



Scottish Information
Commissioner

**Decision 023/2008 Mr Paul Drury and
Glasgow City Council**

*Travel and hotel costs associated with Glasgow's bid to
stage the 2014 Commonwealth Games*

**Applicant: Mr Paul Drury
Authority: Glasgow City Council
Case No: 200700947
Decision Date: 13 February 2008**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 023/2008 Mr Paul Drury and Glasgow City Council

Travel and hotel costs associated with Glasgow's bid to stage the 2014 Commonwealth Games – information withheld – Commissioner held that Glasgow City Council had failed to comply with the requirements of Part 1 of FOISA – disclosure of information required

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement), 2(1) (Effect of exemptions), 30(b)(ii) and (c) (Prejudice to effective conduct of public affairs) and 33(2)(a) (Commercial interests and the economy).

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

Facts

Mr Paul Drury requested details of travel and hotel costs associated with Glasgow's bid to stage the 2014 Commonwealth Games from Glasgow City Council (the Council). The Council withheld the information on the basis that it was exempt from disclosure under the terms of sections 30 and 33(2) of FOISA. Following a review of this decision, Mr Drury remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Mr Drury's request for information in accordance with Part 1 of FOISA. He required the Council to provide the requested information to Mr Drury.



Background

1. On 19 February 2007, Mr Drury emailed the Council requesting the following information:

Details of all travel and hotel costs associated with Glasgow's bid to stage the Commonwealth Games in 2014 over the past 12 months.

He went on to specify that these details should include individual hotel receipts showing what was spent by each city representative and where, and that the claims and costs run up by two particular officials should be included.

2. The Council wrote to Mr Drury in response to his request for information on 14 March 2007. The Council confirmed that it held the information that was requested by Mr Drury. However, the Council advised Mr Drury that the information was considered exempt from disclosure in terms of sections 30 and 33(2) of FOISA and was therefore being withheld. The Council advised Mr Drury that it considered the public interest in withholding the information outweighed that in disclosing the information.
3. On 4 April 2007, Mr Drury wrote to the Council requesting a review of its decision. In particular, Mr Drury pointed out that he considered the information was a matter of public interest and should therefore be disclosed.
4. The Council notified Mr Drury of the outcome of its review in a letter dated 24 May 2007. The Council upheld its original decision and reiterated its view that the public interest in withholding the information outweighed that in favour of disclosure.
5. Mr Drury wrote to my Office on 2 July 2007, stating that he was dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Drury had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.



The Investigation

7. On 5 July 2007, the Council was notified in writing that a valid application had been received from Mr Drury and was asked to provide my Office with specified items of information required for the purposes of the investigation. The Council responded with the information requested and the case was then allocated to an investigating officer.
8. On 29 August 2007, the investigating officer contacted the Council asking it to provide comments in terms of section 49(3)(a) of FOISA, to respond to specific questions on the application and to provide its reasoning when applying the exemptions cited under FOISA including its application of the public interest test.

Submissions by the Council

9. The Council responded on 9 October 2007, confirming that it considered that section 30(b)(ii) and (c) applied to the withheld information. The Council argued that releasing this information would inhibit substantially the free and frank exchange of views for the purposes of deliberation and would otherwise prejudice (or be likely to prejudice) substantially the effective conduct of public affairs.
10. The Council submitted that the information was sought not only prior to the date when the winning bid was due to be announced on 9 November 2007, but also prior to the closing date for bid submissions to the Commonwealth Games Federation (the Federation) on 9 May 2007 and prior to the completion of the Glasgow bid team's travel to promote the bid throughout the Commonwealth.
11. The Council stated that the release of the information would expose the investigations and research that went into the bid submission. The Council pointed out that Glasgow's bid submission involved a degree of "blue sky thinking" and international gathering of intelligence where various considerations were canvassed partly to confirm they can be safely discarded or because they can be usefully applied. The Council considered that such candid "blue sky thinking" would be inhibited if information of this type were to be routinely released to the substantial prejudice of the quality of the investigative decision making process by the bid team and, in consequence, to the free and frank exchange of views for the purpose of deliberation.



12. The Council considered that, ultimately, the release of the information would expose the bid team's deliberations to the detriment of those deliberations and could directly influence the Federation's decision making process and, therefore, be significantly linked to the chances of the ultimate success of the bid.
13. The Council also submitted that disclosure would enable the other city competing for the games to scrutinise the information, exposing the terms of Glasgow's bid as well as its investigations and research. The Council suggested that this would give the other city an unfair advantage.
14. The Council also submitted that the exemption contained in section 33(2)(a) of FOISA applied to the withheld information. The Council considered that the success of the bid would have a significant beneficial impact on the economy of Glasgow, the West of Scotland and Scotland as a whole. The Council considered there would be a significant boost to the economy of the West of Scotland and to the prospects and productivity of the Scottish economy as a whole were Glasgow to be chosen as the host city.
15. The Council referred to an independent report that had been commissioned by the bid team which indicated that net economic benefits of £26 million could potentially be generated at Glasgow level if it were to be chosen as host city and that approximately 1000 jobs would be created in Glasgow as a direct consequence. The Council considered that this would clearly make a significant and immediate contribution to Glasgow's economic and social development.
16. The Council also stated that, more importantly, the report identified the importance of a change in the long term perception of the city which should lead, in the long term, to significant increased forward investment.
17. The Council considered that releasing the information could again directly influence the Federation's decision making process and, again, be significantly linked to the chances of the ultimate success of Glasgow and Scotland's bid. The Council considered that the economic loss to Glasgow and Scotland as a whole would be specific, significant and would occur in the near future.
18. The Council acknowledged the significant public interest in openness and transparency and recognised that any request under section 1 of FOISA could potentially be in the public interest. However, the Council also believed that there is a significant public interest in authorities such as it being able to critically assess all factors involved in these types of situations and to reach the best possible decision.



19. The Council considered that, on occasions, this can only be done on the basis of candid advice and a free exchange of views of a sort which cannot take place if all information is disclosed. The Council believed that the significant and specific public interest in winning the Games, in not jeopardising or prejudicing Glasgow's chances of doing so, in keeping details of the preparation of the bid's submission confidential and in boosting the economy of Scotland and the West Coast in particular outweighed the general public interest in openness and transparency.

Submissions by the applicant

20. In his representations to my Office, Mr Drury pointed out that, one week prior to receiving the initial response to his request, one of the two cities competing with Glasgow to host the Games had decided not to continue with its bid. Consequently, Glasgow was facing competition solely from one city in Nigeria. Mr Drury did not accept that publishing details of cities visited by the Glasgow bid team would come as any surprise to the Nigerian competitor. He considered that, given the fact that Glasgow and Nigerian officials would be visiting the same places, these destinations, or the amounts spent in them, would hardly be confidential.
21. Mr Drury also submitted that, in any event, the information is a matter of public interest. He stated that, to his knowledge, two British cities (Edinburgh and Manchester) had suffered financial difficulties through their involvement in staging previous Commonwealth Games. Mr Drury considered that to rely on the assertion that there would be a significant public benefit in bringing the Games to Glasgow was to fail to learn from the experience of Edinburgh and Manchester and that becoming involved in this process could potentially saddle Glasgow with enormous costs.
22. Mr Drury considered that, in light of this financial uncertainty, the public had a right to know at that stage the amounts being spent on the bid process to allow it to make up its own mind if the costs were justified.
23. Mr Drury also considered that the public interest argument extended to the personnel involved in his request.



24. Mr Drury also referred to research carried out by the Canadian Centre for Policy Alternatives in Nova Scotia which stated: “For starters, the operational budget of the Games is likely to be a break-even proposition at best – Manchester is an example where the revenues did not cover the operational budget. In spite of all the hoopla about the long term benefits of mega-events such as the Olympics, there is very little evidence to back up the majority of the claims. Large scale Games could leave a negative legacy if they are viewed as being unsuccessful or if long term crowding-out effects dominate. As a result, it is a huge gamble to base the spending of hundreds of millions of taxpayers’ dollars on the possibility of long term tourism benefits. In addition, if the goal is to build community and increase sporting participation, the Commonwealth Games does not seem to be the most cost-effective method.”
25. Mr Drury concluded that he felt there was a very significant public interest in the disclosure of the information.

The Commissioner’s Analysis and Findings

26. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Drury and the Council and I am satisfied that no matter of relevance has been overlooked.
27. It is worth noting that, during my investigation, in November 2007, Glasgow was confirmed as the host of the 2014 Commonwealth Games following a vote of the Federation. In this case, however, I must consider the handling of Mr Drury’s request at the time of its consideration by the Council. At that time, the Council’s bid had not yet been submitted and the Federation’s vote had not taken place. The Council maintained that a number of exemptions applied on the basis that disclosure would have a detrimental impact on its chances of success. Clearly the circumstances have changed in the interim, but my discussion below must focus on the Council’s decision at a point where it did not know that the city’s bid would be successful.
28. I will initially consider the Council’s application of the exemption contained in section 30(b)(ii) of FOISA.



Consideration of section 30(b)(ii)

29. Section 30(b)(ii) of FOISA (Prejudice to effective conduct of public affairs) states that information is exempt information if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.
30. Section 30(b)(ii) is a qualified exemption and, if it is found to apply to information, is subject to the public interest test required by section 2(1)(b) of FOISA.
31. My general views on the exemptions in section 30(b) of FOISA are set out in *Decision 089/2007 Mr James Cannell and Historic Scotland*. As I have said in a number of previous decisions, it is my view that the standard to be met in applying the tests in either part of section 30(b) is high. In applying these exemptions, the chief consideration is not whether the information constitutes advice or opinion, but whether the release of the information would, or would be likely to, inhibit substantially, in the case of section 30(b)(ii), the free and frank exchange of views for the purposes of deliberation. In determining whether disclosure of information would have a substantially inhibiting effect, consideration should be given to the risk of damage being caused by disclosing the information, which must be real or very likely if the exemption is to apply, not simply hypothetical. The harm caused or likely to be caused must be significant, not marginal, and it would have to occur in the near (certainly the foreseeable) future and not in some distant time.
32. The Council submitted that the disclosure of the information revealing which countries had been visited would expose the specific research, discussions and “blue sky thinking” being conducted by the bid team at a time when the final bid had not been submitted. The Council’s position was that this would place the Glasgow bid at a disadvantage and could have severely reduced its chances of success. The Council also considered that the release of the bid team’s travel and hotel costs would give officials from the competitor city the opportunity to scrutinise the information and would give them an unfair advantage.
33. The Council has stated that it considers the release of the information would be to the substantial prejudice of the quality of the investigative decision making process by the bid team and, in consequence to the free and frank exchange of views for the purpose of deliberation.



34. As indicated above, I take the view that the main consideration in determining whether this exemption is triggered is not so much whether the information constitutes an exchange of views but rather whether the release of the information would, or would be likely to, have the substantially inhibiting effect required for the exemption to apply. In this connection, I look for authorities demonstrating a real risk or likelihood that actual harm will occur at some time in the near or foreseeable future, not simply that harm is a remote possibility. Also, the harm in question should take the form of substantial inhibition from expressing advice and/or views in as free and frank a manner as would be the case if disclosure could not be expected to follow. The word “substantial” is important here: the degree to which a person will or is likely to be inhibited in expressing themselves should be of some real and demonstrable significance.
35. Having considered the submissions put to me in this case, I am not satisfied that disclosure of the information requested by Mr Drury would, or would be likely to, substantially inhibit the free and frank exchange of views for the purposes of deliberation.
36. In reaching this conclusion, I have noted that the information under consideration simply details travel undertaken by named officials involved in the bid process, and the costs associated with this travel. As might be expected, this reveals that officials visited a number of countries and cities which were either competing to host the 2014 Commonwealth Games, or whose delegates would vote on which city should host the Games. I am not persuaded that disclosure would reveal the thinking process or strategy of the Glasgow bid team or that disclosure would have been likely to inhibit the discussions that were still to take place in the period before the bid was finalised. Given the nature of the information under consideration, I am unable to accept the application of the exemption in section 30(b)(ii) in this case.
37. Accordingly, I do not uphold the application of the exemption in section 30(b)(ii) to the withheld information. As I have not upheld the application of the exemption, there is no need for me to consider the public interest test.

Consideration of section 30(c)

38. Section 30(c) of FOISA provides that information is exempt if its disclosure under FOISA would otherwise (than in the terms of the exemptions elsewhere in section 30 of FOISA) prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.
39. Section 30(c) is a qualified exemption and, if it is found to apply to information, is subject to the public interest test required by section 2(1)(b) of FOISA.



40. The Council has argued that the disclosure of the information would have been to the detriment of the bid and the chances of the ultimate success of the bid.
41. There is no definition of “substantial prejudice” in FOISA, but I would reiterate my view that in order to claim this exemption, the damage caused by disclosing information would have to be very real or very likely, not hypothetical. The harm caused must be significant, not marginal and it would have to occur in the very near future, not in some distant time. If a public authority is applying this exemption, I would expect it to be able to show what kind of harm would result and why this would be the expected outcome if the information in question was released.
42. In this case, I am not persuaded by the Council’s arguments that disclosure of information about travel and costs would have been likely to have such a detrimental effect on Glasgow’s chances of success in the bid for the 2014 Commonwealth Games that this exemption was engaged. Again, I have noted that a competitor city would gain little insight into the thinking process and strategy of the Glasgow bid team. I accept that disclosure at the time may have led to some discussion around the costs of the bid process and of hosting such events in general. However, I am unable to accept that such discussion would have been likely to affect the Federation’s decision. The Council’s arguments concerning the impact of disclosure have again been hypothetical in nature and I am not persuaded that disclosure would have been likely to have the consequences for the success of Glasgow’s bid argued by the Council.
43. Accordingly, I do not uphold the application of the exemption in section 30(c) to the withheld information. As I have not upheld the application of this exemption, there is no need for me to consider the public interest test.

Consideration of section 33(2)(a)

44. Section 33(2)(a) provides that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the economic interests of the whole or part of the United Kingdom.
45. Authorities seeking to rely on the exemption in section 33(2)(a) will need to demonstrate that disclosure would, or would be likely to, prejudice substantially the economic interests contained in the exemption. Once again, the damage caused by disclosing information would have to be real or very likely, not hypothetical and would have to be significant, not marginal. It would have to occur in the very near future, not in some distant time.
46. The Council has argued that a successful bid would have a significant beneficial impact on the economy of Glasgow, the West of Scotland and Scotland as a whole and has made representations to this effect.



47. The Council stated that, if it was forced to release the information prior to the announcement of the winning bid, it may have had a detrimental effect on the Federation's decision. The Council considered that this would be prejudicial to delivering the economic benefits to Glasgow, the West Coast of Scotland and Scotland as a whole.
48. Having considered the Council's submissions in relation to this exemption, I am again unable to conclude that real or likely damage would result from disclosure. With this exemption, the Council's arguments essentially suggest that disclosure would be likely to have a detrimental effect on the chances of a successful bid by Glasgow. In turn, failure to win the Games would substantially harm the economic interests of Glasgow and wider areas.
49. I am again unable to accept that the disclosure of the particular information under consideration would have been likely to have the proposed effect at the time of the Council's consideration of Mr Drury's request. As I am not persuaded that disclosure would have been likely to have a detrimental effect on Glasgow's chances of winning the 2014 Games, I am also unable to accept that disclosure would also have the economic consequences argued by the Council.
50. Accordingly, I do not uphold the application of the exemption in section 33(2)(a) to the withheld information. As I have not upheld the application of this exemption, there is no need for me to consider the public interest test.

Decision

I find that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request from Mr Drury.

I find that the Council incorrectly applied the exemptions in sections 30(b)(ii) and (c) and 33(2)(a) to the information withheld concerning travel and hotel costs associated with Glasgow's bid to stage the Commonwealth Games in 2014. By withholding this information, it failed to comply with section 1(1).

I therefore require the Council to provide the requested information to Mr Drury within 45 days of the date of intimation of this Decision Notice.



Appeal

Should either Mr Drury or the Council 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.

Kevin Dunion
Scottish Information Commissioner
13 February 2008



Appendix

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.

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.

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-

...

- (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.



33 Commercial interests and the economy

...

- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-
 - (a) the economic interests of the whole or part of the United Kingdom