



Scottish Information
Commissioner

Decision 066/2006 - Mr John Robertson, Aberdeen Journals Ltd., and the Chief Constable of Northern Constabulary

Request for details of the cost of providing company cars to the Chief Constable and Deputy Chief Constable over each of the last five years

Applicant: Mr John Robertson, Aberdeen Journals Ltd.

Authority: The Chief Constable of Northern Constabulary

Case No: 200502155

Decision Date: 20 April 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 066/2006 – Mr Robertson and the Chief Constable of Northern Constabulary

Request for details of the cost of providing company cars to senior staff members – section 36(2) confidentiality – section 33(1)(b) commercial interests

Facts

Mr Robertson, a journalist with Aberdeen Journals Ltd, submitted an information request to Northern Constabulary (the force) seeking details of the cost of providing company cars to the Chief Constable and Deputy Chief Constable over each of previous five years.

The request was refused by the force on the grounds that the information was exempt under sections 36(2) and 33(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA).

The investigation in relation to this case primarily focussed on two vehicles purchased from Land Rover UK in 2004. However, during the course of the investigation, it also emerged that an additional two vehicles, purchased from Volvo Car UK, also fell within the scope of the request. Following its discovery of this information, the force released details of the two Volvo vehicles to Mr Robertson.

Outcome

The Commissioner found that the force had incorrectly applied the exemptions under both sections 36(2) and 33(1)(b) of FOISA to the information requested by Mr Robertson and therefore had failed to deal with Mr Robertson's request in accordance with Part 1 of FOISA.

The Commissioner required the force to release details of the cost of the two vehicles purchased from Land Rover UK to Mr Robertson within two months of receipt of this Notice.



Appeal

Should either Mr Robertson or the Chief Constable of Northern Constabulary 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.

Background

1. On 21 January 2005 Mr John Robertson, a journalist working for Aberdeen Journals Ltd., submitted a number of information requests by email to Northern Constabulary (the force). Among these information requests, Mr Robertson asked the following:

“Can you tell me how much it has cost for the force to provide company cars (Range Rover 4x4s) to the Chief Constable and the Deputy Chief Constable this year? Can you tell me how much it cost to provide them with company cars in each of the last five years?”
2. The force responded to these requests on 18 February 2005. In this response, the force informed Mr Robertson that details of the purchase costs for the two vehicles in question could not be released. The force stated that this was because the information was exempt under both sections 36(2)(b) and 33(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA).
3. Section 36(2)(the subsection must be read as a whole) of FOISA exempts information if the information was obtained by the public authority from another person and disclosure of that information would constitute an actionable breach of confidence. Section 33(1)(b) relates to commercial interests, and exempts information if its disclosure would, or would be likely to, prejudice substantially the commercial interests of an individual or organisation.
4. In its response to Mr Robertson, the force indicated that section 36(2) applied as a result of the vehicles being supplied under a Home Office contract with the Police Information Technology Organisation (PITO), which required the terms and conditions to remain confidential. The force also stated that Land Rover and other vehicle manufacturers had advised it that a release of the information would be considered to be a breach of confidence.



5. Mr Robertson immediately requested that the force review its decision. Mr Robertson stated that he believed the release of the cost of the vehicles to be in the public interest.
6. The force responded to Mr Robertson's request for review on 15 March 2005. As with all previous correspondence in relation to this case, this response was sent by email. It would appear however that, due to a fault in the email system, this response did not reach Mr Robertson.
7. Mr Robertson contacted the force again in June 2005. At this time, the force notified Mr Robertson of its earlier response, and forwarded a copy of this correspondence to him.
8. In its response to Mr Robertson's request for review, the force upheld its decision of 18 February 2005, indicating that the information was exempt under both sections 36(2) and 33(1)(b) of FOISA.
9. Mr Robertson submitted a formal application under section 47(1) of FOISA to me on 27 June 2005. The case was allocated to an investigating officer.

The Investigation

10. In his application to me, Mr Robertson acknowledged that the delay in his receipt of the force's response to his request for review may have been due to a fault with his own email system, and stated that he did not wish my Office to investigate this delay. He did, however, state that he was unhappy with the force's general refusal to release the information, and requested that my staff conduct an investigation on this basis.
11. Mr Robertson's application was validated by establishing that he had made a valid information request to a Scottish public authority, and had appealed to me only after requesting that the authority review its response to that request.
12. My Office contacted the force for its comments on 5 July 2005. Information sought in this correspondence included:
 - a) A copy of the information withheld;
 - b) A copy of the PITO contract which the force stated required details relating to the cost of the vehicles to be held in confidence;
 - c) Details of the reasoning behind the force's decision to apply the exemption under section 33(1)(b), including details of any consideration of the public interest test;



- d) Details of any consideration of the public interest in relation to the application of the exemption under section 36(2);
 - e) Copies of any communications or correspondence with either PITO or any vehicle manufacturer relating to the handling of this information request.
13. A response to this correspondence was received from the force on 25 July 2005. This response referred to two vehicles purchased from Land Rover UK which fell within the scope of the request, and presented supporting arguments for the non-disclosure of purchasing information relating to these vehicles.
14. Additional correspondence and communications took place between my Office and the various parties during the course of the investigation. As a result of this correspondence, it emerged in February 2006 that an additional two vehicles had been purchased by the force for use by the Chief Constable and Assistant Chief Constable from Volvo Car UK, the first in December 2000 and the second in April 2002. These vehicles clearly fell within the scope of Mr Robertson's original request, but had not been considered by the force, either in the responses to its correspondence with Mr Robertson, or in its communications with my investigating officer.
15. The force states that it has a policy of replacing vehicles after four years or 100,000 miles of use. The force indicated to my investigating officer that the two vehicles purchased from Volvo Car UK were sold by the force in 2004 as a result of this policy, and were replaced by the two purchases from Land Rover UK.
16. Following its discovery that the two additional vehicles fell within the scope of the request, the force concluded that its reasons for exempting the information in relation to the purchases from Land Rover UK did not apply to the information held in relation to its previous purchases from Volvo Car UK. The force indicated that the passage of time since these vehicles were purchased, along with the fact that the vehicles had now been sold, had acted to diminish any risk of prejudice to commercial interests in relation to these vehicles. As a result, the force released details of the cost of the two vehicles purchased from Volvo Car UK to Mr Robertson on 14 February 2006.

Analysis and Findings

17. Before I discuss the issue of whether the force's decision to withhold the information relating to the vehicles purchased from Land Rover UK was appropriate in terms of FOISA, I wish to first comment briefly on two aspects of the force's handling of Mr Robertson's information request.



The handling of the request

18. Firstly, and most significantly, I would like to discuss the force's failure to accurately identify all the information held in relation to Mr Robertson's request, and specifically its failure to identify information relating to the purchases from Volvo Car UK until the closing stages of this investigation. The force has stated, in its submissions to this Office, that this error occurred as a result of an incorrect assumption on the part of staff handling the request that the Land Rover UK purchase was the only relevant purchase within the time period specified by Mr Robertson. This incorrect assumption was subsequently not identified either during the handling of Mr Robertson's request for review, or during the initial communications with my staff. Indeed it was only following closing checks made by my investigating officer in the final stages of the investigation that this information came to light.
19. This is clearly not acceptable under FOISA. Authorities dealing with FOISA requests have a duty to carefully consider those requests in order to accurately assess the exact nature of the information being sought, seeking clarification from the applicant where necessary. Once this has been established, authorities should then conduct a considered and appropriate interrogation of their systems in order to identify all information falling within the scope of that request. It is clear that this was not done during the force's handling of Mr Robertson's request, or indeed, at any later point during the review or initial investigation period. As a result, Mr Robertson faced a substantial and unwarranted delay in receiving this information. I note, however, that the force has accepted that it was at fault in relation to this aspect of handling Mr Robertson's request, and has since informed my Office that steps have been taken to address the procedural issues which led to this failure.
20. Secondly, I would also briefly like to comment on the text contained in the force's acknowledgement of Mr Robertson's request for review, dated 29 June 2005. In this correspondence, the force states that "*if it becomes clear that the review will not be completed within 20 working days, you will be contacted.*" It should be noted by the force that FOISA places a statutory obligation to respond to all requests, and subsequent requests for review, within 20 working days. The force should note that any failure to respond to a request for review within this statutory timescale will automatically mean that the requestor has a right, under section 47(1)(b) of FOISA, to make an application to me for decision in relation to that information request.



Consideration of the exemptions

21. As discussed above, information has recently been supplied to Mr Robertson in relation to the purchase of the two vehicles from Volvo Car UK. Having considered this information, I am satisfied that the appropriate information in relation to these vehicles has been supplied to Mr Robertson. As a result, the remainder of this Decision Notice will concentrate on the force's assertion that the information held which relates to the cost of the vehicles purchased from Land Rover UK should be withheld.
22. In arguing that the information relating to these two vehicles should be withheld, the force stated that two separate exemptions applied to the information. The exemptions cited were those contained under sections 36(2) and 33(1)(b) of FOISA. I will address the force's application of each of these exemptions in relation to the vehicles purchased from Land Rover UK in turn below.

Section 36(2) - the Confidentiality exemption

23. While the force referred to 36(2)(b) as the appropriate exemption in its correspondence with both the applicant and with my Office, it should be noted that the FOISA requires the exemption contained under section 36(2) to be read as a whole. Section 36(2) of FOISA states the following:

"Information is exempt information if –

- (a) *it was obtained by a Scottish public authority from another person (including another such authority); and*
- (b) *its disclosure by the authority so obtaining it to the public (otherwise than under this Act) would constitute a breach of confidence actionable by that person or any other person."*

Section 36(2) is an absolute exemption, and is not, therefore, subject to the public interest test.

24. There is, therefore, a two stage test which must be fulfilled before the exemption can be relied upon. Firstly, the information must have been obtained by a Scottish public authority from another person. "Person" is defined widely and means another individual, another Scottish public authority or any other body, such as a company or partnership.
25. As pricing details of the vehicles in question were supplied to the force by Land Rover UK, the first part of this test can be considered to be fulfilled.



26. The second part of the test is that the disclosure of the information by the public authority would constitute an actionable breach of confidence either by the person who gave the information to the public authority or by any other person. Although there was no discussion about the meaning of the word “actionable” when the Freedom of Information Bill was being considered in Parliament, I take the view that actionable means that the basic requirements for a successful action must appear to be fulfilled.
27. There are three main requirements which must be met before a claim for breach of confidentiality can be established. These are:
- a) the information must have the necessary quality of confidence;
 - b) the public authority must have received the information in circumstances which imposed an obligation on the authority to maintain confidentiality; and
 - c) there must be a disclosure which has not been authorised by the person who communicated the information but which would cause damage to that person.
28. Having considered the information requested by Mr Robertson, I am satisfied that it fulfils the criteria of having the necessary quality of confidence, in that the information is not common knowledge, and could not be readily obtained by Mr Robertson through any other means.
29. With regard to the circumstances under which the information was received, the force stated, in its submissions to my Office, that a confidentiality clause in the PITO contract expressly forbade the release of information. In its submission, the force stated that this clause “*clearly states that information supplied between the authority and the contractor must be classed as confidential between the two parties. This would include the details of the cost agreed for the supply of the Range Rovers.*”
30. The contract in question took the form of a PITO ‘Framework Arrangement’ governing the supply of vehicles and spare parts to Police and Fire Authorities by various motor companies. The confidentiality clause in the Framework Arrangement was contained under clause 16.2. Clause 16.2 stated:
- “The Contractor shall keep secret and not disclose and shall procure that his employees keep secret and do not disclose any information of a confidential nature obtained by him by reason of the Contract except information which is in the public domain otherwise that [sic] by reason of a breach of this position”.*



31. The 'Contractor' is defined in clause 1.4 of the Framework Arrangement as *"the trader, firm, private limited company or public limited company...which has agreed to make and keep open the offer contained in the Framework Arrangement for the period shown"*.
32. Therefore, while clause 16.2 does indeed impose a duty of confidentiality, it is clear from the contract that such a duty applies only to the Contractor. Such a duty does not, as suggested by the force, apply to both parties.
33. Following review of clause 16.2 my Office contacted the force in order to confirm whether additional documentation could be provided which demonstrated the duty of confidentiality referred to by the force. The force confirmed, in its response, that it held no other contract with Land Rover UK other than that contained under the PITO Framework Arrangement. The force then went on to emphasise its belief that, nevertheless, it considered the information to be exempt under section 33(1)(b) of FOISA.
34. There were, therefore, only two remaining items of documentation, submitted by the force alongside its initial submissions to this Office, which might be considered to refer to any such duty of confidentiality. These letters were received by the force from both Land Rover UK (dated 16 July 2005) and its parent company, the Ford Motor Company Ltd (on 1 June 2005), during its consideration of Mr Robertson's request. Both items of correspondence suggested that the information provided to the force was regarded as information provided in confidence by the companies in question. There is, however, no evidence that the information was so regarded at the time it was supplied.
35. It is my view that for this information to fulfil the criteria of information which was received with an appropriate obligation of confidentiality, it should be possible for the force to demonstrate that such an obligation was in place when the information was initially supplied. Indeed, the fact that the relevant Framework Arrangement contains a confidentiality clause, but that this clause applies only to the Contractor, as opposed to the force itself, appears to me to be a strong indicator that the information was not supplied with such a duty of confidentiality attached. The settled position of the Contractor and the force/PITO on this matter should be as set out in the Framework Arrangement at the time the information was first supplied: I am aware of no contemporary documents or actions which would affect the position of the parties set out in that agreement, nor of any reason why the position should have changed materially in the interim.



36. While the Contractor has since stated, in a letter sent several years after the purchase of the vehicles, that it considered the information to be confidential, it is reasonable to assume that had the Contractor wished the information to be kept confidential at the time of conclusion of the Framework Arrangement, the confidentiality clause in that agreement would have extended to information of that kind.
37. I am satisfied that the relevant clause within the Framework Arrangement does not create circumstances where disclosure of the withheld information by the force would constitute a breach of confidence actionable by Land Rover UK. As such, I find that the exemption under section 36(2)(b) of FOISA does not apply to the information withheld from Mr Robertson.

Section 33(1)(b) – Commercial Interests

38. In responding to Mr Robertson the force also stated that the exemption under section 33(1)(b) applied to the withheld information.
39. Section 33(1)(b) exempts information if its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of any person (or organisation). This exemption is subject to the public interest test, which means that, even if the information falls under section 33(1)(b), the information should be disclosed unless the public interest in withholding it outweighs that in disclosure.
40. The force asserted that both its own commercial interests, and those of Land Rover UK, would be substantially prejudiced by the release of the information. In addition, the force also expressed its view that the public interest would not be served by the release of the information in question.
41. I will address the issue of the potential impact on the commercial interests of both parties below.

Commercial interests of Northern Constabulary

42. In its submissions to this Office, Northern Constabulary failed to present a clear and cohesive case setting out why it was believed that the release of information would, or would be likely to, prejudice substantially its commercial interests. Indeed, it should be noted that the force's initial submission to this Office referred only to the risk of substantial prejudice to Land Rover UK's commercial interests, and made no direct reference to any risk of harm to equivalent interests of the force.



43. Nevertheless, later submissions from the force went on to expressly state its belief that, not only would its own commercial interests be substantially prejudiced by release, but those of all UK police forces may be prejudiced as a result. The force evidenced this assertion by reiterating and expanding on public interest arguments put forward in its initial submission.
44. In that initial public interest submission, the force suggested that release of the information would result in suppliers withdrawing from the PITO framework arrangement. This submission stated:

“PITO have recently produced a report, which indicates that the UK Police Forces have saved over £20 million due to this PITO contract. If we are now required to release details of the prices negotiated under this contract, it may cause all the manufacturers to reconsider their position and potentially withdraw. The cost to UK police forces would be in the millions. This would not be in the public interest.”
45. In later submissions, the force reiterated this position, stating the release would potentially result in individual forces negotiating directly with companies, and would result in a *“consequential loss of economies of scale, and an increase in public expenditure.”*
46. In referring to this argument within the context of 33(1)(b), the force therefore appeared to suggest that the release of the information would substantially prejudice its commercial interests, in that it predicted that release would lead to the withdrawal of manufacturers from the PITO contract. As a result, the force suggested that it, and all other UK police forces, would be required to pay substantially more for vehicles than under current arrangements.
47. I have a number of concerns with regard to this assessment. Firstly, I am not convinced, on the basis of both the limited submission put before me by the force, and the subsequent discussion which took place between my investigating officer and representatives of PITO and Land Rover UK, that the release of the information requested by the applicant would result in the outcome predicted by the force. Indeed, while Land Rover UK indicated in discussions with this office that release of the information may potentially result in a review of the pricing arrangements offered through PITO, at no point did it suggest that it would be likely to withdraw from any agreement as a result.
48. More importantly, however, even if the chain of events predicted by the force did occur, I do not consider that this would result in a substantial prejudice to the commercial interests of Northern Constabulary or, indeed, to the UK’s police forces generally.



49. The exemption under section 33(1)(b) relates to the commercial interests of an individual or organisation. When considering this exemption, it is important that a distinction is drawn between the 'commercial' interests of an organisation and its 'financial' interests.
50. Financial interests will generally relate to the financial affairs of an organisation, and will include, but will not be limited to, the revenue generated by an organisation and the management of its financial assets. Commercial interests, however, will relate more directly to trading activity undertaken by an organisation, and will include activity relating to the ongoing sale and purchase of goods and services by that organisation, frequently for the purpose of revenue generation.
51. In order for the test under section 33(1)(b) to be satisfied, therefore, it is my view that the interests which are at risk of harm must go beyond those relating solely to the purchase by a Scottish public authority of goods and services which are required for the effective fulfilment of its functions, statutory or otherwise. While the purchase of such goods may entail activity which engages with commercial operators, it will not necessarily follow that the force has commercial interests in relation to that activity.
52. In the case of the two vehicles purchased from Land Rover UK, and indeed vehicles purchased generally through the PITO agreement, it is my view that such purchases are not made as part of the type of commercial activity which falls within the scope of the exemption under section 33(1)(b). As a result, even if the circumstances described by the Council (and summarised under paragraphs 43-45 above) did occur, they would not be likely affect any commercial interest of the force or the UK's police forces more widely, let alone substantially prejudice those interests.
53. In relation to the application of section 33(1)(b), the force also stated, in a later submission dated 14 February 2006 (and following the discovery of the information relating to Volvo Car UK purchases), that the "*main issue*" the force now had with the release of information about the Land Rover UK purchases was that any release could affect the resale value of these two vehicles, thus substantially prejudicing the force's commercial interests. In making this assertion, the force introduced an argument which might be considered to be more closely related to a potential 'commercial interest' of the force than any case presented previously. However, the force failed to provide any additional information or evidence which might substantiate or support this argument.



54. Having considered the limited argument which has been put forward, however, I again do not accept that it can be viewed as a legitimate argument for the non-disclosure the information requested by Mr Robertson. I consider it unlikely that any revenue generated from the resale of vehicles will be significantly affected by disclosure of the purchase price, and certainly not to a degree that would fulfil the test of 'substantial' prejudice required by FOISA. Indeed, as stated in my briefing on the section 33 exemption, it is my view that, in order to claim this exemption, the damage caused as a result of disclosure would have to be:

"...real or very likely, not hypothetical. The harm caused must be significant, not marginal, and it would have to occur in the near future not in some distant time."

55. In its brief submission on this point, the force has presented no evidence to demonstrate that the required level of harm would occur. Indeed, I consider it likely that the force will generally be in a position to sell such vehicles in accordance with the appropriate market rate for similar vehicles of an equivalent age and condition, regardless of the purchase price of the vehicles. Should a potential purchaser wish to dispute this, the force would, of course, be free to explore the market in order to ensure that the most appropriate price could be obtained for each vehicle.
56. As such, I therefore do not find that the release of the information requested by Mr Robertson would substantially prejudice the commercial interests of either Northern Constabulary, or the UK's police force's in general.

The Commercial Interests of Land Rover UK

57. In its submissions to this Office, the force also stated that it believed that the commercial interests of Land Rover UK would be substantially prejudiced by the release of information relating to the cost of the two vehicles. In support, the force presented two letters, received from both Land Rover UK and its parent company, the Ford Motor Company Ltd.
58. The letter from the Ford Motor Company Ltd (Ford), dated 1 June 2005, stated that Ford regarded "*all details of fleet support communicated to you or contained in any agreement with you as information provided to you in confidence, and being of a commercially sensitive nature, whose disclosure would be likely to prejudice our commercial interests.*" This correspondence did not, however, go on to provide information on the specific harm which might occur as a result of release of the information in question.



59. The letter from Land Rover UK, dated 19 July 2005, asserted that the publication of the information would have a detrimental impact on its ability to negotiate prices with fleet customers, therefore prejudicing the company's commercial interests. In addition, Land Rover UK also stated that the publication of this information would give a false indication of both the available discounts and the manufacturing cost of the vehicles. It also stressed that its fleet price calculation methodology was complex and, as a result, it would be impossible to explain the pricing decisions in the course of a public debate. The company indicated that release would therefore damage its bargaining position in relation to future vehicle sales.
60. The force made no additional submission in relation to the risk of substantial prejudice to the commercial interests of Land Rover UK, beyond the supply of the two letters described above.
61. During the course of the investigation, my investigating officer contacted the force, Land Rover UK and PITO in order to gather further comment and submissions in relation to the case.
62. During discussions with Land Rover UK, it emerged that the company's key concerns related to the discount negotiated with regard to the purchase of these two vehicles. Land Rover UK indicated in discussions with my investigating officer that the discount negotiated with police purchasers was unique, and that any financial detriment to Land Rover UK as a result of such discount was counterbalanced by the perceived marketing benefits of having their vehicles driven by the UK's police forces.
63. Land Rover UK therefore indicated its belief that its commercial interests would be prejudiced, in that release of the information would result in other customers pursuing similar levels of discount to that offered to the UK's police forces. The company also stated, in its correspondence of 19 July 2005, that it would be "*impossible to explain, in the course of public debate about such pricing, the factors justifying any pricing decision.*"
64. In contrast with the situation of Northern Constabulary and the UK's police forces, discussed in paragraphs 42-56 above, it is my view that the requested information will relate far more directly to the commercial interests of Land Rover UK. Land Rover UK is a commercial organisation, whose core activity is the manufacture and sale of motor-vehicles. Land Rover UK therefore clearly has commercial interests relating to that activity, and information relating to its pricing decisions will directly affect those interests.
65. The issue which must be considered in relation to the application of the exemption under section 33(1)(b) to the information requested by Mr Robertson is, however, whether release would substantially prejudice those interests.



66. Paragraph 72 of the ‘Scottish Ministers’ Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002’ (the Section 60 Code) indicates that the prejudice caused to a particular interest following release of information should be “*real, actual, and of significant substance*” before the test of substantial prejudice can be considered to have been met.
67. Land Rover UK’s arguments in favour of non-disclosure are underpinned by the suggestion that its fleet price calculation methodology is too complex to be explained within the course of public debate. As a result, it is implied that neither its other fleet customers, nor the public in general, will be able to rationalise and accept the pricing decisions made in relation to these two vehicles, and that the company’s bargaining position will therefore be undermined when setting prices with other customers.
68. I am, however, unconvinced by this argument. I do not accept the assertion that the factors which have informed the pricing decisions made in relation to these purchases cannot be communicated successfully within the course of any subsequent debate, either with individual customers or more generally with the public at large. Indeed, the central factor which appears to have informed Land Rover UK’s pricing decision was stated clearly and concisely to my investigating officer during the course of this investigation – namely that the use of Land Rover UK’s vehicles by Britain’s police forces was considered to be a valuable and unique marketing opportunity, and that any potential loss of revenue as a result of such sales is considered to be offset by perceived benefits in terms of marketing and advertising.
69. I am therefore of the view that any risk of prejudice to Land Rover UK’s commercial interests can be considered to be speculative, as opposed to ‘real’ or ‘actual’, and that any such risk is likely to be substantially diminished by the contextual information which Land Rover UK can supply.
70. In addition, it should also be noted that Mr Robertson’s original request sought only details of the cost to the force of providing company cars to the Chief Constable and the Deputy Chief Constable. He did not, therefore, request a detailed breakdown of those costs, or indeed details of the specifications of the vehicles nor the discounts negotiated. The force is not, therefore, required to consider the release of this information in response to Mr Robertson’s request, and it is my view that, without such information, the precise value of the transactions, in terms of any specific discount negotiated, cannot be accurately established. This will, in turn, further reduce the risk of prejudice to the commercial interests of Land Rover UK.



71. An additional factor to consider is the fact that the Framework Arrangement under which the two purchases from Land Rover UK were made has subsequently been replaced by a new Arrangement. As such, it can be assumed that any price calculations made within the scope of the old Framework Arrangement will not necessarily be replicated within that which is currently in place. This will again have the effect of further reducing the effect of any prejudicial impact to the commercial interests of Land Rover UK.
72. I do not, therefore, consider that any potential harm to Land Rover UK's commercial interests in relation to this case can be considered to fulfil the test of substantial prejudice, as required by section 33(1)(b) of FOISA. As I do not consider that the exemption applies, I am not obliged to consider whether the public interest is better served by withholding or releasing the information.
73. Finally, it should also be noted that the letter from Land Rover UK to Northern Constabulary of 19 July 2005 also stated that the requested information constituted a "*confidential trade secret*". However, given that the force has chosen not to apply the FOISA exemption which protects trade secrets (section 33(1)(a)) in relation to the requested information, and the fact that neither the force nor Land Rover UK have presented a case in relation to this claim, I do not intend to consider it within the course of this decision.



Decision

I find that Northern Constabulary (the force) failed to act in accordance with Part 1 of FOISA in its application of the exemption under section 36(2) of the Freedom of Information (Scotland) Act 2002 (FOISA) to the information requested by Mr Robertson.

I also find that the force failed to act in accordance with FOISA in its application of the exemption under section 33(1)(b) of FOISA, in that I am not satisfied that the release of the requested information would substantially prejudice the commercial interests of either the force itself, all of the UK's police forces in general, or those of Land Rover UK.

I therefore require the force to release details of the cost of the two vehicles purchased for the Chief Constable and the Deputy Chief Constable from Land Rover UK to Mr Robertson. In releasing this information, the force should note that the scope of Mr Robertson's request does not oblige it to release details of either the specification of each vehicle or the particular discount offered in relation to each vehicle.

I am obliged to give the force at least 42 days in which to supply Mr Robertson with the information as set out above. In this case, I require the force to supply the information to Mr Robertson within 2 months of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
20 April 2006