's clothing etc. – information provided by the Police – the Commissioner found that the Police had provided all of the information held by them

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement) and 15(1) (Duty to provide advice and assistance).

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

Facts

Ms Uttley asked the Chief Constable of Central Scotland Police (the Police) for information about what had happened to items of clothing etc. worn by Thomas Hamilton in the aftermath of the shootings at Dunblane. Ms Uttley was dissatisfied with the response and, following a review, applied to the Commissioner for a decision. The Commissioner found that the Police had complied with the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Ms Uttley's information request.

Background

1. On 18 September 2005, Ms Uttley asked the Police for information about what had happened to items of clothing etc. worn by Thomas Hamilton in the aftermath of the shootings at Dunblane Primary School in 1996. Ms Uttley stated that, according to a named Scene of Crime Officer, Hamilton's ear muffs, hat and spectacles were found lying to the left of Hamilton's body. Ms Uttley wanted to know who had removed these items from Hamilton and when they were removed.



2. The Police responded on 20 October 2005, noting that Ms Uttley had summarised part of the Scene of Crime Officer's evidence to the Cullen Inquiry. The Police commented that the Scene of Crime Officer had not stated that the items had been removed from the body, merely that he had found them at the left hand side of the body when examining the scene. The Police also referred to the manner in which Hamilton had committed suicide in order to explain how these items came to be found beside his body.
3. Later the same day, Ms Uttley sought further clarification of the response from the Police. Clarification was given by the Police on 4 November 2005.
4. However, Ms Uttley remained dissatisfied with the explanation given by the Police and, on 6 November 2006, asked the Police to review the way in which they had dealt with her information request on the basis that the explanation which had been given to her was not "recorded information".
5. The Police subsequently carried out a review and advised Ms Uttley of the outcome of the review on 11 November 2005. The Police upheld their original decision, noting that the information which had been provided to Ms Uttley in the original response summarised part of the Scene of Crime Officer's evidence before the Cullen Inquiry and commenting that, having asked for further clarification, she should not have objected when clarification had been given.
6. Ms Uttley remained dissatisfied with the response from the Police and, on 19 December 2005, made an application to me for a decision as to whether the Police had dealt with her information request in line with FOISA. In making her application, Ms Uttley noted that in the interim she had received a copy of the witness statement of an off-duty police officer who was present at the gym immediately following the massacre. In that statement, the officer stated that he did not see ear defenders on Hamilton. This led Ms Uttley to believe that the ear defenders (or ear muffs) were not on Hamilton immediately prior to his death and she wished to know who had removed them. She also believed that her request had been "fudged" by the Police.
7. The case was subsequently allocated to an investigating officer and the application validated by establishing that Ms Uttley had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its decision.



The investigation

8. The investigating officer notified the Police of Ms Uttley's application in terms of section 49(3)(a) of FOISA, asking them to comment on the matters raised by Ms Uttley and on the application as a whole. The investigating officer noted that no exemptions had been relied on by the Police to withhold information from Ms Uttley and questioned whether this meant that all of the recorded information held by the Police on this matter had been supplied to Ms Uttley.
9. The Police subsequently advised the investigating officer that the response to Ms Uttley's request was informed by a reading of the statements given by all of the persons who were known to have been in the school gymnasium from the time of the shootings until the arrival of the Scene of Crime Officer named in Ms Uttley's request.
10. The Police noted that none of these witnesses spoke to removing or seeing anyone else remove Thomas Hamilton's ear muffs, hat and spectacles or any item of his clothing.
11. The Police also noted that the response to Ms Uttley pointed out that the witness quoted had not stated that the items in question had been "removed". However, the Police had (in line with its duty under section 15 of FOISA to provide reasonable advice and assistance to a person who has made a request for information) to offer an explanation of what may have accounted for the discovery of those items at the side of Hamilton's body when Ms Uttley asked for clarification.
12. The Police confirmed details of the witness statements which had been checked, including a number of school teachers and other school staff, medical personnel, nurses, ambulance technicians and police officers.

The Commissioner's Analysis and Findings

13. FOISA gives a general right to access recorded information held by Scottish public authorities. In this case, Ms Uttley appears to have two main concerns about the response from the Police, firstly that the Police hold recorded information which they has not supplied to her and secondly that the explanation given by the Police was not "recorded information."



14. While it is certainly the case that the Police could have responded to Ms Uttley's request by providing her with copies of the witness statements which contained references to what had happened to Hamilton's hat, spectacles etc., there is no onus on them to do so as Ms Uttley did not ask for copies of the statements. On the basis of the information provided to me by the Police, I am satisfied that the Police provided Ms Uttley with all of the information which they hold in response to her information request.
15. Ms Uttley is also unhappy that the Police provided her with an explanation of what had happened (rather than recorded information). However, I find her complaint about this aspect of her application unfounded. The Police provided her with information in response to her request. She subsequently asked for clarification of what the Police had told her (separately from a request for review). I consider that the explanation provided to Ms Uttley by the Police was in fact helpful and that the explanation was given as part of the Police's duty to provide advice and assistance to people who have made requests for information under section 15 of FOISA.

Decision

I find that the Chief Constable of Central Scotland Police (the Police) complied with Part 1 of FOISA in responding to the information request made by Ms Uttley.

Appeal

Should either Ms Uttley or the Police wish to appeal against this decision, there is a right of 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
1 March 2007



APPENDIX

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.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.