

Decision Notice



Decision 088/2011 Mr G and the Chief Constable of Strathclyde Police

Investigation concerning the murder of a named individual

Reference No: 201001952
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Scottish Information Commissioner

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Summary

Mr G requested from the Chief Constable of Strathclyde Police (Strathclyde Police) information pertaining to the investigation into the murder of named individual. Strathclyde Police refused to provide the requested information on the grounds that it was exempt from disclosure under sections 34(1), 35(1) and 38(1)(b) of Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Strathclyde Police disclosed some information, but maintained their decision that other information was exempt from disclosure under sections 34 and 35 of FOISA. They also indicated at this stage that they did not understand what information was being requested by some parts of Mr G's request. Mr G remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Strathclyde Police had partially failed to deal with Mr G's request for information in accordance with Part 1 of FOISA. He concluded that they were entitled to withhold information relating to certain witnesses' statements under sections 34(1)(a)(i) and (b) of FOISA, and that no further information was held in relation to parts of Mr G's request where he had expressed dissatisfaction with the extent of information identified and supplied to him.

However, the Commissioner found that Strathclyde Police had failed to comply with Part 1 of FOISA by failing to comply fully with the duty to provide reasonable advice and assistance to Mr G with respect to some parts of his request. He also found that Strathclyde Police had failed to conduct a review in line with section 21 of FOISA (and in particular sections 21(4) and (5)) in relation to some parts of Mr G's request. The Commissioner required Strathclyde Police to conduct a review in relation to these parts of Mr G's request in compliance with section 21.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (6) (General entitlement); 2(1) (Effect of exemptions); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 21(1), (4) and (5) (Review by Scottish Public Authority) and 34(1)(a)(i) and (b) (Investigations by Scottish Public Authorities and proceedings arising out of such investigations)

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



Background

1. On 7 July 2010, Mr G wrote to Strathclyde Police requesting a range of information pertaining to their investigation into the murder of a named individual. This included:
 - i. The following information relative to each of four sightings of the deceased on CCTV camera footage
 - a) the identity or reference numbers of the CCTV camera
 - b) the precise location of the CCTV camera,
 - c) the timings recorded relative to the sightings,
 - d) the direction of travel of the deceased, as derived from the sightings
 - e) such additional information as has been derived from the sightings,
 - f) the video tape format (e.g. 'real time'/'time lapse' etc) relative to the sightings,
 - g) the cataloguing references relative to any sequences or stills produced.
 - ii. The following Information relative to a particular CCTV tape
 - a) the location of the camera(s),
 - b) dates and times of footage recovered relative to a particular location, and
 - c) any information relative to sightings of the deceased or a named witness at this locus.
 - iii.-vi. The number of statements made by five named witnesses, and the dates, times and references for each of these statements.
 - vii. All information as to steps taken to investigate the veracity of certain claims or as to any steps taken to eliminate a named person from the inquiry.
2. Strathclyde Police responded to this request in a letter dated 6 August 2010. They withheld the requested information in its entirety, stating that it was exempt from disclosure under sections 38(1)(b), 34(1)(a) and (b) and 35(1)(a) and (b) of FOISA.
3. On 17 August 2010, Mr G wrote to Strathclyde Police requesting that they review their response to his request. He commented that Strathclyde Police appeared not to have had regard to each element of his request when considering the application of exemptions, and that it had not given proper consideration to the public interest test in relation to the exemptions in section 34 and 35. He commented on each part of his request in turn, arguing in each case that the information requested should be disclosed.
4. On 29 September 2010, Strathclyde Police notified Mr G of the outcome of their review. Having reconsidered the request, they modified the previous decision as follows:



- With respect to parts i and ii of Mr G's request, Strathclyde Police disclosed some information about the CCTV cameras and timings of relevant sightings. They noted that they did not have the precise locations of the cameras, but provided some reference details about the cameras and the location and direction faced. Strathclyde Police stated that they did not hold information regarding the format of the tape (i.f), or catalogue references for stills produced (i.g). They indicated that they did not understand parts i.e and ii.c of the request (seeking information derived from or relative to the sightings).
 - With respect to parts iii-vi, Strathclyde Police maintained its decision that the requested information was exempt from disclosure under sections 34 and 35 of FOISA.
 - With respect to part vii, Strathclyde Police again indicated that they did not understand what information was being requested.
5. On 8 October 2010, Mr G wrote to the Commissioner, stating that he was 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. Mr G expressed dissatisfaction with Strathclyde Police's handling of all parts of his request, except for parts i.c, i.d, and i.g and ii.a and ii.b.
6. The application was validated by establishing that Mr G had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 25 October 2010, Strathclyde Police were notified in writing that an application had been received from Mr G and were asked to provide the Commissioner with any information withheld from him. Strathclyde Police responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted Strathclyde Police, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Strathclyde Police were asked to justify their reliance on any provisions of FOISA (with particular reference to sections 34 and 35), and to respond to questions to inform the Commissioner's consideration of each part of Mr G's request and the matters giving rise to his dissatisfaction.
9. Strathclyde Police provided detailed responses to each of the points raised, along with their comments on the case.
10. Mr G's submissions were sought and received regarding his comments on why the public interest test favoured disclosure in relation to the information being withheld under sections 34 and 35 of FOISA.



11. The submissions received from Strathclyde Police and Mr G are summarised (where relevant) below.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr G and Strathclyde Police and is satisfied that no matter of relevance has been overlooked.
13. As noted above, Mr G expressed dissatisfaction with Strathclyde Police's handling of all parts of his request except for parts i.c, i.d, i.g and ii.a and ii.b. The matters giving rise to Mr G's dissatisfactions were:
- He did not consider he had been provided the information he expected or believed to be held (parts i.a, i.b, i.f)
 - He considered his requests were clear, and any lack of clarity should have been raised with him prior to a response being issued (parts i.e, ii.c and vii), and
 - He considered Strathclyde Police had incorrectly withheld information (parts iii – vi).
14. In what follows, the Commissioner has considered the matters raised by Mr G in turn.

The extent of information held and provided (parts i.a, i.b, i.f)

15. With respect to parts i.a and i.b of Mr G's request, he sought the following in relation to four sightings of the deceased captured on CCTV camera:

- a) the identity or reference numbers of the CCTV camera
- b) the precise location of the CCTV camera,

When responding to his request for review, Strathclyde Police indicated that the CCTV camera did not have a precise location, and they provided Mr G with a single Home Office Large Major Enquiry System (HOLMES) reference number for the CCTV cameras. Mr G noted that this response appeared to be contradicted by the information supplied in response to parts i.c and i.d of his request, which gave details of recordings made by four different cameras, which were allocated individual numbers. He commented that it seemed somewhat improbable that each of the four cameras listed did not have a precise location since each was fixed at a particular location within the relevant town centre. He noted that it was not clear whether the reference given in response to part i.a referred to an individual camera or the entire system.



16. Part i.f of Mr G's request asked about the format of the CCTV tapes and Strathclyde Police informed him that they did not hold this information. Mr G has indicated that he believed Strathclyde Police were aware of whether the images in their possession are derived from real-time or time-lapse systems, as this would be immediately obvious on viewing.
17. The matter to be considered in relation to each of these parts of Mr G's request is whether any further relevant information is held by Strathclyde Police.
18. In their submissions, Strathclyde Police stated that they had provided all the information that was held in responding to parts i.a and i.b of Mr G's request, when providing the HOLMES reference under which the information about the cameras is held, and (within their response to part i.d), the number given to each camera within their records. Beyond this, Strathclyde Police noted that they held only general information about the CCTV cameras, and did not have records revealing the precise location. They also noted that the CCTV cameras are owned and operated by the relevant local authority, and as such they were not Strathclyde Police property, and they were not referenced by any other force information relating to the investigation.
19. With respect to the format of the recordings, Strathclyde Police maintained in their submissions that they did not hold the requested information. Strathclyde Police went on to explain that checks were undertaken with the police office where the physical information was initially held, but it was understood that the recordings themselves were now held by the Crown. As such, Strathclyde Police maintained that it was not possible to ascertain the format of the original CCTV recordings without further investigation with the Crown Office.
20. Having considered the nature of the information requested by Mr G, the passage of time since the events to which it relates, and the explanations provided by Strathclyde Police, the Commissioner is satisfied that they hold no further information which would satisfy parts i.a, i.b. and i.f of Mr G's request.
21. The Commissioner therefore finds that Strathclyde Police complied with Part 1 of FOISA when dealing with these parts of Mr G's requests. In particular, he notes that Strathclyde Police
 - Complied with section 1(1) of FOISA by supplying the information that they did hold and which fell within the scope of parts i.a and i.b of Mr G's request and
 - Correctly gave notice (in terms of section 17(1) of FOISA) that they did not hold the information sought by part i.f of Mr G's request.
22. However, in relation to each of these parts, the Commissioner has been advised by Strathclyde Police that they understand that other public authorities are likely to hold information about the matters raised by Mr G's request. However, Strathclyde Police did not give any such explanation to Mr G, or advise him to pursue his requests through such channels.



23. Section 15(1) of FOISA creates a duty on public authorities to provide reasonable advice and assistance to a person who proposes to make, or has made, a request for information. The Commissioner considers that by not informing Mr G that another authority may hold the information he sought, Strathclyde Police failed to comply fully with the duty under section 15(1) of FOISA.
24. As the Commissioner's comments above have made clear which public authorities are believed to hold the relevant information, the Commissioner can see no purpose in requiring Strathclyde Police to take steps to rectify this failing in response to this decision. Consequently, he does not require any steps to be taken by Strathclyde Police in relation to this breach.

Failure to understand and respond (parts i.e and ii.c and vii)

25. Within parts i.e and ii.c of his request Mr G sought
 - “such additional information as has been derived from the sightings” referred to in part i and
 - any information relative to sightings of the deceased or a named witness at the locus of the CCTV camera referred to in part ii.
26. Within part vii, Mr G requested any information as to the steps taken to investigate the veracity of claims made by an individual, or as to steps taken to eliminate that individual from their enquiries.
27. Although Strathclyde Police's initial response purported to address all parts of his information request, and indicated that the information was entirely exempt from disclosure, their response to Mr G's request for review in relation to each of these parts indicated that they did not understand what information was being requested. At this stage, Strathclyde Police neither disclosed information in response to these parts nor indicated that the information was considered to be exempt for disclosure (or that any provision within Part 1 of FOISA disappplied the right of access in section 1(1)).
28. Mr G has commented that, to the extent to which his requests were unclear, the authority could have reverted to him to clarify this. With respect to part i.e, however, he indicated that he considered it likely that information about the movements of the deceased was derived from each of the sightings. He maintained that the terms of parts ii.c and vii appeared to be quite clear.
29. In their submissions, Strathclyde Police indicated that, when considering Mr G's review, the review panel did not form any specific interpretation of these parts of Mr G's request. They commented that they were “perhaps misled by the vagueness” of the request, and noted that they had expected that Mr G (an applicant who commonly makes requests in very precise terms) would reply with a more pointed request detailing exactly what information he was looking for. Having recognised that Mr G did not do so, it accepted that it was perhaps an oversight not to have entered into correspondence with him as part of the review process.



30. Strathclyde Police indicated that their initial interpretation of these requests, which had formed the basis of their initial response, had been that any information relating to named individuals within police records, reports or subsequent court records was either provided by those individuals or involved them as witnesses, suspects or otherwise, during a criminal investigation. Accordingly, they maintained that the exemptions in section 34 and 35 of FOISA were engaged. It referred to their submissions on these exemptions and the public interest test in support of such a position.
31. With particular reference to part vii, Strathclyde Police commented that, given the wording of the applicant's question, it was not clear what *recorded* information he required, and they suggested that he sought more of an explanation or opinion, in which case the request was not technically a valid one.
32. Having considered all of the above, the Commissioner has concluded that, by failing to respond to these parts of Mr G's requests when notifying him of the outcome of their review, Strathclyde Police breached the requirements of Part 1 of FOISA.
33. Section 8(1) of FOISA states that a request for information for the purposes of FOISA is any request which is (a) made in writing or another form capable of being used for subsequent reference; (b) states the name of the applicant and an address for correspondence and (c) describe the information requested.
34. In any case where a public authority reasonably considers that it needs further information to enable it to identify and locate the information requested (where a request meets the requirements of section 8(1)), it is entitled under section 1(3) of FOISA to notify the applicant of this and to specify what further information is required. Where further information is sought from the applicant in terms of section 1(3) of FOISA, the public authority is not obliged to give the requested information until the further information has been received, provided the requirement is reasonable.
35. Furthermore, section 15(1) creates a duty for a public authority to provide reasonable advice and assistance to a person who makes or proposes to make an information request. Should a person purport to request information in terms of FOISA, but fail to meet all of the requirements of section 8(1) (and so fail to make a valid request engaging their rights under FOISA), it would be appropriate for the public authority to give advice to the applicant on how to make a request in a way that meets the requirements of section 8(1). If the failure is with respect to the requirement to describe the information requested, appropriate advice would include an explanation of the requirement, and why the description provided was considered deficient, and guidance on making a proper request.
36. As noted by Mr G, had Strathclyde Police considered that his information request had failed to provide an adequate description of the information he wished to access, it would have been appropriate for Strathclyde Police to take steps to either seek clarification of the request or offer advice and assistance on making a request prior to making any response. However, Strathclyde Police did neither of these things, and instead purported to respond without identifying any doubt about what was being sought.



37. Having considered the terms of these parts of Mr G's request, the Commissioner considers that, on an ordinary reading, it is clear what information is being requested. While these parts of the request are expressed in quite general terms, this seems reasonable when a person outside Strathclyde Police could not be certain as to what recorded information might be held on the specified topics.
38. With respect to parts i.e and ii.c, the Commissioner considers (in the absence of further clarification or evidence to the contrary) it clear that the requests are seeking any recorded information that would indicate what findings or evidence had been drawn from consideration of the specified CCTV recording. With respect to part vii, the Commissioner considers it to be clear that the request is seeking recorded information that would evidence the steps taken by Strathclyde Police in relation to the matters specified. The information falling within this request would be that which would confirm which steps were taken, when and by whom.
39. The Commissioner is satisfied that each part of Mr G's information request met the requirements section 8(1), and so Strathclyde Police was obliged to provide a response.
40. While it might have been reasonable for Strathclyde Police to engage in discussion with Mr G about these particular parts of his request to enable them to better understand the matters of concern to Mr G, and to assist and focus any searches for relevant information, Strathclyde Police did not take advantage of the provision in section 1(3) to do so.
41. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant to this case.
42. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates:
 - i. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - ii. substitute for any such decision a different decision; or
 - iii. reach a decision, where the complaint is that no decision had been reached.
43. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
44. In this case, Strathclyde Police did conduct a review of their handling of Mr G's request. However, with respect to parts i.e, ii.c and vii of his request, that review did not produce any of the outcome allowed by section 21(4), and so Strathclyde Police failed to comply with the requirements of section 21(4) and (5) of FOISA.
45. In order to comply with Part 1 of FOISA, the Commissioner requires Strathclyde Police to conduct a review that complies with the requirements of section 21(4) in relation to these parts of Mr G's request, and to notify Mr G of the outcome of this review in line with section 21(5) of FOISA.



46. If Strathclyde Police considers it would be beneficial to contact Mr G in order to better understand the intended scope or focus of these parts of his request, they may choose to do so prior to issuing their response.

Information withheld – parts iii - vi

47. In parts iii, iv, v and vi of his request, Mr G requested in relation to a number of named individuals, information detailing the number of statements they had given, the dates and times on which each statement was given, and the HOLMES reference for each statement.
48. Strathclyde Police withheld this information on the basis that it was exempt from disclosure under sections 34(1)(a)(i) and (b) and sections 35(1)(a) and (b) of FOISA

Section 34(1)(a)(i) & (b)

49. Section 34 provides a number of exemptions from disclosure which apply if the requested information has at any time been held by a Scottish public authority for the purposes of certain investigations. Relevant investigations include an investigation which the authority has a duty to conduct to ascertain whether a person should be prosecuted for an offence (section 34(1)(a)(i)) and an investigation which may lead to a decision to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted (section 34(1)(b)).
50. Strathclyde Police explained that the information withheld from Mr G was gathered and recorded for the purposes of an investigation which that they had a duty to conduct in order to ascertain whether a person or persons should be prosecuted for an offence. Following the investigation, a report was made to the Procurator Fiscal, and an individual was subsequently convicted of murder.
51. If information has been held by a Scottish public authority for the purposes of an investigation covered by section 34(1) of FOISA, it automatically falls under the relevant exemption. The Commissioner is satisfied that details of the number of witness statements received from particular witnesses, and the dates, times and references given to those statements is entirely information held by Strathclyde Police for the purposes of a criminal investigation which Strathclyde Police had a duty to conduct, and in relation to which a report was made to the Procurator Fiscal, leading to a criminal trial and conviction. He is therefore satisfied that the exemptions in sections 34(1)(a)(i) and (b) are both applicable to this information.
52. However, the exemptions in section 34(1) are subject to the public interest test required by section 2(1)(b) of FOISA and the Commissioner must go on to consider whether the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.



Public interest – submission from Strathclyde Police

53. Strathclyde Police accepted that considerations such as justice to the individual might show there would be public interest in disclosure, but they believed that the balance of public interest lay in withholding the information.
54. Strathclyde Police noted (inter alia) that the withheld information related to statements obtained as part of a criminal investigation. They noted that such information is considered in general terms to be confidential and would only be disclosed during proceedings instigated as a result of the investigation or other due legal process.
55. They maintained that disclosure of such information may discourage or prevent the public from contacting the police in the future, for fear that their information would be publicly disclosed. This, they argued, would be detrimental to the efficient and effective conduct of Strathclyde Police, as the police must be in a position to fully investigate matters reported to them.

Public interest – submission from Mr G

56. In his application and further submissions to the Commissioner, Mr G argued that Strathclyde Police had failed to properly consider the public interest test, and it had offered only generalised views of what regards the public interest in the wide context of the exemptions cited, without attempting to offer justification for the exemptions in relation to each element of his request.
57. He noted that he had not requested the content of any witness statements, and he did not consider the requested information to be in any way sensitive or controversial. He maintained that there was a clear public interest in transparency and confidence in the criminal justice system in relation to the availability of the information concerned. He also noted that, as much information relating to the investigation was made public at the time, the same approach should be taken now and the withheld information should be made public.

Public interest test – the Commissioner's view

58. The Commissioner has carefully considered the public interest arguments put forward by Mr G and Strathclyde Police (including those parts which are not summarised in full in this decision).
59. Noting Mr G's concerns, he has taken care to consider these arguments with regard to the particular information under consideration. He recognises that some of the comments made by Strathclyde Police appear to be made in very general terms, which in places have given the impression of considering the public interest in relation to the substance of police reports or witness statements, rather than the narrower types of information about statements requested by Mr G.



60. The Commissioner has also borne in mind that disclosure under FOISA is not made just to one person, but has the effect of making information publicly available. The information sought by Mr G would publicly confirm that certain named individuals had given statements in the course of a particular criminal investigation, the number of occasions on which they had done so, and the dates and times of those statements being given.
61. While this disclosure would not reveal the substance of their statements, it would give significant insights into their involvement (its degree and duration) in the relevant police investigation.
62. It should of course also be noted that each of these witnesses might well have been identified in the course of a criminal trial and, as such, their involvement in the case was made public at that time. However, while it is routine for the identities of witnesses to be made known in the course of a trial, the Commissioner recognises that public awareness of such facts will fade after those events. As a result, his view is that such previous identification as a witness should not be given significant weight as factor justifying public disclosure of information relating to their statements at a later date.
63. The Commissioner acknowledges and has given some weight to the general public interest identified by Mr G in transparency in the criminal justice system. This applies both generally, and in relation to the particular case to which his information request relates. He recognises that some public interest would be served by disclosure in this case, since it would aid understanding of the police investigation into the relevant case.
64. However, he considers there to be a stronger public interest in maintaining the exemptions contained in section 34 of FOISA in relation to the withheld information. He considers that there is very considerable public interest in ensuring that persons giving witness statements in the course of criminal investigations are able to do so on the understanding that both the fact and content of their statements are treated in confidence, except where this is disclosed in the context of judicial proceedings or related processes.
65. The Commissioner believes it is unquestionably and strongly in the 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. He agrees with Strathclyde Police that disclosure under FOISA of the information requested by Mr G in parts iii-vi of his request would be likely undermine the confidentiality that is an understood part of police investigations, with the consequence that the public would be less willing to assist the police with future investigations.
66. On balance, the Commissioner finds that the public interest in maintaining the exemptions in sections 34(1)(a)(i) outweighs that in disclosure of the information withheld from Mr G. The Commissioner therefore upholds the decision of Strathclyde Police to withhold the information in question under section 34(1)(a)(i) and (b) of FOISA.
67. Having reached this conclusion, it is not necessary for the Commissioner to go on to consider the application of the exemptions in section 35(1)(a) and (b) of FOISA in this case.



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 Mr G.

The Commissioner finds that by providing the information held in relation to parts i.a and i.b of Mr G request and withholding the requested information in relation to parts iii, iv, v and vi of Mr G's request under section 34(1)(a)(i) and (b) of FOISA, Strathclyde Police complied with Part 1 and, in particular, with section 1(1). The Commissioner also finds that Strathclyde Police were entitled to notify Mr G, in terms of section 17(1) of FOISA, that they did not hold any information in relation to part i.(f) of his request

However, the Commissioner has concluded that Strathclyde Police failed to comply fully with its duty to provide reasonable advice and assistance to Mr G as required by section 15(1) of FOISA, when responding to parts a and b of his request. The Commissioner does not require any action to be taken in relation to this particular breach, since the nature and content of the advice which would have been appropriate to give has been set out in the content of this decision.

By failing to provide any response to parts i.e, ii.c and vii of Mr G's request (other than to indicate that they did not understand what information was being sought) when responding to Mr G's request for review, Strathclyde Police failed to conduct a review in line with section 21, and in particular sections 21(4) and (5), in relation to these parts of Mr G's request. In order to rectify this breach, the Commissioner requires Strathclyde Police to conduct a further review of its handling of these parts of Mr G's information request. This review should comply with the requirements of section 21(4), and Mr G should be notified of the outcome of this review in line with section 21(5) of FOISA by Monday 27 June 2011.

Appeal

Should either Mr G 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.

Margaret Keyse
Head of Enforcement
12 May 2011



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.

...

- (3) If the authority –
- (a) requires further information in order to identify and locate the requested information; and
 - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

- (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.

...



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.

...

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.

...

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.
- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.



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;
 - ...
 - (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;
 - ...