

23/02/2015

Our Ref: IM-FOI-2015-0056



Sir Stephen House QPM
Chief Constable

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FREEDOM OF INFORMATION (SCOTLAND) ACT 2002
SUBJECT: Use of Scottish Airports in connection with Rendition

I refer to your email dated 07/01/2015 regarding the above which has been handled in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA). Please accept my sincere apologies for the delay in responding.

For ease of reference I have provided the response below each question separately;

Question 1

I shall use the terms "police" and "Scottish police" to refer loosely to Scotland's legacy police forces as well as to Police Scotland.

An article in the Sunday Herald dated 23 October 2005 stated: "Scottish police are to launch an investigation into CIA "torture flights" which fly in and out of Glasgow and Prestwick airports, ferrying kidnapped war on terror suspects around the world." The article adds: "Following our reports, the Green Party wrote to the chief constable of Strathclyde Police, Sir William Rae, asking for a full inquiry into the torture flights. A police spokesperson confirmed that the force would now launch an investigation." Please let me know whether a criminal investigation was indeed launched at around this date, or whether

some other form of police activity – perhaps directed at establishing whether there was any substance to the allegations – was launched, or whether the Sunday Herald report was simply incorrect.

Response

No criminal investigation took place. There was insufficient credible and reliable information to commence an inquiry.

Question 2

Please let me know whether, following the announcement in late November/early December 2005 that ACPO would be looking into evidence provided by Liberty, Scottish police contacted Liberty in relation to the suspected use of Scottish airports in connection with rendition.

Response

Having considered your request in terms of the above Act, I regret to inform you that I am unable to provide you with the information you have requested, as it would prove too costly to do so within the context of the fee regulations. As you may be aware the current cost threshold is £600 and I estimate that it would cost well in excess of this amount to process your request. As such, and in terms of Section 16(4) of the Freedom of Information (Scotland) Act 2002 where Section 12(1) of the Act (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

By way of explanation, the files which would require to be manually interrogated in order to establish the information requested is held in multiple locations, in both electronic and paper format and is not easily retrievable. As such, identifying any such information would undoubtedly exceed the cost limit set out in the regulation.

Question 3

Please let me know whether, following the announcement in late November/early December 2005 that ACPO would be looking into evidence provided by Liberty, Scottish police accessed and assessed the published, publicly-available information provided by Liberty and/or other NGOs.

Response

Having considered your request in terms of the above Act, I regret to inform you that I am unable to provide you with the information you have requested, as it would prove too costly to do so within the context of the fee regulations. As you may be aware the current cost threshold is £600 and I estimate that it would cost well in excess of this amount to process your request. As such, and in terms of Section 16(4) of the Freedom of Information (Scotland) Act 2002 where Section 12(1) of the Act (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

By way of explanation, the files which would require to be manually interrogated in order to establish the information requested is held in multiple locations, in both

electronic and paper format and is not easily retrievable. As such, identifying any such information would undoubtedly exceed the cost limit set out in the regulation.

Question 4

Please provide me with the content of all correspondence and memorandums exchanged in the period 1 January 2005 to 31 December 2005 between Scottish Police on the one hand and Scottish Law officers, the Scottish Executive or their staff on the other, relating to the possible use of Scottish Airports by flights operated or sponsored by the CIA. A very similar FOI request was made to Strathclyde Police by Chris Ballance MSP on 24 November 2005. Police refused the request and their refusal was subsequently upheld by the Information Commissioner

(<http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2006/200600436.aspx>). However, I believe that the passage of time and the substantial related disclosures in Britain and the US may mean that the exemption is no longer applicable, and in any case means that the balance between disclosure and non-disclosure under the public interest test would today be different.

Response

Irrespective of what information is held, the public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with what is placed into the public domain.

Due to the nature of this subject, despite it being public knowledge that Police Scotland has launched an investigation into alleged rendition flights using Scottish airports, to confirm or deny that specific information exists, could adversely affect national security, international relations and the ongoing enquiry.

In terms of Section 18 of the Freedom of Information (Scotland) Act 2002 (the Act) Police Scotland can neither confirm nor deny that it holds the information requested by you. This is supported by one or more of the following exemptions;

Section 31 National Security and Defence
Section 32 International Relations
Section 34 Investigations

No inference should be taken from this response as to whether the information you have requested does or does not exist.

These exemptions are subject to the public interest test, as outlined below.

Factors favouring Confirming or Denying that we hold the information;

In general terms, the public are entitled to know how public funds are spent and resources distributed within an area of policing. To confirm or deny information relating to a specific enquiry exists may enable the general public to hold Police Scotland to account. In the current climate of cuts and with the call for transparency of public spending this would enable improved public debate.

Factors against Confirming or Denying that we hold the information;

Confirming or denying that information exists when part of an ongoing enquiry and particularly where the subject matter is of an extremely sensitive nature would undermine the impartial integrity of the report and potentially the force's ongoing efforts against criminality and terrorism.

Should there be an incident relating to the existence or otherwise of such information, countries could lose confidence in the UK to maintain information confidentiality where it has been supplied in confidence for the assistance of an investigation. This would be likely to detrimentally affect their relationship with the UK, undermine the investigation and prejudice any such future relationship.

To confirm or deny that any information is held would offer terrorists information which could lead them to potentially change or continue their behaviour. Security measures are put in place to protect the community that we serve. The cumulative effect of terrorists gathering information from various sources would have even more impact when linked to other information gathered from various sources specifically about terrorism. The more information disclosed over time will give a more detailed account of the tactical infrastructure of not only a force area, but also the country as a whole.

To confirm or deny the existence of material held would indicate investigative activity that may or may not take place and highlight to terrorists and individuals intent on carrying out criminal behaviour the potential direction of any associated or future enquiries. This would ultimately increase the risk of harm to the general public and significantly undermine any ongoing or future operations to protect the security or infrastructure of the United Kingdom and increase the risk of harm to the public.

The confirmation or denial that information is held would identify that the Police are or are not currently pursuing a particular area of enquiry. As this particular case is ongoing, I cannot confirm or deny that particular documentary exists without prejudicing the eventual outcome of the ongoing investigation.

No inference should be taken from this response as to whether the information you have requested does or does not exist.

Balance Test

The security of the country is of paramount importance and the Police Service will not confirm or deny the existence of any material that in doing so could undermine national security or compromise law enforcement. Whilst there is a public interest in the transparency of policing operations and in this case providing assurance that the police service is appropriately and effectively investigating all the information gathered, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in this area.

As much as there is public interest in knowing that policing activity, particularly around all investigations are appropriate and balanced in matters of national security, this will only be overridden in exceptional circumstances. Whilst there is also a strong public interest in the transparency of police performance in relation to the prevention and detection of crimes across Scotland, this would be outweighed by the need to safeguard national security.

Despite accountability and public awareness being strong factors, the need to ensure that the Police can conduct investigations thoroughly and the integrity of any subsequent court proceedings are more compelling factors

In this respect there is also no requirement to satisfy any public concern over the existence of particular information. The service is already held to account in such matters by the Crown Office Procurator Fiscal Service and all documentary evidence gathered by the police will be reported to this body in due course. Our accountability is therefore not enhanced by confirming or denying the existence of information pertinent to this request at an early stage where investigations are incomplete and may inadvertently indicate the direction such enquiries would take.

Any actions taken by Police Scotland as part of this enquiry are ongoing and are to develop clarity and establish whether any criminality has taken place in relation to alleged rendition flights. Confirming that particular information either does or does not exist, when part of any ongoing enquiry and particularly where the subject is of an extremely sensitive nature would undermine the impartial integrity of the report and potentially the force's ongoing efforts against criminality and terrorism.

Public Interest Test:

The key test when considering where the balance of public interest lies, is to establish whether, in all the circumstances of the request, the public interest in confirming or denying the information is held is not outweighed by maintaining the exemption(s).

Please note the subject matter should not just be of interest to the public, but something which is of serious concern and benefit to the public, and not merely something of individual interest. To clarify, public interest does not mean "of interest to the public" but "in the interest of the public".

The following outlines the public interest considerations taken into account in arriving at the decision to neither confirm nor deny whether the information requested is held.

In this instance, I can find no meaningful purpose for confirming or denying the information held by Police Scotland. Although it is acknowledged there is considerable media interest in the police investigation this does not outweigh that as stated above, by the ongoing nature of the enquiry, it is more likely to include material of a very sensitive nature. This is further enhanced by the subject matter in this request.

It is therefore not, in the public interest to confirm or deny that we hold information relating to the request where it jeopardises either the impartial integrity of the police report to the Crown Office Procurator Fiscal Service, or the force's ongoing efforts against criminality and terrorism.

Accordingly, on this occasion I have therefore decided to maintain the exemption and refuse to confirm or deny whether the information requested is held.

No inference should be taken from this response as to whether the information you have requested does or does not exist.

Question 5

For each year from 2005 onwards, please let me know:

a) How much money did police spend investigating or inquiring into the possible use of Scottish airports in connection with rendition?

i) 2005 to 2013

The number of resource hours and therefore the costs involved are difficult to quantify. Prior to the inception of Police Scotland, any officers involved in related enquiries were not required to collate timesheets detailing how their time is spent, i.e. between such enquiries and other policing business. Therefore under Section 17 of the Freedom of Information (Scotland) Act 2002 I must inform you that we do not hold the information you have requested.

ii) 2013 to Present

From 5 June 2013 to the present date, officers of Police Scotland have been working on this inquiry. However the number of resource hours and therefore the costs involved are again difficult to quantify as the officers involved in this enquiry are not required to collate timesheets detailing how their time is spent, i.e. between this enquiry and other policing business. Therefore under Section 17 of the Freedom of Information (Scotland) Act 2002 I must inform you that we do not hold the information you have requested.

b) How many police officers were involved in investigations or inquiries into the possible use of Scottish airports in connection with rendition?

i) 2005 to 2013

The number of resource hours and therefore the number of officers involved are difficult to quantify. Prior to the inception of Police Scotland, any officers involved in related enquiries were not required to collate timesheets detailing how their time is spent, i.e. between such enquiries and other policing business. Therefore under Section 17 of the Freedom of Information (Scotland) Act 2002 I must inform you that we do not hold the information you have requested.

ii) 2013 to Present

From 5 June 2013 to the present date, two officers have been allocated to this enquiry and have been appointed as Senior Investigation Officer (SIO) and a Deputy SIO. They are supported by officers within the Specialist Crime Division (SCD) as required.

c) How many people were interviewed by police in relation to investigations or inquiries into the possible use of Scottish airports in connection with rendition?

The information requested by you is considered to be exempt in terms of the Freedom of Information (Scotland) Act 2002 (the Act). Section 16 of the Act requires

Police Scotland to provide you with a notice which: (b) states that it is claiming an exemption, (c) specifies the exemption in question and (d) states, if that would not be otherwise apparent, why the exemption applies. Where information is considered to be exempt, this letter serves as a Refusal Notice regarding the release of the information held and an explanation of the appropriate exemption is provided as follows;

Section 34 1 (a) & (b) - Investigations

Please consider this a refusal notice in terms of Section 16 of the Act;

Disclosure under FOISA puts that information into the public domain. As this particular case is ongoing, I cannot disclose specific information on the evidence gathered without prejudicing the eventual outcome of the ongoing investigation. I am therefore exempting any further detail under Section 34 (1) (a) (b) of the Freedom of Information (Scotland) Act 2002.

We also have to ensure that certain details relating to how investigations are conducted remain confidential; whether the investigation is complete or ongoing. Although it may be of interest to the public to see this information, I do not agree that in these circumstances it could be considered to be in the public interest to reveal these details. I feel that it is more important to ensure that the criminal justice process is not adversely affected.

If we were to release the information requested, details about how investigations are conducted would be made known and furthermore it could identify how certain information came to be known by police. This could reveal details of techniques used or discourage people from providing information, if they were aware that information could be later released without a compelling reason to do so. If such investigations information was placed into the public domain, it would have a detrimental effect on the ability of the police to conduct effective investigations.

The confidentiality of such information is essential, as release would prejudice substantially the freedom with which the police gather information and report to the Procurator Fiscal.

Despite accountability and public awareness being strong factors, the need to ensure that the Police can conduct investigations thoroughly and the integrity of any subsequent court proceedings are more compelling factors.

Finally, by the very nature of the investigation, it is more likely that it contains material of a very sensitive nature.

Section 34 is a class based qualified exemption which means the public interest must be considered.

Public Interest Test:

The key test when considering where the balance of public interest lies, is to establish whether, in all the circumstances of the request, the public interest in disclosing the information is not outweighed by maintaining the exemption(s).

Please note the subject matter should not just be of interest to the public, but something which is of serious concern and benefit to the public, and not merely

something of individual interest. To clarify, public interest does not mean “of interest to the public” but “in the interest of the public”.

The following outlines the public interest considerations taken into account in arriving at the decision to refuse access to the information requested.

In this instance, I can find no meaningful purpose for the release of the information. Although it is acknowledged there is considerable media interest in the police investigation this does not outweigh that as stated above, by the very nature of an interim report, it is more likely to contain material of a very sensitive nature. This is further enhanced by the subject matter in this request.

It is therefore not, in the public interest that disclosure of the response jeopardises either the impartial integrity of the police report to the Crown Office Procurator Fiscal Service, or the force’s ongoing efforts against criminality and terrorism.

Accordingly, on this occasion I have therefore decided to maintain the exemptions and refuse to provide you with the information requested.

Question 6

Please let me know of any occasions since 1 January 2002 on which police were informed, by British or US officials or from any other source, that an aircraft operated by or on behalf of the CIA, or likely to be suspected by members of the public or campaigners of being run by or on behalf of the CIA, was due to land or was present at a Scottish airport. Please let me know the date of the incident and the source of the information in each case (if any).

Response

Police Scotland holds no data with regard to being notified about an aircraft (associated with the CIA’s Detention and Interrogation Programme) being either due to land or being present at a Scottish airport. Therefore under Section 17 of the Freedom of Information (Scotland) Act 2002 I must inform you that we do not hold the information you have requested.

I trust that the information available is of assistance and should you require any further assistance concerning this matter please contact me on 01463720555 quoting the reference number given.

If you are not satisfied with the way in which your request has been dealt with, you are entitled in the first instance and within 40 working days of receiving this letter to request a review of the decision made by the Service. Should you wish to do so, contact details are; Police Scotland, FOI Central Processing Unit, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH. (Or email foi@scotland.pnn.police.uk).

Once informed of the review decision, if you are still not satisfied, then you are entitled to apply to the Scottish Information Commissioner within six months for a decision. The contact details are: Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS, telephone 01334 464610. Should you wish to appeal against the Scottish Information Commissioner’s decision, there is an appeal to the Court of Session on a point of law only.

Yours sincerely

Andrene MacLeod
Information Management
Freedom of Information