



Scottish Information
Commissioner
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Decision Notice 210/2025

Operation Sandwood

Authority: Chief Constable of the Police Service of Scotland
Case Ref: 202201245

Summary

The Applicant asked the Authority for a list of public bodies and other organisations reviewed or investigated under Operation Sandwood. The Authority refused to provide the information on the basis that disclosure would prejudice ongoing investigations, the prevention or detection of crime and the apprehension or prosecution of offenders. The Commissioner investigated and found that the Authority had complied with Part 1 of FOISA in responding to the request.

Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002](#)¹ (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 21(1) (Review by Scottish public authority); 34(1)(b) (Investigations by Scottish public authorities and proceedings arising out of such investigations); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 22 December 2021, the Applicant made a 10-part request for information to the Authority seeking information relating to Operation Sandwood. In part 9 of his request, he asked for the public bodies and other organisations reviewed or investigated under Operation Sandwood.
2. The remaining parts of the request do not form part of the Applicant's application to the Commissioner.

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

3. The Authority responded on 3 February 2022. It refused to provide the information requested on the basis that it was exempt from disclosure under the exemptions in section 34(1)(b) (Investigations by Scottish public authorities and proceedings arising out of such investigations) and section 35(1)(a) and (b) (Law Enforcement) of FOISA. The Authority referred to a [statement issued by the Lord Advocate](#)² on 15 January 2021 and explained that the information in the report was of potential relevance to ongoing investigations. Recognising the public interest in disclosure, the Authority believed this was outweighed by maintaining the exemption. It stated that investigative materials, including details of those under investigation, will only ever be released where there are overwhelming public interest considerations for doing so and in cases where disclosure could not be argued to be potentially prejudicial, in particular to any associated criminal justice procedures. Although Operation Sandwood had now concluded, a criminal case review remained ongoing.
4. On 31 March 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he believed it was unreasonable to apply the exemptions in section 34(1)(b) and section 35(1)(a) and (b) as:
 - he had not requested information on the outcome or findings of such investigation, which might have been reasonable grounds for applying the exemptions. He argued that, as public bodies, there was always a public interest of disclosure of the information requested, particularly where the information could be extrapolated from other sources in the public domain, i.e. the extensive body of literature on the Lockerbie Disaster together with the various Opinions and decisions relating to the trial and appeal at the Scottish Court in the Netherlands (2000-2001) and subsequent referrals from the Scottish Criminal Case Review Commission (SCCRC), and
 - as stated by the Authority, the Operation Sandwood investigation had concluded with no charges arising therefrom. He argued that disclosure would not prejudice substantially investigations, activities or functions.
5. The Authority notified the Applicant of the outcome of its review on 9 May 2022, fully upholding its original decision.
6. On 4 November 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because it had failed to comply with the statutory timescale in FOISA. He further believed that the exemptions applied by the Authority to withhold the information were irrational and unreasonable.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 15 November 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application, invited its comments and asked it for the information withheld from the Applicant. The Authority subsequently provided the information along with its initial comments.

² <https://www.copfs.gov.uk/about-copfs/news/lockerbie-appeal-statement-from-the-lord-advocate/>

9. The Applicant also provided comments on the public interest in disclosing the information.
10. The case was subsequently allocated to an investigating officer.
11. Following consideration of the comments received, it was considered necessary to seek further submissions from the Authority. These focused on the alleged failure, by the Authority, to comply with the response timescales set out in FOISA, and the Authority's justification for relying on the exemption in section 34(1)(b).

Commissioner's analysis and findings

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

Section 34(1)(b) (Investigations by Scottish public authorities and proceedings arising out of such investigations)

13. In his application to the Commissioner, the Applicant was dissatisfied with the Authority's decision to withhold the information requested under the exemption in section 34(1)(b) of FOISA.
14. 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.
15. The exemptions in section 34 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 in section 34 are, however, subject to the public interest test contained in section 2(1)(b) of FOISA.

The Applicant's submissions on the section 34(1)(b) exemption

16. In his application to the Commissioner, the Applicant believed that the exemptions applied by the Authority to withhold the information were irrational and unreasonable given:
 - 1) the identities of public authorities, organisations and individuals were available in numerous books on the subject (including by a former Justice Secretary) and documents provided to the Scottish Parliament Justice Committee in respect of Petition PE1370, and
 - 2) the length of time between the date of his information request and:
 - (i) the original event (21 December 1988);
 - (ii) the date of completion of the Operation Sandwood report (November 2018), meaning that risk of compromising secret or operationally sensitive information was minimal (including through death and retirement of most of those accused of wrongdoing) and

- (iii) the death of the sole person convicted for the destruction of Pan Am Flight PA 103 and the completion of the judicial process in his name.

The Authority's submissions on the section 34(1)(b) exemption

- 17. In its submissions to the Commissioner, the Authority explained that Operation Sandwood referred to a major investigation it had initiated in February 2014 in response to calls for the robust investigation into "allegations of criminality against police officers, forensic investigators and legal officials involved in the Lockerbie inquiry and the 2000/01 trial at the Scottish Court in the Netherlands", submitted by the group "Justice for Megrahi".
- 18. It confirmed that all of the information held in relation to Operation Sandwood was held for the purposes of an investigation into allegations of criminality and therefore section 34(1)(b) applied.

The Commissioner's view on the section 34(1)(b) exemption

- 19. The Commissioner has considered the submissions from both parties, together with the withheld information itself. Having done so, he is satisfied that the information withheld from the Applicant is 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 in this case.

Public interest test – section 34(1)(b)

- 20. 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.
- 21. 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 Applicant's submissions on the public interest – section 34(1)(b)

- 22. The Applicant put forward the following arguments in support of the public interest in disclosure of the information:
 - (i) The bombing of Pan Am 103 on 21 December 1988 resulted in the deaths of all 259 passengers and crew together with a further 11 people in Lockerbie where large sections of the aircraft fell. It was the United Kingdom's worst terrorist event and case of mass murder. This was clearly a matter of serious concern to the public and disclosure of the information would serve the interests of the public.
 - (ii) There were significant questions and doubts regarding the conduct of the investigation, prosecution and outcome (including subsequent appeals) resulting from the bombing of Pan Am 103. These impacted upon the credibility of the Scottish criminal justice system as a whole, both domestically and internationally; upon the Authority and its predecessor forces, the Crown Office and Procurator Fiscal Service, the SCCRC and the judiciary; and give cause for concern regarding possible interference in Scottish affairs from London and elsewhere.
 - (iii) The families of those killed as a consequence of the bombing had an absolute right to the true facts of the case. This right also extended to the family of the person

convicted for the bombing, and all the more so if he was in fact unconnected with the acts he was convicted of.

- (iv) The Authority had failed to comply with its duty to set out its methodology for applying the balancing exercise with respect to the public interest test.
- (v) Almost 34 years had passed since the bombing of PA 103. Most of the principals involved with this matter – whether as senior politicians in the UK or elsewhere, senior investigators, lawyers and judges; the sole person convicted of the bombing and the leaders of the various groups believed to have actually been responsible – were deceased. More tragically, so were many of the relatives of those who died, some of whom spent many years searching for the truth. Accordingly, it was all the more important that the information be disclosed.

The Authority's submissions on the public interest – section 34(1)(b)

- 23. In its submissions to the Commissioner, the Authority stated that the bombing of Pan Am 103 remained the deadliest terrorist attack on UK soil and the largest homicide case Scotland's prosecutors had ever encountered in terms of scale and of complexity.
- 24. The Authority accepted that the investigation was high profile and consequently of significant interest to the public and that disclosure of any information connected to the initial and/or subsequent related investigations would add to and inform any public debate on the matter.
- 25. The Authority also accepted that there was a public interest argument in terms of accountability. Being publicly-funded, the Authority recognised that its actions were subject to appropriate scrutiny. It believed, however, that this had to be balanced against the fact that investigative information should only ever be released where there were overwhelming public interest considerations for doing so.
- 26. Noting that the Applicant was effectively seeking a list of parties associated with a police investigation that concluded only a few years ago (in 2018) and which did not result in criminal proceedings, the Authority disagreed that disclosure of the information was in the public interest simply because the case was arguably high profile.
- 27. The Authority stated that engagement with police investigations and/or associated criminal justice proceedings by public bodies and other organisations was an essential part of policing utilised in numerous investigations each year. It submitted that there existed an expectation of privacy and confidentiality outwith criminal justice proceedings (court appearances etc.) and that engagement with the police, whether that be as a complainer, victim, witness, suspect or accused, ought to be confidential. It argued that any breakdown in that expectation of trust was significantly detrimental to policing overall and the ability of the Authority to conduct investigations.
- 28. In the Authority's view, it was not in the public interest to disclose information where this could be argued to be potentially prejudicial - in particular to any associated criminal justice procedures.
- 29. The Authority acknowledged that the involvement of the named bodies in the Lockerbie bombing investigation was a matter of public record, but maintained that their involvement in the subsequent investigation (Operation Sandwood) was not. It submitted that, while that the Justice for Megrahi group had listed various bodies in its allegations to the police (with those documents being in the public domain), the Authority had not confirmed, in its statements, which bodies were actually subject to investigation.

30. The Authority argued the point that anyone can publicise the fact that they have made allegations about a person/organisation, but only in the most exceptional circumstances would the Authority confirm receipt of those allegations or the scope of any subsequent investigations.
31. The Authority believed that the public interest test would be the same for each body, all of which were subject to allegations of criminality which, following investigation, were found to be unsubstantiated with no criminality having been identified. In its view, no person or organisation ought to expect that being subject to a police investigation would be publicly disclosed outwith any associated criminal justice proceedings. The Authority acknowledged that a reasonable person may make assumptions as to the scope of the police investigation, but contended this was different to the Authority publicly confirming this. It maintained that the scope of Operation Sandwood, insofar as to who was investigated, was not in the public domain and that should continue to be the case. Had there been any evidence of criminality, the position may have been different, but there was not.
32. Acknowledging that the allegations were connected to a high profile investigation, the Authority submitted that these were unfounded and, in their own right, completely unsubstantiated. In the Authority's view, it was unfair to those bodies for it to confirm that they were the subject of an investigation in the circumstances, and would never do so for any other organisation or individual (for good reason). The fact that the allegations stemmed from the investigation into the Lockerbie bombing did not negate that position or the expectation of confidentiality of the parties linked to police investigations.

The Commissioner's view on the public interest – section 34(1)(b)

33. The Commissioner has carefully considered all of the submissions provided by both parties on the public interest. In this case, the Commissioner is prevented from rehearsing the Authority's submissions in full, and from setting out his full reasoning, as to do so would involve referencing the withheld information itself.
34. The Commissioner recognises and accepts the considerable public interest that exists in the relation to the bombing of Pan Am flight 103 over Lockerbie, the subsequent investigations and trial that have taken place, and the ongoing investigation taking place in the United States (referred to in the Lord Advocate's statement referenced in the Authority's initial response). He also recognises the need for the public to have full faith and confidence in all components of the criminal justice system.
35. The Commissioner has given consideration to how disclosure of the information requested in this case would contribute to satisfying the public interest in the Lockerbie investigation. He accepts that disclosure would confirm that the concerns raised by the Justice for Megrahi group had been acted upon and that appropriate scrutiny mechanisms were in place; however, he considers that these factors have been met through the disclosure of the outcome of the Operation Sandwood investigation. In the Commissioner's view, had there been any concern about the outcome of that investigation, this could have been taken forward by the SCCRC; however, as far as the Commissioner is aware, this has not been raised by any party.
36. In relation to the Authority's position, the Commissioner acknowledges that there may be a general expectation about not disclosing details of individuals or bodies who have been investigated, where no criminality has been found to have taken place. However, in his view, this cannot be taken to be a universal position, and disclosure of such information depends on the balance of public interest in each particular case.

37. The Commissioner notes the Authority's stance that investigative materials should only be disclosed where the public interest considerations are overwhelming. In the Commissioner's view, however, for information requests of this nature, it cannot be a foregone conclusion that the public interest will always favour non-disclosure.
38. In this case, the Commissioner considers that the public interest in making the information available is finely balanced with that in withholding the information requested, largely due to the general nature of the Authority's submissions. While the Commissioner cannot go into further detail here, without revealing the withheld information itself, he would expect to receive more focused submissions specific to the circumstances of the particular information being withheld in this and every such case.
39. While the Commissioner recognises the considerable public interest in the disclosure of the information requested, he considers that this has been catered for by the fact that an investigation was carried out into the allegations made, a report prepared and the conclusion from that report, which brought no criminal proceedings, shared publicly. He has also taken into account that the investigation in the United States, referred to in the Authority's initial response, was ongoing at the time the Authority issued its review outcome, and remains ongoing at the time of writing this Decision Notice.
40. In all the circumstances of the case, and in the absence of there being a substantial case for finding otherwise in this case, the Commissioner is satisfied – but only just - that the public interest in maintaining the exemption in section 34(1)(b) of FOISA outweighs the public interest in making available the information requested. The Commissioner therefore finds that the Authority correctly relied on section 34(1)(b) of FOISA to withhold the information requested by the Applicant.
41. Having reached this conclusion, he is not required to consider the application of the other exemptions relied on by the Authority to withhold the information requested.

Handling of the request for review - timescale for compliance

42. In his application to the Commissioner, the Applicant was dissatisfied with the failure of the Authority to comply with the statutory timescale in FOISA for responding to his requirement for review.
43. As set out in the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the EIRs) (the "[Section 60 Code](#)"³), section 21(1) of FOISA requires all public authorities to respond "promptly" to a requirement for review (and, in any case, within a statutory 20 working day timescale).
44. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.
45. The provision in section 21(1) makes it clear that the 20 working day period is a long-stop and that the overriding requirement is to respond promptly.
46. In its submissions to the Commissioner, the Authority explained that the Applicant's request for review was received on 8 April 2022 and responded to, by post, on 9 May 2022, which

³ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

was the twentieth day for responding (taking account of the public holiday on 15 April 2022). The Authority commented that it dealt with thousands of requests each year and, whilst it endeavoured to respond to requests promptly and within statutory deadlines, there could occasionally be delays, although there was nothing in the file to indicate any delays with the review in this case.

47. The Authority further submitted that it no longer used mail books (or anything similar), given it received so little hard copy mail. It explained that office-based staff would immediately scan any mail received and forward it to the relevant team as appropriate, with the hard copy being destroyed immediately thereafter. The Authority provided the relevant email which included, as part of the email trail, the date and time of scanning of the Applicant's requirement for review. This evidenced that the requirement for review had been sent to the FOI team on 8 April 2022.
48. The Commissioner notes that, although the Applicant's request for review letter was dated 31 March 2022, this did not provide confirmation of when it was actually posted, or when it may have been received by the Authority. Having considered the Authority's submissions, describing the system in place for forwarding hard copy mail upon receipt, the Commissioner can find no reason to doubt its position that it had received the request for review on 8 April 2022 and had responded to it within 20 working days.
49. The Commissioner is therefore satisfied that the Authority complied with section 21(1) of FOISA, by responding to the Applicant's requirement for review within 20 working days.

Decision

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

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.

Euan McCulloch
Head of Enforcement

1 September 2025