



Scottish Information
Commissioner

**Decision 026/2007 – Mr James Duff and the Chief
Constable of Dumfries and Galloway Constabulary**

*Request for the names of civil authorities referred to in particular
police reports, the name of the police officer who produced a
particular police report, and the opinion of a particular judge*

**Applicant: Mr James Duff
Authority: Dumfries and Galloway Constabulary
Case No: 200600820/200600830
Decision Date: 9 February 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 026/2207 – Mr James Duff and the Chief Constable of Dumfries and Galloway Constabulary

Request for the names of civil authorities referred to in particular police reports, the name of the police officer who produced a particular report and the opinion given by a particular judge on a particular date – section 17 (Notice that information is not held) applied and upheld by Commissioner

Relevant Statutory Provisions

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

The relevant text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Duff submitted three separate but related requests for information to the Chief Constable of Dumfries and Galloway Constabulary. These requests related to police reports that concerned Mr Duff.

This decision notice only considers the second and third of these three requests which were submitted by Mr Duff. These are:

- A request for the names of the civil authorities Dumfries and Galloway police officers had corresponded with, as referred to in particular reports produced by Dumfries and Galloway Constabulary.
- A request for the name of the police officer who produced a particular report, and also for the opinion given by a particular, named judge on a particular date.



In its response to Mr Duff's second and third requests, Dumfries and Galloway Constabulary indicated that it did not hold any information on the civil authorities in question and as a result it could not provide this information to Mr Duff. Dumfries and Galloway Constabulary also advised that it had referred to the original version of the police report that Mr Duff had made reference to in the context of his request for the name of the author, and that this was not signed. As a result, Dumfries and Galloway Constabulary was unable to provide Mr Duff with the name of the police officer who produced the report.

In its response to Mr Duff's second and third requests Dumfries and Galloway Constabulary did not address Mr Duff's request for the opinion delivered by a particular, named judge.

On review Dumfries and Galloway Constabulary upheld its decision as regards Mr Duff's second and third requests. Mr Duff then applied to the Commissioner for a decision.

Following an investigation the Commissioner was satisfied that Dumfries and Galloway Constabulary complied with Part 1 of FOISA in relying on section 17 for not providing Mr Duff with information as to the names of the civil authorities referred to in particular police reports, and the name of the police officer who prepared a particular report.

The Commissioner also found (while being satisfied that this had been rectified during his investigation) that Dumfries and Galloway Constabulary had not provided Mr Duff with the judge's opinion he had requested, in accordance with section 1(1) of FOISA.

Background

1. Mr Duff has made three separate but related requests to Dumfries and Galloway Constabulary for information relating to police reports about himself. The second and third of these requests are being considered in this decision notice, although reference is also made to Mr Duff's first request.

Request for reports from Dumfries and Galloway Constabulary to the civil authorities

2. On 13 September 2005, Mr Duff asked Dumfries and Galloway Constabulary to provide him with copies of the reports that were made to civil authorities by Dumfries and Galloway Constabulary, and the reports that Dumfries and Galloway Constabulary received back from these civil authorities, over a particular timescale.



3. Dumfries and Galloway Constabulary responded to Mr Duff on 11 October 2005. In this response Dumfries and Galloway Constabulary advised Mr Duff that the reports mentioned by him in his information request related to Court decisions and the opinions made by those who presided over the various stages of civil proceedings (civil authorities). Dumfries and Galloway Constabulary went on to state that it was its understanding that Mr Duff had previously been notified and was aware of the various Court decisions and findings.
4. Mr Duff submitted a request for a review to Dumfries and Galloway Constabulary on 15 November 2005.
5. In its submissions to my Office, Dumfries and Galloway Constabulary has advised that it did not receive this request for a review from Mr Duff, and therefore no review was carried out. From the checks carried out by Dumfries and Galloway Constabulary, I am satisfied on balance that it was not received.
6. As Dumfries and Galloway Constabulary was not given an opportunity to carry out a review of their response to Mr Duff's request prior to an application being submitted to my Office, I cannot treat this as a valid application.
7. This information request is therefore not being considered as part of this investigation.

Request for the names of civil authorities

8. On 8 February 2006, Mr Duff asked Dumfries and Galloway Constabulary for the names of the civil authorities Dumfries and Galloway police officers had corresponded with, as referred to in particular reports produced by Dumfries and Galloway Constabulary.

Request for the name of a police Officer and the opinion of a particular judge

9. On 10 February 2006, Mr Duff asked Dumfries and Galloway Constabulary for the name of the police officer who produced a particular report. Mr Duff also asked for the opinion that was delivered by a particular, named judge on a particular date.
10. Dumfries and Galloway Constabulary responded to the request that was submitted on the 8 February 2006 at the same time as it responded to the requests that had been submitted on the 10 February 2006.



11. In its response of 20 March 2006, Dumfries and Galloway Constabulary advised that it did not hold any information which would answer Mr Duff's request as to the names of the civil authorities referred to in certain police reports. Dumfries and Galloway Constabulary also indicated that it had reviewed the original police report in respect of which Mr Duff was requiring the name of the police officer who prepared it, and as the original copy was unsigned, it did not hold information which would answer this request from Mr Duff. Mr Duff's information request for the opinion of a particular, named judge was not addressed in this response. Dumfries and Galloway Constabulary did not cite any section(s) or exemption(s) in FOISA for not providing information to Mr Duff.
12. Mr Duff submitted a request for a review to Dumfries and Galloway Constabulary on 21 March 2006.
13. An acknowledgement letter was sent to Mr Duff by Dumfries and Galloway Constabulary on 22 March 2006, indicating that his request for a review had been received.
14. A response to Mr Duff's request for a review was sent to him on 19 April 2006 by Dumfries and Galloway Constabulary. In this response Dumfries and Galloway Constabulary indicated that it upheld the original decision that it had made in respect of Mr Duff's requests. Again, Dumfries and Galloway Constabulary did not indicate in this letter which section(s) or exemption(s) under FOISA it was relying on in not providing Mr Duff with the information he had requested.
15. On 21 April 2006, I received an application from Mr Duff for a decision on the second and third information requests that he made to Dumfries and Galloway Constabulary. The cases were subsequently allocated to an investigating officer within my Office.
16. Mr Duff's appeals were validated by establishing that he had made valid information requests to a Scottish public authority under FOISA (i.e. Dumfries and Galloway Constabulary) and had appealed to me only after requesting that Dumfries and Galloway Constabulary review its decisions.

The Investigation

17. Both of these information requests will be considered in this one decision notice.
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18. A letter was sent to Dumfries and Galloway Constabulary by the investigating officer on 2 June 2006. In this letter the investigating officer asked Dumfries and Galloway Constabulary for its comments on Mr Duff's applications in terms of section 49(3) of FOISA. Dumfries and Galloway Constabulary was asked to provide:
 - Any documentation that it held relating to Mr Duff's requests of 13 September and 15 November 2005, and also the requests submitted by Mr Duff on 8 and 10 February 2006 and the request for review which was submitted on 21 March 2006.
 - An explanation of the process that was undertaken by Dumfries and Galloway Constabulary to answer Mr Duff's requests, and any record of searches undertaken for the information and documents requested by Mr Duff.
19. A full response was received from Dumfries and Galloway Constabulary on 12 July 2006.

Submissions from Dumfries and Galloway Constabulary

20. Within its response to my Office, Dumfries and Galloway Constabulary provided its comments on Mr Duff's appeal to me, and also the nature of the searches that it carried out to determine whether it held the information that Mr Duff was seeking.
21. Dumfries and Galloway Constabulary argued that it believed that all measures have been exhausted in researching Mr Duff's request.
22. Dumfries and Galloway Constabulary advised me that it was relying on section 17 of FOISA in not providing Mr Duff with information which would address his requests.
23. I will consider Dumfries and Galloway Constabulary's reasoning for relying on this section of FOISA further in the section on Analysis and Findings below.



The Commissioner's Analysis and Findings

24. As indicated already in this decision notice, Mr Duff made several requests to Dumfries and Galloway Constabulary for information as to the names of the civil authorities who are referred to in particular reports prepared by Dumfries and Galloway Constabulary, and the name of the police officer who produced a particular report. Mr Duff also requested a copy of the opinion delivered by a particular, named judge, on a particular date. In its responses to Mr Duff, Dumfries and Galloway Constabulary advised that they do not hold any information which would answer Mr Duff's requests as to the name of the civil authorities and the police officer who produced a particular report. Dumfries and Galloway Constabulary did not cite any section(s) or exemption(s) in FOISA in its response to Mr Duff's information requests, or his request for a review.
25. Dumfries and Galloway did advise my investigating officer in its submissions to my Office that it was relying on section 17 of FOISA in not providing information in response to Mr Duff's requests.
26. I will now go on to consider Dumfries and Galloway Constabulary's reliance on section 17 of FOISA.

Section 17 – Notice that information is not held

27. In order to determine whether Dumfries and Galloway Constabulary were correct to cite section 17 of FOISA in respect of the information that Mr Duff was seeking, I must be satisfied that Dumfries and Galloway Constabulary do not hold (and did not hold at the time of Mr Duff's request) information which would address his request.
28. In its submissions, Dumfries and Galloway Constabulary has advised that it had reviewed the documentation that Mr Duff had made reference to, in order to establish which civil authorities were being alluded to in the police reports Mr Duff highlighted. The reports simply refer to "the civil authorities" without any further specification.
29. Dumfries and Galloway Constabulary stated that it searched all documentation that it held in respect of Mr Duff, which involved researching various files and records and seeking to establish whether there was a link between any of the documentation held and the reports referred to by Mr Duff which would identify the civil authorities in question. Dumfries and Galloway Constabulary advised that the outcome of this search was negative, in that it could not identify any specific civil authorities which might be those alluded to in the specified reports.



30. Dumfries and Galloway Constabulary also advised me that there is no general definition of the term “civil authorities”, which would give an indication of the types of authorities which might have been covered by this element of the request.
31. In its submissions concerning Mr Duff’s request for the name of the police officer who produced a particular report, Dumfries and Galloway Constabulary has advised that, as part of its searches it checked the original copy of this report and found that this was unsigned and that there was no reference as to the details of the author.
32. Dumfries and Galloway Constabulary also advised that it had been unable to identify the author of the report from any other information that it held.
33. Following further communication with the investigating officer, Dumfries and Galloway Constabulary advised that it was unable to check the notebook entries, from around the time that the report was produced, of those officers who had investigated Mr Duff’s concerns in an effort to identify which officer prepared the report. Dumfries and Galloway Constabulary indicated that its records retention policy, which was in place at the time that this report was produced, required that police notebooks be retained for a period of ten years. As this ten year retention period had expired Dumfries and Galloway Constabulary could not access these records. It also advised that there were no electronic recording facilities at the time which might have recorded this information.
34. Having considered the submissions that have been provided by Dumfries and Galloway Constabulary, in respect of the searches that it carried out in order to determine whether it held the information requested by Mr Duff, I am satisfied that the information that Mr Duff is seeking is not held by Dumfries and Galloway Constabulary (and was not held at the time of Mr Duff’s request). I am therefore satisfied that Dumfries and Galloway Constabulary has relied on section 17 of FOISA correctly in respect of their responses to Mr Duff concerning the names of the civil authorities, and the name of the police officer who produced a particular report.
35. I am also satisfied that although Dumfries and Galloway Constabulary did not advise Mr Duff that it was relying on section 17 of FOISA in not providing information in response to his requests, the responses given by Dumfries and Galloway Constabulary would constitute a valid notice under section 17 of FOISA.



36. As mentioned previously in this decision notice, as part of Mr Duff's third information request he asked for a copy of the opinion which was delivered by a particular, named judge on a particular date. In its submissions to my Office, Dumfries and Galloway Constabulary acknowledged that it did not respond to this part of Mr Duff's request in its response of 20 March 2006, and its response to Mr Duff's request for review dated 19 April 2006.
37. In its submissions in respect of Mr Duff's request for a copy of the judge's opinion Dumfries and Galloway Constabulary stated that, as Mr Duff was the appellant in the case in question, he should have been provided with a copy of the judge's opinion at the time. Dumfries and Galloway Constabulary has also indicated that the judge's opinion is a matter of public record.
38. Following further communication between my investigating officer and Dumfries and Galloway Constabulary, Dumfries and Galloway Constabulary provided Mr Duff with a copy of the judge's opinion, as an enclosure to a letter dated 30 January 2007.
39. I am satisfied that Dumfries and Galloway Constabulary has now provided Mr Duff with the information he requested in the second part of his third information request, although clearly it should have done so in response to his request or his subsequent request for review and was in breach of section 1(1) of FOISA in failing to do so.

Decision

I find that the Chief Constable of Dumfries and Galloway Constabulary dealt with Mr Duff's second request and the first part of his third request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in relying on section 17 of FOISA.

I find that the Chief Constable of Dumfries and Galloway Constabulary did not deal with the second part of Mr Duff's third request for information in accordance with Part 1 of FOISA, in that he did not provide Mr Duff with a copy of the judge's opinion that he requested in compliance with section 1(1) of FOISA. I am, however, satisfied that Dumfries and Galloway Constabulary has now done so and therefore do not require any further action in this regard.



Appeal

Should either Mr Duff or Dumfries and Galloway Constabulary 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
9 February 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 who holds it is entitled to be given it by the authority.

10 Time for compliance

(1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after –

(a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request;

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.

