

# Decision Notice



Decision 139/2010 Mr Derek Cooney and the Chief Constable of Dumfries and Galloway Constabulary

Police raid in the 1960s

Reference No: 201001293

Decision Date: 16 August 2010

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

Mr Derek Cooney requested from the Chief Constable of Dumfries and Galloway Constabulary (Dumfries and Galloway Constabulary) information pertaining to an alleged police raid in Dumfries in the 1960s. Dumfries and Galloway Constabulary responded by advising that they did not hold the information requested. Following a review, Mr Cooney remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Dumfries and Galloway Constabulary had dealt with Mr Cooney's request for information in accordance with Part 1 of FOISA, by giving Mr Cooney notice under section 17 of FOISA stating that they did not hold the information requested.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

## Background

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1. On 19 May 2010, Mr Cooney wrote to Dumfries and Galloway Constabulary requesting the following information:
  - i) *The exact date of the raid on premises occupied by [named individual] in Dumfries town centre in the late sixties,*
  - ii) *How many police officers were suspended or under investigation as a result of that raid, and what ranks did these officers hold?*
  - iii) *How many of these officers were convicted?*
  - iv) *How many of these officers were allowed to continue in the force?*
2. Dumfries and Galloway Constabulary responded on 9 June 2010, indicating that they did not hold the information Mr Cooney had requested. They advised that all of their records were subject to retention guidelines set by the Association of Chief Police Officers in Scotland (ACPOS).



3. On 7 July 2010, Mr Cooney wrote to Dumfries and Galloway Constabulary requesting a review of its decision. He said he understood that each police force kept records of such incidents in an incident book, which he believed would be retained in perpetuity. He referred to another case of a similar vintage, on which he understood a file was still held.
4. Dumfries and Galloway Constabulary notified Mr Cooney of the outcome of their review on 15 June 2010, referring again to the ACPOS guidelines and providing a link where these might be viewed on the internet. Prior to the introduction of these guidelines, there had been force-specific retention periods. They explained that they could not identify the incident Mr Cooney had described and could trace no relevant records from the information he had provided. Had the current ACPOS guidelines applied at the time, they advised, any information of the description his request appeared to fall into would have been destroyed in the early 1980s. Noting his reference to another case, they advised that this was a serious unresolved crime and therefore any records would be retained until the case was resolved.
5. On 23 June 2010, Mr Cooney wrote to the Commissioner, stating that he was dissatisfied with the outcome of Dumfries and Galloway Constabulary's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Cooney had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

## Investigation

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7. On 22 July 2010, Dumfries and Galloway Constabulary were notified in writing that an application had been received from Mr Cooney, given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, they were asked to provide further information on the steps they had taken to identify and locate the information Mr Cooney had requested.
8. Dumfries and Galloway Constabulary responded on 30 July 2010, explaining the searches they carried to establish what relevant information they held, the systems and records in which these searches had been carried out, and their records retention policies.
9. The submissions received from Mr Cooney and Dumfries and Galloway Constabulary, insofar as relevant, are considered in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr Cooney and Dumfries and Galloway Constabulary and is satisfied that no matter of relevance has been overlooked.

### Section 17 (Notice that information is not held)

11. Where a Scottish public authority receives a request for information which it does not hold, it must, in line with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information.
12. In his application to the Commissioner, Mr Cooney asserted that an incident book would be held and consequently he believed the information he had requested would be available.
13. Dumfries and Galloway Constabulary were satisfied that they did not hold the information Mr Cooney had requested. They advised that it could not identify the incident in question from the information Mr Cooney had provided: while it may have been prudent for them to have sought clarification from Mr Cooney in the course of dealing with his request, it does not appear in any event that Mr Cooney is able to provide significant further information on the incident. They referred to certain assumptions they had made from the information in the request, noting that more than 40 years had elapsed since the events in question and that any officers involved would have retired some time ago. They submitted that it would be impractical and disproportionate for the force to retain records indefinitely, as was reflected in a records retention schedule designed to manage its records effectively.
14. In summary, Dumfries and Galloway Constabulary advised that the incident in question would have occurred prior to the introduction of computerised incident records. No attempt had been made to migrate information on previous incidents when these systems had been introduced, so any information on the incident would have been held in paper records only. They referred to the various types of incident records maintained before the introduction of computerised systems, advising that the last of these had been destroyed in 2006. The only crime records which would be retained for the period in question would relate to serious unresolved crimes. No remaining misconduct records could be traced for the period in question: they might be able to search their Criminal History System for information on any officer who had received a criminal conviction, but this would require the identity of any such officer. Given the time which had elapsed since any of the officers concerned had retired, no relevant HR records would be held.
15. Having considered the submissions received from both Dumfries and Galloway Constabulary and Mr Cooney, the Commissioner is satisfied that there could be no reasonable expectation that any of the information requested by Mr Cooney would still be held. Consequently, the Commissioner has concluded that Dumfries and Galloway Constabulary were correct to notify Mr Cooney in terms of section 17 of FOISA that they did not hold the requested information.



## DECISION

The Commissioner finds that Dumfries and Galloway Constabulary complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Cooney.

## Appeal

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Should either Mr Cooney or the Chief Constable of 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 after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**16 August 2010**



## Appendix

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### 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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

##### 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.

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