



Scottish Information
Commissioner

**Decision 200/2006 – Mr W Herriot and the Chief
Constable of Lothian and Borders Police**

*Names and ranks of police officers who were on duty at a particular
police station over a particular period of time*

Applicant: Mr W Herriot

Authority: Chief Constable of Lothian and Borders Police

Case No: 200600996

Decision Date: 2 November 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 200/2006 – Mr W Herriot and Chief Constable of Lothian and Borders Police

Names and ranks of police officers who were on duty at a particular police station over a particular period of time, and also the times that these officers came on and off duty

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement); 17 (Notice that information is not held).

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 Herriot submitted an information request to the Chief Constable of Lothian and Borders Police (the Police). In this request for information, Mr Herriot was seeking the names and ranks of police officers who were on duty at a particular police station over a particular period of time in 1974, and the times that these officers came on and off duty. In their response to Mr Herriot's request, the Police advised Mr Herriot that they did not hold any information which would address his request. The Police did not cite any section or exemption in the Freedom of Information (Scotland) Act 2002 (FOISA) in their response to Mr Herriot. In response to Mr Herriot's request for a review the Police cited section 17 of FOISA in upholding their decision that they did not hold any information which would address his request for information. Mr Herriot then applied to the Commissioner for a decision.

Following an investigation the Commissioner found that the Police were correct to rely on the terms of section 17 of FOISA in responding to Mr Herriot's request for information.



Background

1. On 10 April 2006, Mr Herriot submitted an information request to the Police. In this information request Mr Herriot asked for information as to the names and ranks of the police officers who were on duty at a particular Police station over a particular period of time in 1974, and the times that these Officers came on and off duty.
2. The Police responded to Mr Herriot's information request on 26 April 2006. In their response the Police advised Mr Herriot that because of the age of the records that he had requested they no longer held the information that he was seeking.
3. Mr Herriot submitted a request for a review to the Police on 9 May 2006.
4. The Police responded to Mr Herriot's request for a review on 19 May 2006. In this response, the Police upheld their original decision, and reaffirmed that they did not hold the information that he was seeking. The Police cited section 17 (Notice that information is not held) of FOISA in respect of the information that Mr Herriot had requested.
5. On 3 June 2006, Mr Herriot applied to me for a decision as to whether the Police had applied Part 1 of FOISA properly in dealing with his request for information.
6. Mr Herriot's appeal was validated by establishing that he had made a valid information request to a Scottish public authority under FOISA and had only appealed to me after asking the Police to review their response to his request. The case was allocated to an investigating officer.

The Investigation

7. A letter was sent by the investigating officer to the Police on 12 June 2006. In this letter the investigating officer asked the Police to comment on Mr Herriot's application in terms of section 49(3)(a) of FOISA. The Police were asked to provide, amongst other items, evidence of the searches that they had carried out to assess whether they held the information requested by Mr Herriot. The Police were also asked to provide a copy of the relevant section of the Association of Chief Police Officers in Scotland (ACPOS) Records Retention and Disposal Policy, referred to in their correspondence with Mr Herriot.



8. A response was received from the Police on 23 June 2006. Within this response the Police provided their comments on Mr Herriot's appeal to me, and also the nature of the searches that they carried out to determine if they held the information that Mr Herriot was seeking. The Police also provided my Office with a copy of the relevant section of the ACPOS Records Retention and Disposal Policy, along with evidence of retention practice before this Policy was introduced.
9. The Police argued that they had taken all reasonable steps to help Mr Herriot with his request. Mr Herriot had requested that they contact certain named police officers who might be able to recall the names of the officers who were on duty at the time his request related to. The Police stated that they had carried out a search of the details of these named police officers but that they were no longer serving with the Police.
10. The Police have cited section 17 of FOISA in its response to Mr Herriot.
11. I will consider the Police's reasoning for relying on this section of FOISA further in the section on Analysis and Findings below.

The Commissioner's Analysis and Findings

12. As indicated already in this decision notice, Mr Herriot made a request to the Police for information as to the name and rank of police officers who were on duty at a particular police station over a particular period of time in 1974, and the times that these Officers came on and off duty. In their responses to Mr Herriot the Police advised that due to the age of the records that he was looking for they were unable to provide Mr Herriot with this information, as they no longer held it. The Police did not cite any section(s) or exemption(s) in FOISA in their response to Mr Herriot's information request. However, they did cite section 17 (Notice that information is not held) of FOISA in response to Mr Herriot's request for a review.
13. I will now go on to consider the Police's reliance on section 17 of FOISA.

Section 17 – Notice that information is not held

14. In order to determine whether the Police were correct to cite section 17 of FOISA in respect of the information that Mr Herriot was seeking, I must be satisfied that the Police do not hold (and did not hold at the time of Mr Herriot's request) information which would address his request.



15. In their submissions to my Office, the Police have advised (as is clear from Mr Herriot's request) that the information that Mr Herriot has requested dates from the 2nd and 3rd November 1974. The Police stated that all records held by the Police are currently kept in accordance with the Association of Chief Police Officers (ACPOS) Records Retention and Disposal Policy, which was introduced in October 2005. The Police have indicated that prior to this Standing Orders provided guidance on how long information should be retained by the Police.
16. The Police have provided me with a copy of the relevant section of the ACPOS Records Retention and Disposal Policy, which indicates that records relating to names of officers on duty at a particular station should be retained for the current year plus an additional six years. The Police also provided my Office with a copy of the Standing Order which had been in place within the division in which the particular police station was located prior to the introduction of the ACPOS Policy. This Standing Order required that duty record sheets should be retained for a period of 5 years.
17. The Police stated that as part of their search to ascertain whether they held the records which would address Mr Herriot's request, they contacted the force's central personnel service, the Divisional Headquarters for the area in which the named police station is located and the named police station itself, and that in each case they were advised that all records which would have contained duty rosters from 1974 had long since been destroyed.
18. The Police have also advised me that they carried out a search of the historical crime system to determine if there had been any serious crimes committed at that time, as crime records are required to be retained for longer than duty records: however, the result of this search was also negative. The Police advised that they also tried to trace the police officers that Mr Herriot had named in his request for review, but that none of the Officers still served with the Force.
19. Having considered the content of the ACPOS Records Retention and Disposal Policy, and the appropriate Standing Order, together with the submissions received from the Police, I am satisfied that the information that Mr Herriot is seeking is no longer held by the Police (and was not so held at the time of Mr Herriot's request). I am therefore satisfied that the Police have relied on section 17 of FOISA correctly in respect of their response to Mr Herriot.



Decision

I find that the Chief Constable of Lothian and Borders Police (the Police) dealt with Mr Herriot's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in relying on section 17 of FOISA in relation to information which would address Mr Herriot's request.

Appeal

Should either Mr Herriot or the 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
2 November 2006



APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

(1) A person who requests information from a Scottish public authority who holds it is entitled to be given it by the authority.

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 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.