



Scottish Information
Commissioner

**122/2007 Mr Norman Brown and the Chief
Constable of Strathclyde Police**

Request for information relating to complaints made by Mr Brown

**Applicant: Mr Norman Brown
Authority: The Chief Constable of Strathclyde Police
Case No: 200502285 and 200600618
Decision Date: 26 July 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 122/2007 Mr Norman Brown and the Chief Constable of Strathclyde Police

Request for information relating to complaints made by Mr Brown –The Commissioner was satisfied that the authority acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 when withholding the documents concerned.

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2 (Effect of exemptions); 17(1) (Information not held); 35(1)(g) read in conjunction with 35(2)(b) (Law enforcement) and 38(1)(a) (Personal information).

The Police (Conduct) (Scotland) Regulations 1996 (the 1996 Regulations) Regulation 5(1) (Preliminary investigation procedure)

The Data Protection Act 1998 (the DPA) sections 1(1) (basic interpretative provisions)

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 Brown made two separate information requests under the terms of the Freedom of Information (Scotland) Act 2002 (FOISA) to the Chief Constable of Strathclyde Police (Strathclyde Police).

Mr Brown's first request sought an extract from a Police Officer's notebook and a copy of an Investigating Officer's report (Inspector A's report) written in response to complaints he had made to Strathclyde Police. Strathclyde Police withheld all of the requested information under the exemption in section 38(1)(a) of FOISA and informed Mr Brown of the procedure for requesting his own personal data under the Data Protection Act 1998.



Mr Brown's second request to Strathclyde Police sought a copy of a second Investigating Officer's report (Inspector B's report), written in relation to his complaints against officers of Strathclyde Police. He also asked for additional information relating to those complaints. Strathclyde Police advised Mr Brown that the information he had requested was exempt under a number of exemptions in FOISA.

Mr Brown was dissatisfied with the responses from Strathclyde Police and submitted two applications for decision by the Commissioner, asking him to investigate whether Strathclyde Police complied with Part 1 of FOISA in responding to his requests for information.

Because of the similarities in the subject matter of Mr Brown's two information requests, the Commissioner conjoined Mr Brown's applications for the purposes of investigation and this decision. Following an investigation, the Commissioner found that Strathclyde Police dealt with Mr Brown's requests for information in line with Part 1 of FOISA.

Background

Mr Brown's first request for information to Strathclyde Police

1. On 7 May 2005 Mr Brown wrote to Strathclyde Police requesting an extract of a police officer's notebook and an investigating officer's report into complaints that he had made to Strathclyde Police (Inspector A's report).
2. On 19 May 2005 Strathclyde Police responded to Mr Brown, stating that the information was exempt from disclosure under section 38(1)(a) of FOISA and provided him with details of how to make a request for the information under section 7 of the DPA.
3. On 10 June 2005 Mr Brown wrote to Strathclyde Police and asked them to review their decision to withhold the information under section 38(1)(a) of FOISA.
4. On 23 June 2005 Strathclyde Police wrote to Mr Brown and upheld their original decision to withhold the documents under section 38(1)(a) of FOISA.
5. On 11 July 2005 Mr Brown wrote to me stating that he was dissatisfied with the outcome of Strathclyde Police's review and applying to me for a decision in relation to Strathclyde Police's decision to withhold the information.



6. The application was passed to an investigating officer within my Office and it was validated by establishing that Mr Brown 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 response to that request..

Mr Brown's second request for information to Strathclyde Police

7. Mr Brown wrote to Strathclyde Police again on 17 December 2005 requesting the following:
 - a) The names of three people that a letter from Strathclyde Police claimed had been provided by Mr Brown in a statement
 - b) The dates and locations of statements given by four police officers of Strathclyde Police in relation to Mr Brown's complaints
 - c) A copy of Inspector B's report into complaints made by Mr Brown to Strathclyde Police
 - d) A copy of a statement given by Mr Brown to Strathclyde Police in 2004 in relation to his complaints
 - e) A copy of a statement given by Mr Brown to Strathclyde Police in 2005 in relation to his complaints
 - f) A letter written by a member of Strathclyde Police to a Procurator Fiscal relating to Mr Brown's complaints.

I will refer to the various requests above as request (a) – (f) within Mr Brown's second request.

8. Strathclyde Police responded to Mr Brown on 23 January 2006, stating that the information was exempt from disclosure. They stated that :
 - a) the information in request (a) was exempt from disclosure under sections 34(1)(a)(i), 35(1)(a), 35(1)(b) and 38(1)(b) of FOISA
 - b) the information contained in request (b) was not held by Strathclyde Police and gave notice under section 17 of FOISA to that effect
 - c) the information in request (c) was exempt from disclosure under sections 30(c), 35(1)(g), and 38(1)(b) of FOISA
 - d) the information sought by requests (d) and (e) was exempt from disclosure under section 38(1)(a) of FOSIA. Strathclyde Police provided details of how to access such information using the rights given to him by the DPA
 - e) request (f) was exempt from disclosure under sections 34(1)(a)(1), 35(1)(a) and (b), and 38(1)(b) of FOISA.
9. Mr Brown wrote to Strathclyde Police on 24 February 2006 and asked them to review their decision to withhold the information.



10. On 28 March 2006 Strathclyde Police wrote to Mr Brown and upheld their original decision to withhold the information, with some modification to the reasons for doing so. Strathclyde Police:
 - a) withdrew their reliance upon the exemptions in sections 34(1)(a)(i) and 35(1)(a) and (b) of FOISA in relation to request (a). They also suggested that a subject access request under DPA might be made in relation to such information, although the exemption in section 38(1)(a) of FOISA of FOISA was not explicitly cited
 - b) Withdrew their reliance upon the exemption in section 30(c) of FOISA in relation to request (c).
 - c) additionally applied the exemptions in sections 34(1)(a), 35(1)(a) and 35(1)(b) of FOISA in relation to request (f).
11. Mr Brown wrote to my Office on 15 May 2006, stating that he was dissatisfied with the outcome of Strathclyde Police's review and applying to me for a decision in relation to Strathclyde Police's decision to withhold the information.
12. Again, the application was passed to an investigating officer within my Office and it was validated by establishing that Mr Brown 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 response to that request.

The Investigation

Mr Brown's first request to Strathclyde Police

13. On 10 August 2005 the Investigating Officer wrote to Strathclyde Police giving notice that an appeal had been received, that an investigation into Mr Brown's initial request had begun, and inviting comments from Strathclyde Police as required under section 49(3)(a) of FOISA. Strathclyde Police were asked to supply my Office with, amongst other items, a copy of Inspector A's report and a copy of the relevant extract of a police officer's notebook.
14. Additionally, Strathclyde Police were asked to provide further details of why they had applied the exemption in section 38(1)(a) of FOISA to all of the information requested.
15. On 6 September 2005 Strathclyde Police wrote to the Investigating Officer, providing the information requested by Mr Brown.



16. Strathclyde Police also confirmed that it had not initially recognised Mr Brown's request for review of 10 June 2005 as such, and had viewed it as a request for clarification. Subsequently, Strathclyde Police carried out a belated review of its response to Mr Brown, and forwarded the results of that review to both Mr Brown and the Investigating Officer. Strathclyde Police again upheld their initial decision to withhold the information, but applied a number of further exemptions to it.
17. Strathclyde Police continued to maintain that Inspector A's report and the relevant extract from a police officer's notebook was exempt from disclosure under section 38(1)(a) of FOISA.
18. Strathclyde Police also asserted that the information contained within Inspector A's report was partly the personal data of third parties, and that this personal information was exempt under the terms of section 38(1)(b) of FOISA.
19. Strathclyde Police also applied the exemption in section 35(1)(g) read in conjunction with sections 35(2)(b) and (c) of FOISA to Inspector A's report. Strathclyde Police argued that disclosure of, the information would prejudice substantially the exercise of their functions in order to ascertain whether a person is responsible for conduct which is improper, and to ascertain whether circumstances which would justify regulatory action in pursuance of any enactment.
20. Strathclyde Police held that the report requested by Mr Brown was produced as a record of them carrying out their functions under the 1996 Regulations. They argued that it is important reports of this nature are candid and robust because they are used as the basis for any action taken by Strathclyde Police against police officers who are complained about in the future. They asserted that to make such reports public would significantly weaken their beneficial nature, and may deter witnesses or victims from assisting them in future.
21. They also argued in support of their application of section 35(1)(g), in conjunction with section 35(2)(c) of FOISA that disclosure of the information may impede any possible formal misconduct proceedings initiated against police officers as a result of the report.

Mr Brown's second request to Strathclyde Police

22. On 23 May 2006 the Investigating Officer wrote to Strathclyde Police, giving notice that an appeal had been received and that an investigation into Mr Brown's second request had begun. The Investigating Officer invited comments from Strathclyde Police as required under section 49(3)(a) of FOISA. Strathclyde Police were asked to supply my Office with, amongst other items, copies of the information requested by Mr Brown.



23. On 12 June 2006 Strathclyde Police responded to my Office , providing all information that had been withheld from Mr Brown in response to his requests (a) – (f) along with details of the search methods used to determine whether the information relating to request (b) was held.
24. Strathclyde Police also provided a copy of its decision log in relation to Mr Brown's information request. This provided details of Strathclyde Police's rationale for withholding information requested under sections 34, 35 and 38 of FOISA. They also confirmed that they believed request (a) to be exempt under section 38(1)(a) of FOISA.
25. On 29 June 2006, the Investigating Officer wrote to Mr Brown and noted that requests (a), (d), and (e) sought his own personal information, and asking whether he would be willing to withdraw these parts of his request and pursue the information by making a subject access request under section 7 of the DPA.
26. Mr Brown replied on 20 July 2006, advising that he wished to withdraw from the parts of his application relating to his two witness statements his application. As request (a) sought information contained within one of the statements sought by these requests (d) and (e), I understand this withdrawal to apply to parts (a), (d) and (e) of this second request. Consequently I am not required to determine whether Strathclyde Police complied with FOISA in responding to requests (a), (d) and (e) within Mr Brown's second request.
27. In subsequent correspondence, the investigating officer sought further clarification from Strathclyde Police on various issues raised by Mr Brown's requests.
28. Strathclyde Police also advised my office that having reconsidered this matter in the course of my investigation, they considered the letter sought by Mr Brown's request (f) to be personal information relating to Mr Brown. Therefore Strathclyde Police submitted that they applied section 38(1)(a) of FOISA to this request also.

The Commissioner's Analysis and Findings

29. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Brown and Strathclyde Police and I am satisfied that no matter of relevance has been overlooked.



30. Mr Brown has had a long and troubled relationship with Strathclyde Police stemming from an incident investigated by them (the incident) and involving Mr Brown. Following the incident, Mr Brown raised a series of complaints about the manner in which Strathclyde Police handled the incident, and about the actions of particular police officers.
31. Strathclyde Police compiled two Investigating Officer's reports in relation to the complaints made by Mr Brown. In the course of its investigations into Mr Brown's complaints, Strathclyde Police took statements from Mr Brown, other witnesses and the Police Officers who had investigated the incidents. Strathclyde Police have also written to the Procurator Fiscal about Mr Brown's complaints. All of the information under consideration in this case relates to the Police's various investigations and actions taken in response to Mr Brown's complaints.
32. There are a number of issues that I will address in this decision. In what follows below, I will first consider whether Strathclyde Police correctly asserted that maintain that they do not hold information in relation to request (b) of Mr Brown's second application. I will then consider whether Strathclyde Police acted in accordance with Part 1 of FOISA when withholding the remaining information under consideration in this case from Mr Brown.

Notice that information requested by Mr Brown was not held

33. In request (b) of his second application to me, Mr Brown requested the dates and locations of four police officers' statements made in relation to his complaints. The statements were given by the police officers to inform Inspector A's investigation and report into Mr Brown's first complaint.
34. In response to this request, Strathclyde Police formally notified Mr Brown under section 17 of FOISA that they did not hold the dates and locations of the statements. Strathclyde Police explained that the statements had been dictated over the telephone to a typing bank and that when officers dictate their own statements in this manner, they are not required to give the date of the statement nor their location at the time.
35. Following its review, Strathclyde Police upheld this initial response, but confirmed that the statements were typed up on 4 and 7 March 2004. They noted that they could not guarantee, however, that they had been typed on the day they had been dictated into the telephone typing bank. Police officers use a central telephone system to dictate statements. This can be done from anywhere in the Force and so Strathclyde Police argued that they could not confirm where the statements had been given.



36. In the course of my investigation, Strathclyde Police advised the investigating officer that their Standard Operating Procedures on the submission of reports and statements gave no instruction to police officers, if dictating their own statements, to give the date on which they made the statement and their location at the time.
37. I have been provided with a copy of the Standard Operating Procedure and also of the statements given by the Police Officers. The statements do not contain details of the dates they were given or the locations of the officers when giving them. I have also examined their Standard Operating Procedures and concur that they do not require police officers to record such information when dictating their own statements.
38. Consequently I find that Strathclyde Police do not hold information about the dates the statements were given or of the location of the Police Officers whilst giving them. I have concluded that Strathclyde Police acted in accordance with Part 1 of FOISA in giving Mr Brown notice under section 17 that they did not hold this information.
39. I should note here that Mr Brown believes such information should be recorded by Strathclyde Police as it may need to be submitted in court at a later date. However, it is not in my remit to determine whether Strathclyde Police should or should not record information of this nature. I can only determine whether they complied with the provisions of FOISA in responding to Mr Brown. In this instance, I am satisfied that they did.

The application of section 38(1)(a) of FOISA

40. Section 38(1)(a) of FOISA states that information is exempt information if it constitutes personal data of which the applicant is the data subject. This is an absolute exemption under FOISA and is not subject to the public interest test.
41. In the course of my investigation, Mr Brown withdrew requests (a), (d) and (e) of his second application because he accepted that these had sought his own personal data and that he should make a request for information through the subject access procedure set out in section 7 of the DPA. I will not consider these items further.
42. Of the remaining information requested by Mr Brown, Strathclyde Police have maintained that this exemption applies to the following items:

In Mr Brown's first request

- The extract from a police officer's notebook. This note was taken during a visit by that officer to Mr Brown and contains a statement made by Mr Brown, written by the officer and signed by Mr Brown.
- Inspector A's report into Mr Brown's complaint.



In Mr Brown's second request

- Request (f) – a letter to the procurator fiscal concerning Mr Brown's complaints.
43. "Personal data" is defined in section 1(1) of the DPA as:
"data which relate to a living individual who can be identified –
- a) from those data, or
 - b) from those data and from other information which is in the possession or is likely to come into the possession of the data controller
- and includes any expression of opinion about the individual and any indication of the intentions of the data controlled or any other person in respect of the individual."
44. I am satisfied that each of the items listed in paragraph 42 contains information that has Mr Brown as its focus and which is biographical about him in a significant sense. I am satisfied that this information falls under the definition of personal data as set out in the DPA, and as such is exempt from disclosure under section 38(1)(a) of FOISA.
45. In the case of the notebook extract and the letter, I am satisfied that these items in their entirety fall under the scope of the exemption in section 38(1)(a) of FOISA.
46. With respect to Inspector A's report, I am satisfied that the majority of this document should be considered personal data relating to Mr Brown, and therefore exempt under the terms of section 38(1)(a). This document is an Investigating Officer's Report prepared in line with the 1996 Regulations, comprising:
- a) Recommendations submitted as a result of Mr Brown's complaints
 - b) Witness statements which were attached to the recommendations
 - c) Supporting documentation attached to the recommendations.
47. The contents of the report relate directly to a complaint made by Mr Brown, prompted by incidents in which he was directly involved. While the report contains statements or opinions of other individuals relating these complaints and incidents, in each case these views relate directly to Mr Brown's actions, opinions and complaints, and or to the investigation of incidents in which Mr Brown was directly involved. While I accept that it may be the case that there is some information within the report that is not Mr Brown's personal data, I am of the view that the vast majority of the contents should be considered to be such.



48. Therefore, I have concluded that the exemption in section 38(1)(a) has been applied correctly by Strathclyde Police to the majority of the content of Inspector A's report.
49. However, I would note that Strathclyde Police appears to have applied the exemption in section 38(1)(a) inconsistently in relation to Mr Brown's information requests. In correspondence with both Mr Brown and my office Strathclyde Police argued that Inspector A's report was exempt under the terms of section 38(1)(a) of FOISA. In correspondence with respect to Inspector B's report (sought in Mr Brown's second request) Strathclyde Police have not sought to apply the exemption in section 38(1)(a).
50. Both reports relate to complaints made by Mr Brown to Strathclyde Police about the manner in which an incident involving Mr Brown had been investigated. Both reports were prepared in line with the 1996 Regulations and contain the various components set out in paragraph 46 above. The contents of these reports are very similar in their subject matter, and I therefore would suggest that if one contains personal data relating to Mr Brown, both reports do.
51. In the circumstances, I have concluded that the exemption in section 38(1)(a) applies more widely than was indicated by Strathclyde Police. I have also found that this exemption applies to the majority of the information contained in Inspector B's report, sought under request (c) of Mr Brown's second application.
52. It should be noted that Strathclyde Police suggested that Mr Brown make a request for the information under section 7 of the DPA on several occasions during the period of his requests for information.

Section 35(1)(g) of FOISA – Law Enforcement

53. Strathclyde Police have maintained that the two reports requested by Mr Brown (Inspector A's report and Inspector B's report) are exempt from disclosure under the terms of the exemption in section 35(1)(g), read in conjunction with section 35(2)(b).
54. Before considering this exemption, it is worth providing some background information on reports (such as these) prepared under the 1996 Regulations.
55. Such documents must be produced where there has been an allegation of misconduct made against a police officer or officers made under the 1996 Regulations. The documents should recommend whether further action should be taken against the police officers who have been accused of misconduct. The actions may include recommending that the matter be referred to the Procurator Fiscal to decide whether criminal proceedings should be raised as a result of the complaints.



56. As set out above, the reports contain a number of components.
- a) Recommendations submitted as a result of Mr Brown's complaints
 - b) Witness statements which were attached to the recommendations
 - c) Supporting documentation attached to the recommendations.
57. Although Strathclyde Police cited two functions listed in section 35(2) of FOISA in relation to Inspector A's report, having examined the information I am satisfied that its contents fall more easily within the function described within section 35(2)(b) of FOISA (to ascertain whether a person is responsible for conduct which is improper). I will concentrate my analysis on the application of section 35(1)(g) solely read in conjunction with section 35(2)(b) of FOISA and not consider in any detail whether the function contained within section 35(2)(c) of FOISA applies.
58. Strathclyde Police held that Inspector B's report was exempt from disclosure under sections 38(1)(b) and section 35(1)(g) read in conjunction with 35(2)(b) of FOISA.
59. The exemption in section 35(1)(g) of FOISA is subject to the public interest test. This means that, when considering the use of section 35(1)(g), I must consider three separate matters in all. First of all, I must consider whether Strathclyde Police have functions in relation to ascertaining whether a person is responsible for conduct which is improper. If I am satisfied that they do, I must go on to consider whether release of the information would prejudice substantially Strathclyde Police's ability to exercise this function. Even if I am satisfied that release of the information would prejudice substantially Strathclyde Police's ability to exercise this function, I must go on to consider whether, in all the circumstances of the cases, the public interest would be better served by the information being released or by the information being withheld. If I find that the public interest would be better served by the information being released, then I must order release of the information.
60. Investigations into allegations of misconduct by police officers below the level of Assistant Chief Constable are governed by the 1996 Regulations. Given the existence of the 1996 Regulations, I am satisfied that such investigations are a function of Strathclyde Police.
61. I will now go in to consider whether disclosure of the information requested would prejudice substantially Strathclyde Police in exercising their functions in line with section 35(1)(g) read in conjunction with section 35(2)(b) of FOISA.



62. A report prepared under the 1996 Regulations includes the investigator's opinion on the matter under investigation and can offer advice for consideration by the Assistant Chief Constable on recommended action for dealing with the allegations. Strathclyde Police have argued that it is essential for officers providing such advice that they are not inhibited from being frank and candid by fear of reprisal and that Strathclyde Police are able to take a decision on the basis of the best available advice.
63. I accept that police officers must be able to make comprehensive and unreserved statements to assist with the processes of law and order. I further accept that it is likely that if such reports were routinely disclosed, this would have the effect of inhibiting officers' and witnesses comments and, as a result, would prejudice substantially the ability of Strathclyde Police to exercise their function of investigating whether a police officer or officers are responsible for conduct which is improper.
64. I therefore accept Strathclyde Police's argument that release of Inspector A's and Inspector B's reports could reasonably be expected to prejudice substantially their function of carrying out such investigations, and therefore I find that section 35(1)(g) read in conjunction with section 35(2)(b) of FOISA applies to the information requested. Given that I have found that the information is exempt under section 35(1)(g), I must now go on to consider whether the public interest lies in the information being withheld or released.

The Public Interest

65. I will consider the public interest in releasing police reports on a case by case basis. Arguments based on public interest in disclosure will have to be specific and strongly persuasive to allow me to conclude that particular police reports should be released.
66. Both Strathclyde Police and Mr Brown raised a number of arguments as to why it would be in the public interest for Inspector A and Inspector B's reports to be disclosed. The arguments for withholding and disclosing the information requested were extremely similar for both of the reports, so I have looked at them together.
67. Strathclyde Police stated that disclosure of the reports would serve to demonstrate that they had been thorough in investigating the complaints made by members of the public against police officers. They also held that disclosure would perhaps better inform the community as a whole. Finally, they stated that disclosure would reassure Mr Brown that, notwithstanding the internal examination of the case, the investigations had been carried out in a fair and impartial manner.



68. Mr Brown has stated that there is a public interest in disclosure because he believes that there has been a miscarriage of justice, in that the Police Officers involved in the case did not investigate his complaints in a proper manner, and that this had been covered up by Strathclyde Police.
69. Mr Brown has implied that he does not believe his complaints to have been investigated properly or impartially. He believes that the public interest lies in favour of disclosure as he would gain information that would support him in this view and allow him to take the matter further.
70. Strathclyde Police found the balance of public interest lay in favour of withholding the information for the following reasons.
71. Firstly Strathclyde Police found that it would not be fair to disclose information contained within the reports written by Inspector A and Inspector B which related to third parties.
72. Also, Strathclyde Police argued that the information should be withheld in order to ensure their efficient and effective conduct in that to prepare reports under the 1996 Regulations officers rely on the ability to gather evidence in the form of statements from any person who may be able to assist them. There is an acceptance, Strathclyde Police argued, that the information gathered would not be disclosed to a third party other than in the course of proceedings under the 1996 Regulations. To do so would undermine this expectation and may deter victims and witnesses from assisting them in future. This would impact upon the future investigation of such complaints and would result in Strathclyde Police being unable to investigate such complaints thoroughly.
73. In this case, I am of the view that there is a general public interest in releasing information that may lead to an increase in accountability and scrutiny of Strathclyde Police's actions. However, the investigation did not find any wrongdoing on the part of the officers against whom allegations had been made, or on the part of Strathclyde Police as a whole. The reports were not submitted to the Procurator Fiscal to pursue criminal a criminal action, and the inspectors who carried out the investigation into Mr Brown's complaints clearly believed the matter to be closed on the submission of their recommendations to Strathclyde Police.
74. From sight of the documents in question, I do not see that disclosure would add anything to public debate on the issue, or increase the accountability of Strathclyde Police in carrying out their internal investigation.



75. I note Mr Brown's frustration over not being able to access documentation which he believes would assist him to take his complaints forward,. I am unconvinced that the disclosure of the documents would provide Mr Brown, or any other member of the public, with the means to further progress complaints made against Strathclyde Police. Consequently I cannot accept Mr Brown's argument that the disclosure of the documents would be in the public interest.
76. In conclusion, I am not of the view that the public interest in releasing the documents requested by Mr Brown would override the general public interest in withholding information relating to reports made under the 1996 Regulations. I find the information requested by Mr Brown to be exempt from disclosure by virtue of section 35(1)(g) of FOISA, and that, on balance, the public interest lies in favour of withholding the information in this instance.

The application of further exemptions to the information requested by Mr Brown

77. I have concluded that all information that is held by Strathclyde Police and that falls under the scope of Mr Brown's requests is exempt under the exemptions in sections 38(1)(a) and/or section 35(1)(g) of FOISA.
78. I have therefore concluded that Strathclyde Police acted in accordance with Part 1 of FOISA by withholding this information from Mr Brown.
79. Having reached this conclusion I will not examine the application of further exemptions in this decision.

Decision

I find that Strathclyde Police acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr Brown.

I do not require Strathclyde Police to take any action as a result of my decision.



Appeal

Should either Mr Brown 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 of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
26 July 2007



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.

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.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
[...]
 - (e) in subsection (1) of section 38 –
 - (i) paragraphs (a), (c) and (d); and

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.



35 Law enforcement

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-

- (g) the exercise by any public authority (within the meaning of the Freedom of Information Act 2000 (c.36)) or Scottish public authority of its functions for any of the purposes mentioned in subsection (2);

(2) The purposes are-

- (b) to ascertain whether a person is responsible for conduct which is improper;

38 Personal information

(1) Information is exempt information if it constitutes-

- (a) personal data of which the applicant is the data subject

Data Protection Act 1998

Basic interpretative provisions

1. (1) In this Act, unless the context otherwise requires-

[..]

"personal data" means data which relate to a living individual who can be identified-

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,



and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

The Police (Conduct) (Scotland) Regulations 1996

Preliminary investigation procedure

5.—(1) The assistant chief constable shall prepare and maintain procedures in order to secure that where any report, allegation or complaint is received from which it may reasonably be inferred that an act or omission, or an alleged act or omission, of a constable of the police force concerned amounts, or may amount, to misconduct-

- (a) the report, allegation or complaint is in the first instance considered by another constable of the same force of an appropriate rank; and
- (b) any such constable who is authorised to consider the report, allegation, or complaint is also authorised to arrange for the matter-
 - (i) if in the opinion of that constable it involves an allegation of misconduct of a minor or trivial nature, to be dealt with in accordance with the procedures; or
 - (ii) in any other case, to be referred to the assistant chief constable.