



Scottish Information
Commissioner
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Decision Notice 168/2025

Reports relating to a named individual

Applicant: Anonymous

Authority: Chief Constable of the Police Service of Scotland

Case Ref: 202300702

Summary

The Applicant asked the Authority for information relating to a named individual in connection with the Lockerbie bombing. The Authority refused to confirm or deny whether it held the information requested. The Commissioner investigated and found that the Authority was not entitled to refuse to confirm or deny whether it held the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1) (Effect of exemptions); 18 (Further provision as respects responses to requests); 34(1)(b) (Investigations by Scottish public authorities); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 17 April 2023, the Applicant made a request for information to the Authority. He asked for reports produced during the period of 1994-1995 concerning a deceased named individual, specifically those relating to a specified book published by the named individual, and an interview they provided for a specified documentary.
2. The Authority responded on 9 May 2023. It refused to confirm or deny whether it held the information requested or whether it existed, relying on section 18(1) of FOISA, in conjunction with sections 34(1)(b), 35(1)(a) and 35(1)(b) of FOISA.

3. On the same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he considered the public interest favoured disclosure of the information requested.
4. The Authority notified the Applicant of the outcome of its review on 7 June 2023, which fully upheld its original decision.
5. On 8 June 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated he was dissatisfied with the outcome of the Authority's review because he considered the public interest favoured disclosure of the information requested.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 20 June 2023, in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
8. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 18(1) – neither confirm nor deny

10. Section 18(1) of FOISA allows public authorities to refuse to confirm or deny whether they hold information in the following limited circumstances:
 - a request has been made to the authority for information, which may or may not be held by it; and
 - if the information existed and was held by the authority (and it need not be), it could give a refusal notice under section 16(1) of FOISA, on the basis that the information was exempt information by virtue of any of the exemptions in sections 28 to 35, 38, 39(1) or 41 of FOISA; and
 - the authority considers that to reveal whether the information exists or is held by it would be contrary to the public interest
11. Where section 18(1) of FOISA is under consideration, the Commissioner must ensure that his decision notice does not confirm one way or the other whether the information requested actually exists or is held by the authority. This means he is unable to comment in any detail on the Authority's reliance on any of the exemptions referred to, or on other matters which could have the effect of indicating whether the information exists or is held by the Authority.
12. In this case, the Authority submitted that, if it held any information falling within scope of the Applicant's request, it would be exempt from disclosure under the exemptions in sections 34(1)(b), 35(1)(a) and 35(1)(b) of FOISA.

13. It is not sufficient to claim that one or more of the relevant exemptions applies. Section 18(1) of FOISA makes it clear that the authority must be able to give a refusal notice under section 16(1), on the basis that any relevant information (if it existed and was held) would be exempt information under one or more of the listed exemptions.
14. The Commissioner must first, therefore, consider whether the Authority could have given a refusal notice under section 16(1) of FOISA in relation to the information in question, if it existed and was held.

Section 34(1)(b) – Investigations

15. The exemption in section 34(1)(b) of FOISA provides that information is exempt from disclosure if it has at any time been held by a Scottish public authority for the purposes of 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.
16. The exemptions in section 34 of FOISA are described as “class-based” exemptions. This means that if information falls within the description set out in the exemption, the Commissioner is obliged to accept it as exempt. There is no harm test: the Commissioner is not required or permitted to consider whether disclosure would, or would be likely to, prejudice substantially an interest or activity, or otherwise to consider the effect of disclosure in determining whether the exemption applies. The exemptions are, however, subject to the public interest test contained in section 2(1)(b) of FOISA.
17. The Authority noted that the information requested related to a named individual and their involvement or otherwise as a witness in relation to the Lockerbie bombing. It confirmed the existence of an ongoing investigation by both the Authority and the Crown Office and Procurator Fiscal Service, which may lead to criminal charges. Any information held by the Authority would be solely held for the purposes of this investigation.
18. The Applicant considered it “likely” that the Authority had investigated claims made by the named individual but considered there was “zero” chance their claims “played any part in the prosecution against Libya”.
19. Having considered the submissions made to him by the both the Applicant and Authority, and the nature of the request, the Commissioner is satisfied that the information (if it existed and was held) would be held by the Authority for the purposes of an investigation covered by section 34(1)(b) of FOISA. Consequently, he must conclude that the exemption applies.
20. Given that the Commissioner accepts that the Authority was entitled to rely on the exemption in section 34(1)(b) of FOISA for withholding all of the information requested (if it existed and was held), he is required to consider the application of the public interest test in section 2(1)(b) for that information.

Section 34(1)(b) – the public interest

21. As noted above, the exemption in section 34(1)(b) is subject to the public interest test in section 2(1)(b) of FOISA. Where this exemption is correctly applied, the Commissioner must consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
22. The “public interest” is not defined in FOISA but has been described as “something which is of serious concern and benefit to the public”, not merely something of individual interest. The

public interest does not mean “of interest to the public” but “in the interest of the public”, i.e. disclosure must serve the interests of the public.

The Authority’s submissions on the public interest

23. The Authority accepted that the nature of the Lockerbie bombing resulted in substantial media coverage and speculation over the years and that such attention was arguably a compelling public interest argument.
24. However, the Authority argued there was a difference between the public being interested in the investigation and the public interest in disclosure of information (if it existed and were held) gathered for the purposes of an investigation covered by section 34(1)(b) of FOISA. It submitted that such information (if it existed and were held) should only be disclosed in cases of “overwhelming public interest”.
25. The Authority confirmed that an investigation was ongoing. It referred to [a statement made by the Lord Advocate in 2022](#)¹ to this effect. It submitted that both the Authority and the Crown Office remained committed to the pursuit of justice regarding the Lockerbie bombing and recent developments demonstrated that this matter could “in no way” be regarded as “historic”.
26. For these reasons, the Authority considered that any disclosure of the information requested (if it existed and were held), or even confirmation of what information was held, would only prejudice ongoing investigations and therefore the law enforcement role of the Authority.

The Applicant’s submissions on the public interest

27. The Applicant submitted that there was a great public interest in disclosure of the information requested. He provided the Commissioner with an outline of the named individual’s involvement in the investigation into the Lockerbie bombing. He explained that the named individual had added “nothing of substance” to the investigation and had in fact been a “distraction” who had put forward a narrative unsupported by evidence.
28. Given that some of the named individual’s claims were still reported as fact by certain sectors of the media, the Applicant argued that there was a significant public interest in disclosure of the information requested as it would shed light on the Authority’s investigation of these claims and why they were “ultimately discredited” by the authorities.
29. The Applicant considered that the death of the named individual removed any potential privacy concerns and that the public interest favoured disclosure of information relating to their “true character” and how they exploited the families of victims for their own personal ends.
30. The Applicant also explained that he had submitted an FOI request to the FBI in the United States, which it was processing, and that it had already disclosed some information relating to the named individual in connection with the investigation into the Lockerbie bombing. He therefore believed that the disclosure of more information regarding the named individual posed no risk to any ongoing investigations.

The Commissioner’s view on the public interest

31. The Commissioner has carefully considered all the arguments presented by the Authority and the Applicant.

¹ <https://www.copfs.gov.uk/about-copfs/news/lockerbie-bombing-statement-from-the-lord-advocate/>

32. The Commissioner agrees that, given the nature, scale and profile of the Lockerbie bombing, there is considerable public interest in providing information about the bombing and associated investigations.
33. However, the Commissioner also considers that there is a strong public interest in avoiding prejudice to the investigation and judicial processes and that the public interest in information about the Lockerbie bombing and related investigations has been served, to a certain extent, by the significant volume of information already in the public domain.
34. The Commissioner notes the Applicant's statement that the FBI had, in response to an FOI request of his, disclosed some information relating to the named individual in connection with the investigation into the Lockerbie bombing. The Commissioner does not accept that disclosure of some information in a different jurisdiction implies that other information must be disclosed under FOISA.
35. While the Commissioner acknowledges that the named individual in the Applicant's request is deceased, he does not consider this has any significant bearing on his consideration of the public interest test in relation to the exemption in section 34(1)(b) of FOISA. The exemption is not contingent on the status of any individual involved, and he does not consider the fact of death of the named individual in this case does anything to diminish the importance of allowing law enforcement bodies to carry out investigations without investigative materials being disclosed into the public domain.
36. Further to this, the Commissioner found in similar circumstances (in paragraph 40 of [Decision 030/2024](#)²) that investigative materials should only be disclosed where the public interest considerations are overwhelming. The Commissioner does not consider this to be the case, in this instance.
37. In all the circumstances of the case, therefore, the Commissioner is satisfied, on balance, that the public interest in maintaining the exemption in section 34(1)(b) of FOISA would outweigh the public interest in disclosure of the information requested. The Commissioner therefore concludes that the Authority was correct in its application of the exemption in section 34(1)(b) to withhold the information requested.
38. Having accepted that the Authority could give a refusal notice under 16(1) of FOISA on the basis that any relevant information (if it existed and was held) would be exempt information by virtue of section 34(1)(b), the Commissioner is required by section 18(1) to go on to consider whether the Authority was entitled to conclude that it would be contrary to the public interest to reveal whether the information requested existed or was held.
39. As the Commissioner has accepted that the Authority could give a refusal notice under 16(1) of FOISA on the basis that any relevant information (if it existed and were held) would be exempt information by virtue of section 34(1)(b), he is not required to go on to consider if the information requested would also be exempt information by virtue of sections 35(1)(a) or 35(1)(b).

Section 18(1) – the public interest

40. The Commissioner must now consider whether the Authority was entitled to conclude that it would be contrary to the public interest to reveal whether the information existed or was held.

² <https://www.foi.scot/decision-0302024>

41. As stated above, the Applicant submitted that the public interest was best served by disclosing any documentation on the named individual and their claims as this would show their claims were without merit. He said that the named individual's claims were still deemed credible in certain quarters, especially with some families of the victims, and disclosure of the information requested would therefore help dismiss claims that had outlived the named individual.
42. The Applicant also argued, as rehearsed earlier, that the death of the named individual removed any potential privacy concerns and that the public interest favoured disclosure of information relating to their "true character" and how they exploited the families of victims for their own personal ends.
43. The Authority submitted that it was not in the public interest to prejudice the ongoing investigation by both the Authority and the Crown Office and Procurator Fiscal Service, or any proceedings (including the ongoing prosecution in the United States), by confirming or denying whether the information existed or was held.
44. The Commissioner does not accept that confirming or denying the information's existence (or whether it was held) would cause the prejudice claimed by the Authority. Confirming or denying that the information exists, or is held, is simply just that – it does not extend to disclosure of the actual content or nature of any information (if it existed and were held).
45. In the Commissioner's view, the Authority's arguments for section 18(1) of FOISA focus more on the actual disclosure of any relevant information (if it existed and were held), as opposed to confirmation or otherwise of its existence and whether it was held.
46. On balance, therefore, the Commissioner concludes that the Authority was not entitled to refuse to confirm or deny, in line with section 18(1) of FOISA, whether it held the information requested, or whether that information existed.
47. The Commissioner requires the Authority to issue the Applicant with a revised review outcome, otherwise than in terms of section 18(1) of FOISA. He requires the Authority to confirm to the Applicant whether the information requested existed and was held by it when it received the request, and to issue a fresh review outcome in terms of section 21(4)(b) of FOISA.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), in responding to the information request made by the Applicant.

The Commissioner finds that the Authority was not entitled to refuse to confirm or deny, in line with section 18(1) of FOISA, whether it held the information requested, or whether that information existed.

The Commissioner therefore requires the Authority to reveal to the Applicant whether the information he requested existed and was held by it when it received his request, and to provide him with a fresh review outcome in terms of section 21(4)(b) of FOISA, by 18 August 2025.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to 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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

4 July 2025