

Decision Notice 093/2023

Transfer and housing of asylum seekers in Glasgow

Public authority: Glasgow City Council

Case Ref: 202001521



Scottish Information
Commissioner

Summary

Following a stabbing attack at the Park Inn Hotel in Glasgow, the Authority was asked for a range of information about the management and transfer of asylum seekers in Glasgow. The Authority disclosed some information, gave notice that other information was not held and withheld the remainder under a number of exemptions. During the investigation, the Authority disclosed more information, but continued to apply exemptions to the rest. The Commissioner agreed that some of the information was exempt from disclosure, but ordered the Authority to disclose other information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1), (2)(e)(ii) (Effect of exemptions); 30(b) and (c) (Prejudice to effective conduct of public affairs); 38(1)(b), (2A)(a), (5) (definitions of "the data protection principles", "data subject", "personal data", "processing" and "the UK GDPR") and (5A) (Personal Information)

United Kingdom General Data Protection Regulation (the UK GDPR) articles 5(1)(a) (Principles relating to processing of personal data); 6(1)(f) (Lawfulness of processing)

Data Protection Act 2018 (the DPA 2018) sections 3(2), (3), (4)(d), (5), (10) and (14) (Terms relating to the processing of personal data)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 26 June 2020, a stabbing attack took place in the Park Inn Hotel in Glasgow. At that time, the Park Inn Hotel was being used by the Mears Group to accommodate asylum seekers. It was established that the man responsible for the attack was an asylum seeker.
2. On 2 July 2020, the Applicant made a request for information to the Authority. The information requested was:
 - 1) All records related to each monthly meeting between the Mears Group and the Authority for the months February 2020, March 2020, April 2020, May 2020 and June 2020 and July 2020 including minutes, agendas, written notes, action lists arising from the meetings, and any other records or information
 - 2) All risk assessment information pertinent to these meetings which relates to the transfer of asylum seekers in Glasgow from dispersed accommodation to hotels
 - 3) All records related to weekly updates from Mears Group on asylum seekers in Glasgow for the month of June 2020 and July 2020 (to 26 July)
 - 4) All "daily on site risk assessments" from the month of June 2020 and July 2020 (to 26 July) which relate to the transfer of asylum seekers in Glasgow from dispersed accommodation to hotels
 - 5) All reports, documents, papers or emails sent between Mears Group and the Authority in relation to the transfer of asylum seekers in Glasgow from dispersed accommodation to hotels

- 6) All risk assessment information relating to the decision by Mears Group to move asylum seekers in Glasgow from supported accommodation into hotels during the Coronavirus/COVID-19 pandemic
 - 7) All reports, documents, papers or emails sent between Mears Group and the Glasgow Strategic Partnership in relation to the transfer of asylum seekers in Glasgow from supported accommodation to hotels
 - 8) The names, job titles and employers or organisations of the people who make up the Glasgow Strategic Partnership
 - 9) All records related to the meetings, including video call meetings and telephone calls, which have taken place between Mears Group and the Authority since Friday 26 June 2020 (the date of the stabbings), including minutes, agendas, written notes, action lists arising from the meetings, and any other records or information
3. The Authority wrote to the Applicant on 21 July 2020, and sought clarification of his request. Specifically, the Authority asked the Applicant to confirm whether he was really seeking information in relation to the Glasgow Strategic Partnership, or whether he was seeking information concerning the Regional Partnership Board (RPB), which holds meetings between Mears Group and the Authority.
 4. On 27 July 2020, the Applicant responded to the Authority and confirmed that the information he was requesting was in relation to the RPB and not the Glasgow Strategic Partnership.
 5. The Authority responded to this clarified request on 25 August 2020. The Authority:
 - notified the Applicant that it did not hold any information falling within the scope of requests 2, 3, 4 and 6;
 - disclosed some information falling within the scope of requests 5 and 7; and
 - applied the exemptions contained in section 30(b)(i) and (ii), 33(1)(b) and 38(1)(b) of FOISA to the remainder of the information captured by the requests.
 6. On 27 August 2020, the Applicant wrote to the Authority requesting a review of its handling of requests 1 and 9, arguing that the public interest favoured disclosure of this information.
 7. The Authority notified the Applicant of the outcome of its review on 18 September 2020. It upheld its response without modification.
 8. On 16 December 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because there was an overwhelming public interest in the transfer of asylum seekers into hotels in Glasgow.

Investigation

9. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
10. The Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was allocated to an investigating officer.

11. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the Authority. He is satisfied that no matter of relevance has been overlooked.

Withheld information

13. During the investigation, the Authority disclosed additional information to the Applicant.
14. This information comprised redacted versions of 13 emails and six minutes of meetings which fell within the scope of the Applicant's request. The Authority explained that it was withholding information in each document, under one or more of the following exemptions; section 26(a), 30(b)(i) and (ii), 30(c) and 38(1)(b) of FOISA.
15. In later correspondence, as a result of further searches, the Authority identified one email chain (comprising two emails) that it considered to fall within the scope of the request. The Authority relied on section 30(c) of FOISA to withhold this email chain in its entirety (the Commissioner will refer to this email chain as "email A"). The Authority also identified seven further emails which it deemed to be out of scope.

Out of scope information

16. The Commissioner has reviewed the seven emails that the Authority deemed to be out of scope of the request. Having considered these in detail the Commissioner is satisfied that they do not fall within the scope of the Applicant's information request. As a result, these emails will not be discussed any further in this decision.

Section 38(1)(b): Personal information

17. Section 38(1)(b) of FOISA, read in conjunction with section 38(2A)(a) or (b), exempts information from disclosure if it is "personal data" (as defined in section 3(2) of the DPA 2018) and its disclosure would contravene one or more of the data protection principles set out in Article 5(1) of the UK GDPR.
18. The exemption in section 38(1)(b) of FOISA, applied on the basis set out in the preceding paragraph, is an absolute exemption. This means that it is not subject to the public interest test contained in section 2(1)(b) of FOISA.
19. In correspondence with the Commissioner, the Applicant confirmed that he was not seeking the contact details of individuals, but he wanted the Commissioner to investigate whether the Authority had correctly withheld the names of individuals. As a result, the Commissioner will only look at the Authority's decision to withhold names under section 38(1)(b) of FOISA.

Is the information personal data?

20. The first question the Commissioner must address is whether the information withheld by the Authority under this exemption is personal data for the purposes of section 3(2) of the DPA 2018, i.e. any information relating to an identified or identifiable living individual. "Identifiable living individual" is defined section 3(3) of the DPA 2018 – see Appendix 1. (This definition reflects the definition of personal data in Article 4(1) of the UK GDPR.)

21. Information will "relate to" a person if it is about them, is linked to them, has biographical significance for them, is used to inform decisions affecting them, or has them as its main focus.
22. The Commissioner is satisfied that the information being withheld under section 38(1)(b) is personal data: it comprises the names of identified or identifiable living individuals and is information that clearly relates to those individuals.

Would disclosure contravene one of the data protection principles?

23. The Authority argued that disclosure would breach the data protection principle in Article 5(1)(a) of the UK GDPR. Article 5(1) states that personal data shall be processed "lawfully, fairly and in a transparent manner in relation to the data subject."
24. "Processing" of personal data is defined in section 3(4) of the DPA 2018. It includes (section 3(4)(d)) disclosure by transmission, dissemination or otherwise making available personal data. The definition therefore covers disclosing information into the public domain in response to a FOISA request.
25. The Commissioner must consider whether disclosure of the personal data would be lawful. In considering lawfulness, he must consider whether any of the conditions in Article 6 of the UK GDPR would allow the data to be disclosed.
26. The Commissioner considers that condition (f) in Article 6(1) is the only condition which could potentially apply in the circumstances of this case.

Condition (f): legitimate interests

27. Condition (f) states that processing shall be lawful if it is necessary for the purposes of legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.
28. Although Article 6 states that this condition cannot apply to processing carried out by a public authority in the performance of their tasks, section 38(5A) of FOISA makes it clear that public authorities can rely on Article 6(1)(f) when responding to requests under FOISA.
29. The three tests which must be met before Article 6(1)(f) can be met are as follows:
 - Does the Applicant have a legitimate interest in the personal data?
 - If so, would the disclosure of the personal data be necessary to achieve that legitimate interest?
 - Even if the processing would be necessary to achieve the legitimate interest, would that be overridden by the interests or fundamental rights and freedoms of the data subjects which require protection of personal data (in particular where the data subject is a child)?
30. There is no presumption in favour of the disclosure of personal data under the general obligation laid down by section 1(1) of FOISA. Accordingly, the legitimate interests of the Applicant must outweigh the rights and freedoms or legitimate interests of the data subjects before condition (f) will permit the data to be disclosed. If the two are evenly balanced, the Commissioner must find that the Authority was correct to refuse to disclose the personal data to the Applicant.

Does the Applicant have a legitimate interest?

31. The Applicant recognised that the names of more junior individuals should be protected, but he contended that there was a legitimate interest in the disclosure of the names of individuals performing a senior role, or with a public-facing function.
32. The Authority acknowledged that it had not asked the Applicant what his legitimate interests were, but it submitted that the Applicant had referred to the public interest in the disclosure of the information and he made specific references to the incident at the Park Inn Hotel.
33. The Commissioner agrees that, in the circumstances, the Applicant has a legitimate interest in the personal data. He also considers that there is a wider interest in understanding the decision-making processes of the Authority, and its involvement in the placement, transfer and support of asylum seekers, particularly in light of the incident at the Park Inn Hotel.

Is disclosure necessary to achieve that legitimate interest?

34. Here, “necessary” means “reasonably” rather than absolutely or strictly necessary. The Commissioner must therefore consider whether the disclosure is proportionate as a means and fairly balanced as to the aims to be achieved, or whether the Applicant’s legitimate interests can be met by means which interfere less with the privacy of the data subjects.
35. The Commissioner notes that, if the information the Applicant has requested is disclosed in response to his FOISA request, it is, in effect, disclosed into the public domain.
36. While the Authority acknowledged that there was significant public interest in the housing and support of asylum seekers, it argued that the disclosure of personal data would not be necessary to achieve any legitimate interest that the applicant may have in the information. It submitted that the Applicant’s legitimate interests, in obtaining copies of the personal data, are met by the release of the data the Authority has voluntarily released and there would be no further public interest in disclosing individual identities which could allow staff to be targeted.
37. The Commissioner notes the Applicant’s reasons for considering the names should be disclosed and he accepts that the Applicant has a legitimate interest in understanding which individuals were involved in email discussions about the housing of asylum seekers, and which individuals expressed views during the RPB meetings. The Commissioner can identify no other viable means of meeting the Applicant’s legitimate interests than providing the withheld information. In all the circumstances, the Commissioner is satisfied that disclosure of the information is necessary for the purposes of the Applicant’s legitimate interests.

Balancing the legitimate interests of the Applicant and the interests or fundamental rights and freedoms of the data subjects

38. Having found that disclosure is necessary for the purposes of the Applicant’s legitimate interests, the Commissioner must now balance the legitimate interests in disclosure against the individuals’ interests or fundamental rights and freedoms.
39. The Commissioner’s [guidance on section 38 of FOISA](https://www.itspublicknowledge.info/sites/default/files/2022-04/BriefingSection38PersonalInformationGDPR.pdf)¹ lists certain factors that should be taken into account in balancing the interests of the parties. He makes it clear that, in line with Recital (47) of the GDPR, much will depend on the reasonable expectations of the data subjects and that these are some of the factors public authorities should consider:

¹ <https://www.itspublicknowledge.info/sites/default/files/2022-04/BriefingSection38PersonalInformationGDPR.pdf>

- Does the information relate to an individual's public life (their work as a public official or employee) or to their private life (their home, family, social life or finances)?
 - Would the disclosure cause harm or distress?
 - Whether the individual has objected to the disclosure.
40. The Commissioner acknowledges that the withheld information relates to the individuals' public life (as employees of specific organisations), and this adds some weight toward disclosure.
 41. The Authority told the Commissioner that it generally considers that staff on its leadership grades (grade 9 and above) should have a reasonable expectation that their identities will be disclosed, on the basis of seniority. However, it has not taken this approach in this case due to the sensitive nature of the information and the potential fallout from releasing the names into the public domain in connection with these issues.
 42. The Authority explained that it has taken the same approach with the other individuals from external organisations whose personal data is contained within the information. The Authority argued that individuals from private sector organisations are unlikely to have any expectation that their personal data would be released into the public domain in response to a FOI request.
 43. The withheld information concerns the housing and support of asylum seekers in Glasgow, a subject that is important to many people across Scotland. There is no doubt that there is a large body of people who would like to know who was involved in making decisions affecting their communities. The Authority have suggested that if the names of those attending the RPB meetings or engaging in email discussions were disclosed, they could be targeted, given the contentious nature of the topic.
 44. The Commissioner is satisfied that the interests or fundamental rights and freedoms of individuals who hold junior or less public-facing roles in their organisation are not outweighed by the Applicant's legitimate interests in obtaining the information. (Indeed, the Applicant has acknowledged that the personal data of less senior staff is unlikely to be disclosed.) They would not reasonably expect, given the roles they play, that their names would be disclosed.
 45. Condition (f) in Article 6(1) of the GDPR cannot, therefore, be met in relation to the names of junior members of staff. In the absence of a condition in Article 6 of the UK GDPR allowing personal data to be disclosed, the Commissioner has concluded that disclosing the names of individuals who hold junior roles would be unlawful and that the names are, consequently, exempt from disclosure under section 38(1)(b) of FOISA.
 46. However, the Commissioner does not agree that the names of individuals holding senior or public-facing roles should be withheld. He considers that, in the circumstances of this case, individuals employed in a senior or public-facing role should be disclosed, regardless of whether they are employed by the Authority or an external organisation.
 47. The Authority has argued that individuals from private sector organisations would be unlikely to have any expectation that their personal data would be released into the public domain in response to a FOI request, but the Commissioner rejects these arguments. All organisations who are involved with Scottish public authorities are aware that FOI legislation exists and that disclosure in response to a FOI request is a real possibility. It is the Commissioner's view that senior or public-facing members of these organisations, must (or should) have an expectation that their personal data may be disclosed. This is particularly the case when the

subject matter is of such high public interest. The incident at the Park Hotel raised safety concerns about the housing of asylum seekers during the pandemic, and the Commissioner considers that there is a strong public interest in understanding the decision-making processes that preceded that incident.

48. In reaching this view, the Commissioner has considered the [guidance](#)² produced by the ICO regarding the personal data of representatives from other organisations, which states;

The more senior the representative of the other organisation, the more likely it is that it is reasonable to release their names. Also, if someone normally acts a spokesperson for the other organisation, disclosure of their name is more likely to be reasonable.

49. The Authority has referred to the “potential fallout” from disclosing the names, and has argued that there is “...a significant risk of the individuals being targeted if their names and contact details were to be released into the public domain.” However, the Authority has not provided the Commissioner with any evidence to indicate what form this “fallout” might take, or the nature or likelihood of the “targeting” that may be caused by disclosure of the personal data.
50. However, the Commissioner also finds that the legitimate interests served by disclosure of the withheld personal data are not outweighed by the unwarranted prejudice that would result to the rights and freedoms or legitimate interests of individuals who hold senior or public-facing roles. These individuals already have a public profile and they have a level of seniority whereby their expectations of the disclosure of personal data, are significantly greater than those of more junior staff. It is the Commissioner’s view that condition (f) in Article 6(1) of the GDPR can, therefore, be met in relation to the names of individuals who hold senior posts or have public facing roles.

Fairness

51. As the Commissioner has determined that the processing of the personal data of senior individuals would be lawful, and bearing in mind his reasons for reaching that conclusion, he can identify no reason for finding that disclosure of the names of individuals in a senior or public facing role would be other than fair.

Conclusion on the data protection principles

52. For the reasons set out above, the Commissioner is satisfied that disclosure of the names of senior or public-facing staff would not breach the data protection principle in Article 5(1)(a) of the GDPR and, accordingly, are not exempt from disclosure under section 38(1)(b) of FOISA.

Section 30(b)(i) of FOISA

53. The Authority is withholding some information under section 30(b)(i) of FOISA. Section 30(b)(i) provides that that information is exempt if its disclosure would, or would be likely to, inhibit substantially the free and frank provision of advice. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
54. In applying the exemption in section 30(b)(i), the chief consideration is not whether the information constitutes advice, but whether the disclosure of that information would, or would

² https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

be likely to, inhibit substantially the provision of advice. The inhibition in question must be substantial and therefore of real and demonstrable significance.

The Authority's submissions

55. The Authority explained that the purpose of the RPB is primarily to improve the outcomes for asylum seekers and communities in relation to asylum dispersal and other wider immigration schemes as required. It argued that the nature of the information generated from RPB discussions is inherently sensitive.
56. The Authority referred the Commissioner to a specific example of advice contained in the documentation. The Authority submitted that the ability of experts to provide professional judgement could be inhibited if such advice was not able to be provided freely and frankly.
57. The Authority argued that it is essential that the organisations which are part of the RPB are able to obtain professional advice in response to emergency situations. It submitted that there is a real risk that disclosure of this type of information could prohibit advice that may be sought in the future, and that individuals providing such advice could be substantially inhibited if they feel that they are not able to communicate freely and frankly. Given the circumstances, the Authority argued that advice of this nature would not be considered to form part of "day-to day" professional duties.

The Commissioner's findings

58. The Commissioner has considered all the submissions made by the Authority and the Applicant, along with the withheld information under consideration.
59. The Commissioner notes that very little information is being withheld under section 30(b)(i) of FOISA. The information that is being withheld is part of an email exchange in Email 7 and part of a sentence in section 4a of the 7 July 2020 RPB minutes.
60. The Commissioner accepts that there was a need for RPB members to have a private space to seek urgent advice on the matter in question. This process involved the free and frank provision of advice by someone external to the RPB. The Commissioner is satisfied that disclosure of this advice in Email 7 would, for the reasons given by the Authority, substantially inhibit those involved from giving their advice freely in future.
61. However, the Commissioner is not satisfied that the disclosure of information withheld in section 4a of the 7 July 2020 minutes would dissuade RPB members from sharing advice in the future. The comments simply highlight a view that the Commissioner considers to have been relatively well known at that time, and which had been previously been reported on in various published reports and articles. As the Commissioner has not found the exemption to apply to this information, he requires the Authority to disclose it to the Applicant.
62. As the Commissioner is satisfied that the information being withheld in email 7 is exempt from disclosure, in terms of the exemption contained in section 30(b)(i) of FOISA, he will now go on to consider the application of the public interest test in section 2(1)(b) of FOISA to this information.

Public interest

63. 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.

Authority's submissions

64. The Authority argued that there was a strong public interest in avoiding the scenario whereby professionals feel inhibited from providing free and frank advice and views, particularly at a time when advice may change frequently to reflect the circumstances. It submitted that there was a significant public interest in professionals being able to provide their advice on such matters without inhibition.
65. While the Authority acknowledged that there was a public interest in disclosure, it considered that there was a greater public interest in RPB members being able to seek uninhibited advice. The Authority also argued that the public interest in disclosure is already met by the measures that are put in place by RPB members, without the workings and background discussions being made publicly available.

Applicant's submissions

66. The Applicant submitted that he was not asking for information from regular or routine meetings of the RPB, but was seeking information about a period of the utmost public importance; namely the transfer of asylum seekers into hotels in Glasgow, following which a man has been shot dead by the police (the most serious intervention the state can make) and several other individuals, including a police officer, have been seriously injured.
67. He argued that serious concerns have been raised about the mental and physical welfare of asylum seekers housed in hotels during the coronavirus pandemic, and there is a profound public interest in understanding the decision making and discussions which preceded these events.

Commissioner's conclusions on the public interest

68. The Commissioner has considered carefully all the public interest arguments he has received.
69. The Commissioner acknowledges that there is a public interest in transparency in relation to the actions and decision-making processes of the Authority and the RPB, and he accepts that disclosure of the free and frank advice contained in the withheld information would shed some light on these actions and processes. He notes the Applicant's comments regarding the fatality at the Park Inn Hotel, and acknowledges that there are valid public interest arguments, in understanding the decisions surrounding the housing and transfer of asylum seekers in Glasgow.
70. However, the Commissioner also accepts that disclosure of this information would have an adverse impact on such frank and free advice being provided in future, particularly in light of the fact that the focus of much of the advice was given by an expert from outside the RPB group. The Commissioner recognises that RPB members must be allowed to seek free and frank advice from external experts in order to enable the RPB to fulfil its key role, which the Authority has described as *to improve the outcomes for asylum seekers and communities in relation to asylum dispersal and other wider immigration schemes as required*. Any action, which may impede or dissuade experts from providing advice in the future, would not be in the public interest.
71. In relation to the advice sought and obtained in Email 7, the Commissioner is satisfied that external experts must be able to offer free and frank advice to the RPB or other bodies, without fear of such advice being disclosed, particularly when that advice was given during an evolving pandemic, which saw official guidance change almost monthly. He agrees that disclosure of the withheld information would, or would be likely, to inhibit individuals from

offering such free and frank advice in the future, and that this would be to the detriment of the RPB's ability to execute its main purpose.

72. The Commissioner therefore finds that, the public interest in maintaining the exemption in the circumstances of this case outweighed that in making the information available. He concludes that the Authority was entitled to withhold this information under section 30(b)(i) of FOISA.

Section 30(b)(ii) - substantial inhibition to free and frank exchange of views

73. The Authority is withholding some information under section 30(b)(ii) of FOISA. Section 30(b)(ii) provides that that information is exempt if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.

74. As is the case with the exemption contained in section 30(b)(i), the chief consideration when applying the exemption in section 30(b)(ii), is not whether the information constitutes opinion or views, but whether the disclosure of that information would, or would be likely to, inhibit substantially the exchange of views. The inhibition in question must be substantial and therefore of real and demonstrable significance.

The Authority's submissions

75. The Authority submitted that the nature of the issues discussed at the RPB are of a very sensitive nature. The Authority referred to the specific information it was withholding under section 30(b)(ii) of FOISA, and provided the Commissioner with its reasons for considering them to fall under the scope of the exemption.
76. The Authority argued that the examples it referred to relate to the views and opinions of individuals, often regarding concerns or issues that they have with proposals and plans regarding asylum delivery. It argued that it was important that these individuals can have honest and difficult discussions in order to come to solutions and improve outcomes for asylum seekers. The Authority submitted that, throughout the withheld information, representatives of the RPB set out their views and concerns on numerous, contentious issues. It argued that there was a very real risk that such candid discussions would be inhibited if this information were to be released into the public domain, as the individuals concerned would not feel like they could express themselves as openly as they otherwise would.
77. The Authority argued that representatives on the RPB would likely be substantially inhibited from exchanging free and frank views if the information requested were to be disclosed. The Authority submitted that this includes officials from the Authority, the Home Office, the Mears Group, Migrant Help, COSLA and the Scottish Government. The Authority argued that RPB meetings and subsequent dialogue arising from these meetings contain the free and frank views of these individuals. It stated that it is necessary that officers are able to have such discussions and raise issues in a confidential forum.
78. The Authority reiterated that, if this type of information were to be disclosed, there was a real risk that the individuals would be inhibited from having these types of discussions, to the detriment of the services being delivered. The Authority argued that, if the information were to be disclosed, there was a real risk that the external organisations would dispense with or otherwise limit their scope, membership or agenda because of concerns as to the proceedings being generally available to the public. If this occurred, the Authority claimed it would undoubtably impact on the work that it carries out with asylum seekers.

79. The Authority referred to the RPB's terms of reference which set out that, as part of the Home Office's commitment to working closer in partnership with local authorities and the providers for the delivery of asylum dispersal, they recognise that these forums are essential in ensuring local issues and provider performance are addressed. The Authority submitted that these meetings are intended to improve joint engagement and create effective partnerships between the Authority, the Home office and the service providers (i.e. the Mears Group). The Authority argued that participants at these meetings would expect that most of the issues raised would be on a confidential basis.
80. The Authority submitted that disclosure of the information would be likely to inhibit discussions and impact negatively on the engagement between the organisations. While each of the organisations involved have their own responsibilities and roles with regard to asylum dispersal, the Authority noted that there is no requirement to have these meetings. The Authority submitted that the views would not be communicated and received as part of the individuals expected day to day professional duties. This was recognised and forms part of the basis of why these meetings were initially established.

The Commissioner's views on section 30(b)(ii)

81. Information in emails 3, 4, 6, 7, 12 and 13, and in each set of minutes, has been withheld under section 30(b)(ii) of FOISA. The Commissioner has considered all of the submissions made by the Authority, along with the withheld information under consideration.
82. The Commissioner considers that the exemption cannot be upheld in relation to some of the information in email 4 and 7, and some of the information in the minutes from 4 March, 15 April, and 27 May 2020. In each instance, he does not find the withheld information to be particularly sensitive, nor does he accept that its disclosure would prevent individuals from sharing their views in future. As he finds that the exemption is not engaged, and as no other exemptions have been applied to this information, he requires the Authority to disclose the information that he has found not exempt under section 30(b)(ii) to the Applicant. The Commissioner will provide the Authority with guidance on the specific information to be disclosed.
83. The Commissioner accepts that officials who attended RPB meetings, or who represent organisations who are members of the RPB, require a private space to discuss matters freely and frankly, particularly when those matters are of a sensitive nature. The Commissioner notes that the information in email 12 that is being withheld under this exemption includes comments on a proposed policy document, which comprises very frank views from a number of RPB member organisations.
84. It is the Commissioner's view, that disclosure of the information in email 12, at the time of the request, would be likely to dissuade others from communicating similar views in future. Given the nature of the views exchanged, it is clear to the Commissioner that, if similar views were not exchanged in future, this would be to the detriment of decision-making in relation to the housing of asylum seekers.
85. Additionally, the Commissioner notes that the issue raised in email 13 was ongoing at the time of the request. Given the subject matter, the Commissioner considers that there was considerable sensitivity of the views provided on this issue, and he, again, finds that the exemption applies to this information, as the matter discussed was only proposed and had not been finalised at the time of the request.
86. The Commissioner will not go into detail for each case where he finds the exemption applies, but he would note that, in each case where he has upheld the exemption, it is because he is

satisfied that disclosure would lead to the harm claimed by the Authority. Overall, the Commissioner is satisfied that the exemption contained in section 30(b)(ii) applies to some information in emails 3, 4, 6, 7, 12 and 13, and some information in the minutes of 4 March, 15 April, 27 May, 10 June, 22 June and 7 July 2020.

87. The Commissioner considers that disclosure of this information would be likely to stifle the frankness and candour of comments on similarly sensitive issues in future and would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. The Commissioner is therefore satisfied that this information is exempt from disclosure under section 30(b)(ii) of FOISA. He will now go on to consider the application of the public interest test in section 2(1)(b) of FOISA.

Public interest test

88. The exemption in section 30(b)(ii) is subject to the public interest test required by 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.

The Applicant's submissions

89. The Applicant submitted that, while the Mears Group executes important functions under a multi-million-pound public contract, it is not itself subject to FOI laws. The Applicant noted that the Mears Group is accountable to the public through its discussions with both parliaments, the Authority and other statutory bodies, and he argued that those discussions, or at least certain aspects of them, should be made public.
90. The Applicant commented that the Authority itself has acknowledged how disclosure of the discussions could serve the public interest. He argued that, when the discussions concern matters of high public interest such as the incident at the Park Inn Hotel, the arguments in favour of disclosing them are overwhelming.

The Authority's submissions

91. The Authority noted that the purpose of the RPB meetings is to encourage joint working and facilitate a forum whereby issues around asylum can be addressed. It argued that there is a strong public interest in avoiding significant inhibition of officials exchanging free and frank views during these meetings. The Authority submitted that, if officials did not feel comfortable expressing their views, there would be a substantial risk that key points or issues would not be addressed fully. If this occurred, the Authority argued, it would have a detrimental impact on the RPB's ability to ensure the on-going delivery of asylum dispersal, as key concerns and considerations may be overlooked when decisions are being made.
92. The Authority recognised that there was a public interest in the matters that are discussed at RPB meetings. However, on balance, it took the view that there is a greater public interest in withholding the information than there is in its disclosure.

The Commissioner's conclusions on the public interest test

93. The Commissioner has considered all of the arguments presented to him in relation to the public interest in withholding or disclosing the information in the RPB minutes and correspondence. As noted above, the information withheld under section 30(b)(ii) of FOISA is contained in emails 3, 4, 6, 7, 12 and 13, and in each set of minutes.
94. The Commissioner acknowledges that there is a public interest in allowing RPB members a private space for views to be exchanged and discussed. Having considered the information,

it is his view that disclosure of some of these views would, or would be likely to, limit frankness or willingness to comment in similar circumstances in the future. If this occurred, the Commissioner is satisfied that it would diminish the quality of the views provided for the purposes of deliberation, and it would be contrary to the public interest.

95. The Commissioner notes that some of the information that is being withheld under section 30(b)(ii) of FOISA contains the views of RPB members which were clearly not intended to be placed in the public domain. The Commissioner is satisfied that, disclosure of these comments would dissuade other members of the RPB from sharing their views so freely in future, and this would have a negative impact on the openness of the discussions held by the RPB, which would not be in the public interest.
96. In addition to personal comments, the Commissioner notes that some of the views contain comments on proposed plans, actions and strategies that had yet to be finalised. While there is clearly a public interest in knowing the Authority's comments on specific policies and plans regarding asylum seekers, the Commissioner is satisfied that there is a greater public interest in allowing individuals and authorities a private space to critique proposals that will impact on both asylum seekers and the wider public.
97. The Commissioner notes that most of the views that were exchanged in these documents related to new or proposed actions which had not yet been finalised. Other views contain frank comments on past events or proposals. The date of the request was very close to when these comments were sought and provided, and this lends the views even more sensitivity. The Commissioner must consider the circumstances at the time of the request. It is the Commissioner's view that if this information was disclosed at that time, it would have had a "chilling" effect on discussions about proposed policies and plans that were still under debate, and this would not be in the public interest.
98. In relation to the views on past events or proposals, the Commissioner considers that disclosure of such open and reflective assessments is not in the public interest: similar views would not be expressed in the future, and this would be to the detriment of future decision-making policies, affecting asylum seekers.
99. On balance, the Commissioner has concluded that there is a significant, and greater, public interest in the Authority (and the RPB) being able to provide and obtain such comments in future, and in preventing individuals from being inhibited from exchanging similar views.
100. Therefore, the Commissioner finds that the public interest in disclosing the withheld information is outweighed by that in maintaining the exemption in section 30(b)(ii) of FOISA. Consequently, he is satisfied that the Ministers have correctly withheld some information in emails 3, 4, 12 and 13, and in the minutes of 22 June and 7 July 2020, under this exemption.
101. However, the Commissioner has reviewed the remaining information that he had found to be exempt under section 30(b)(ii) of FOISA, and, on balance, despite having found that disclosure would or would be likely to inhibit substantially the free and frank exchange of views for the purposes of deliberation, he considers that the public interest in disclosure is so overwhelming as to favour its disclosure. These views provide comment or ask questions about actions or decisions taken by RPB members, and they influenced the decision-making processes of the RPB, of which the Authority is a key member.
102. The Commissioner is satisfied that there is an over-riding public interest in knowing how the RPB members discussed and reached decisions on the transfer and housing of asylum seekers in Glasgow. As alluded to previously, the housing of asylum seekers impacts on

accommodation availability, community initiatives, health care provision, education, transport and policing across Glasgow. The inhabitants of Glasgow are entitled to know how this process is handled and what considerations are taken into account when decisions are made.

103. While the Commissioner acknowledges the importance of individuals being able to express their views on emerging policies and plans in confidence, he considers there to be a strong public interest in transparency regarding the views exchanged by RPB members (including the Authority) in relation to the housing and transfer of asylum seekers.
104. Consequently, the Commissioner has concluded that the public interest requires disclosure of some information withheld under section 30(b)(ii) of FOISA, in emails 3, 4, 6, and 7, and in the minutes of 4 March, 15 April, 27 May, 10 June, 22 June and 7 July 2020.

Section 30(c) - Prejudice to the effective conduct of public affairs

105. Section 30(c) of FOISA exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs." The use of the word "otherwise" distinguishes the harm required from that envisaged by the exemptions in sections 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority citing it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
106. In order for the exemption in section 30(c) to apply, the prejudice caused by disclosure must be substantial and therefore of real and demonstrable significance. The Commissioner expects authorities to demonstrate a real risk or likelihood of substantial prejudice at some time in the near (certainly foreseeable) future, not simply that such prejudice is a remote or hypothetical possibility. Each request should be considered on a case-by-case basis, taking into consideration the content of the information and all other relevant circumstances.

The Authority's submissions

107. The Authority argued that the majority of the information it is withholding under section 30(c) of FOISA is operationally sensitive and consists of proposals and plans on how to deal with issues relating to asylum dispersal. It explained that these plans and proposals are often in response to immediate situations, for instance, plans arounds covid-19 measures and the incident at the Park Inn Hotel. In order for the Authority to be able to carry out its statutory functions with regard to asylum seekers and refugees, the Authority argued, it was essential that officials were able to communicate fully and frankly in order to effectively plan and manage services.
108. The Authority submitted that RPB meetings provide a forum whereby organisations can identify issues and offer solutions. It argued that the Authority should be able to have such free and frank discussions without the adverse effect of public scrutiny, especially in regard to the immediate response to emergency situations. The Authority submitted that, release of the information could negatively impact on-going relationships with the external stakeholders.
109. The Authority commented that RPB meetings are intended to promote joint working and create effective partnerships between the Authority, the Home Office, Scottish Government, service providers and charity organisations. It stressed the importance of the Authority being able to continue to develop collaborative relationships with these stakeholders. The Authority argued that disclosure of this information would dissuade external parties from

participating fully in these meetings, and if this occurred, it would be to the substantial detriment of the Authority's ability to deliver services.

110. The Authority explained that, at the time of the initial request, it sought the views of the organisations concerned on the release of the information. It raised this matter at a meeting of the RPB, and all of the organisations advised that, in their view, the information should not be disclosed. The Authority provided the Commissioner with written comments from Mears, Migrant Help and its own departments, which maintain that RPB minutes should not be disclosed under FOISA.
111. The Authority submitted that, under asylum legislation, there is no statutory requirement for the Home Office or the Mears Group to engage with the Authority when procuring housing stock. It argued that the Authority has an on-going relationship with these organisations and, as part of the RPB, it works closely in partnership with them. The Authority contended that, if there were to be a breakdown in these relationships, it would create a substantial risk to its ability to deliver asylum services. The Authority noted that RPB members have agreed that disclosure of the information would substantially inhibit partnership working, particularly if there was no longer a confidential forum for discussions to take place. The Mears Group have cautioned that they would be reluctant to share information with the Authority on these types of issues, if the information was disclosed.

The Commissioner's view on section 30(c)

112. Information can only be exempt under section 30(c) of FOISA if its disclosure would prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. Having considered the nature and content of the withheld information, together with the Authority's submissions, the Commissioner accepts that disclosure of some of the withheld information would be likely to cause substantial prejudice to the effective conduct of public affairs.
113. He finds that disclosure of this information would have a detrimental impact on the RPB's ability to deliver agreed outcomes, which in turn would impede the Authority's ability to carry out its functions in relation to asylum services. If this occurred, the Commissioner is satisfied that disclosure would, or would be likely to, prejudice the effective conduct of public affairs and that the Authority was entitled to apply the exemption in section 30(c) of FOISA to this information.
114. However, the Commissioner also finds that some of the information has been wrongly withheld under this exemption. In particular, he finds that there is information contained in emails A, 6 and 7, and in the minutes of 4 March, 27 May, 10 June and 7 July 2020 which has been wrongly withheld under section 30(c) of FOISA.
115. In these cases, it appears to the Commissioner that the Authority has applied this exemption to information or comments that are awkward, rather than because the information was sensitive and required protecting. As the Commissioner does not accept the application of section 30(c) to this information, he does not need to consider the public interest test in section 2(1)(b) of FOISA. The Commissioner requires the Authority to disclose this information to the Applicant.
116. The Commissioner will now go on to consider the public interest test in relation to the information that he has found to be correctly withheld under section 30(c) of FOISA.

Public interest test

117. As mentioned above, the exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.
118. The public interest is not defined in FOISA, but has been described in previous decisions as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interests of the public", i.e. disclosure must serve the interests of the public.

Submissions from the Authority

119. The Authority acknowledged the significant public interest in openness and transparency and it recognised that any request for information under section 1(1) of FOISA, was potentially in the public interest. The Authority also considered the subject matter of the request, and it accepted that there was a public interest in disclosure of matters relating to the provision of services for asylum seekers.
120. However, the Authority also considered the factors in favour of maintaining the exemption, and it argued that disclosure of the information would, or would be likely to, prejudice substantially, the effective conduct of public affairs. In reaching this view, the Authority submitted that it had taken into account the likely negative impact that disclosure of the information would have on its ability to plan and deliver services, as well as its ability to work with external organisations.
121. In addition, the Authority noted that there would be a Fatal Accident Inquiry into the incident at the Park Inn Hotel, the findings of which will be disclosed into the public domain. On balance, the Authority argued that the public interest in maintaining the exemption outweighed the public interest in disclosure of the information.

Submissions from the Applicant

122. The Applicant referred to the specific content of the redacted documents, when making his arguments on the public interest. He argued that email 6 (19 June 2020) seems crucially important to understanding the events leading up to the attack at the Park Inn one week later. He notes that email 6 suggests that a timeline for the exit from hotels for asylum seekers was being planned, although asylum seekers at that point remained in hotels. He argued that it was reasonable, even necessary, for the public to know as much about the decisions that were made and implemented at that time.
123. The Applicant also referred to the email chain contained in email 7, which had as its subject line *urgent asylum quarantine and households query*. He suggested that the information that is disclosed in email 7 raises many questions, such as: What was "urgent"? What does the official at Health Board agree with on page 20? Why can we know they agree but not what to? What are the different scenarios being suggested by the Home Office around accommodating asylum seekers in Glasgow during the pandemic?
124. The Applicant submitted that there are many other questions emanating from the information the Authority has disclosed and he argued that, given the events of 26 June 2020, as well as the wider interest in understanding the operation of the asylum system, the public has a reasonable right to know the answers to these questions.
125. The Applicant referred to email 12, which discusses an "Exit plan" on 9 July 2020. He commented that this was after the attack on the 26 June, and it followed numerous other

examples of ill-health among asylum seekers within Glasgow hotels, including the death of the man killed at the Park Inn hotel. The Applicant argued that there was a reasonable right to know what this “Exit Plan” was, and what the social work department, a key stakeholder in asylum seeker and wider community wellbeing, thought about it.

126. The Applicant referred to email 13, which followed a meeting of a board of stakeholders, and he noted that it was clear from the disclosed content that something was agreed in relation to the Hallmark hotel. He argued that it was fair and reasonable to know what has been agreed, given the seriousness of the situation at the Park Inn.
127. The Applicant submitted that there are many other examples within the Minutes that were disclosed to him, where issues around emergency accommodation and exit planning are being discussed, all of which should bear public scrutiny. He noted that the asylum accommodation system is operated by Mears Group as a contractor for the Home Office, who holds responsibility for the way it operates. However, he argued that the exemption in section 30(c) of FOISA, cannot simply be used as a way for the Authority and other authorities to withhold things that they would prefer not to bear that public scrutiny.
128. The Applicant referred to the Commissioner’s guidance on the public interest test, which states, *the prejudice caused by disclosing the information must be of real and demonstrable significance, rather than simply marginal*. He contended that, If the Authority cannot demonstrate real and significant prejudice, then the information must be disclosed.

Commissioner’s conclusions on the public interest

129. The public interest, in the context of FOISA, should be considered as “something which is of serious concern and benefit to the public”. The nature of this case and the people affected by these circumstances determine that there is a public interest in ensuring that such policies and planning are considered in detail and planned and implemented adequately, to ensure benefit and safety for the asylum seekers and the communities in which they are placed.
130. The Commissioner has taken account of all the relevant submissions, together with the withheld information in this case. The Commissioner understands the situation surrounding housing of asylum seekers, especially in light of the Park Inn incident and the additional impact of the pandemic on those plans in a rapidly changing environment. He acknowledges that public authorities have been required to make decisions, implement plans and processes, and consider their impacts, in difficult circumstances.
131. Having carefully considered the circumstances of this case, the Commissioner notes that, while he considered that the Authority correctly relied upon section 30(c) to withhold some of the information in the minutes and in some of the emails, in a number of cases the public interest favours disclosure – where, in all the circumstances, the public interest in adequate scrutiny should prevail over the public interest in securing the effective delivery of a key public service.
132. Consequently, the Commissioner has concluded that the public interest requires disclosure of some information withheld under section 30(c) of FOISA, in a number of emails and in each set of minutes.
133. As the Commissioner has upheld the application of section 30(c) to information which the Authority had also withheld under section 26(a) of FOISA, there is no need for the Commissioner to consider section 26(a) in this decision.

Guidance to the authority on disclosure

134. Where the Commissioner has decided that further information should be disclosed to the Applicant, guidance will be provided to the Authority to assist in its preparation of the information in the minutes and emails for disclosure.

Decision

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

The Commissioner finds that by correctly withholding some information under section 30(b)(i) and (ii), 30(c) and 38(1)(b) of FOISA, the Authority complied with Part 1.

However, by wrongly withholding other information under section 30(b)(i) and (ii), 30(c) and 38(1)(b) of FOISA, the Authority failed to comply with Part 1.

The Commissioner therefore requires the Authority to provide the Applicant with the information that was wrongly withheld, by 16 October 2023.

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Daren Fitzhenry
Scottish Information Commissioner

31 August 2023

Appendix 1: 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

- (e) in subsection (1) of section 38 –

...

- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied.

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-
 - (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

38 Personal information

- (1) Information is exempt information if it constitutes-

...

- (b) personal data and the first, second or third condition is satisfied (see subsections (2A) to (3A);

...

- (2A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act -
- (a) would contravene any of the data protection principles, or
- ...
- (5) In this section-
- "the data protection principles" means the principles set out in –
- ...
- "data subject" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
- ...
- "personal data" and "processing" have the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(2), (4) and (14) of that Act);
- "the UK GDPR" has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(10) and (14) of that Act).
- (5A) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.
- ...

UK General Data Protection Regulation

Article 5 Principles relating to processing of personal data

- 1 Personal data shall be:
- a. processed lawfully, fairly and in a transparent manner in relation to the data subject ("lawfulness, fairness and transparency")
- ...

Article 6 Lawfulness of processing

- 1 Processing shall be lawful only if and to the extent that at least one of the following applies:
- ...
- f. processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of personal data, in particular where the data subject is a child.

Data Protection Act 2018

3 Terms relating to the processing of personal data

...

- (2) “Personal data” means any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).
- (3) “Identifiable living individual” means a living individual who can be identified, directly or indirectly, in particular by reference to –
 - (a) an identifier such as a name, an identification number, location data or an online identifier, or

...

- (4) “Processing”, in relation to information, means an operation or set of operations which is performed on information, or on sets of information, such as –

...

- (d) disclosure by transmission, dissemination or otherwise making available,

...

- (5) “Data subject” means the identified or identifiable living individual to whom personal data relates.

...

- (10) “The UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Authority of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4)).

...

- (14) In Parts 5 to 7, except where otherwise provided –
 - (a) references to the UK GDPR are to the UK GDPR read with Part 2;
- ...
- (c) references to personal data, and the processing of personal data, are to personal data and processing to which Part 2, Part 3 or Part 4 applies;
- (d) references to a controller or processor are to a controller or processor in relation to the processing of personal data to which Part 2, Part 3 or Part 4 applies.

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