

Decision Notice 027/2021

Job evaluation help statements

The Applicant

Public authority: Scottish Prison Service

Case Ref: 202000191



Scottish Information
Commissioner

Summary

The SPS was asked for its Job Evaluation Evaluator Help Statements. The SPS refused to disclose the statements as they considered disclosure would substantially prejudice the job evaluation process.

The Commissioner investigated and accepted that the Help Statements were exempt from disclosure.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible); 30(c) (Prejudice to the effective conduct of public affairs)

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 18 December 2019, the Applicant made a request for information to the Scottish Prison Service (the SPS). He asked for a copy of its Job Evaluation Evaluator Help Statements (the Help Statements).
2. The SPS responded on 8 January 2020. The SPS stated that the information was exempt from disclosure under section 30(c) of FOISA as disclosure would prejudice the ability of the SPS to conduct evaluations. The SPS considered it was not in the public interest to disclose the information.
3. On 10 January 2020, the Applicant wrote to the SPS requesting a review of its decision. He argued that the general principles of transparency, openness and understanding of the job evaluation process would outweigh any exemption.
4. The SPS notified the Applicant of the outcome of its review on 4 February 2020. The review upheld the original response without modification.
5. On 5 February 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 SPS's review because he did not accept that the information was exempt under section 30(c) or that the public interest lay in maintaining the exemption.

Investigation

6. 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.
7. On 7 February 2020, the SPS was notified in writing that the Applicant had made a valid application. The SPS was asked to send the Commissioner the Help Statements. The SPS did so and the case was allocated to an investigating officer.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPS was invited to comment on this application and to answer specific questions. These related to the SPS's application of section 30(c) of FOISA.
9. The SPS provided submissions to the investigating officer in response to these questions and provided details of the job evaluations and the purpose of the Help Statements requested in determining pay grading of roles.
10. During the course of the investigation, the SPS confirmed that, as a trade union representative, the Applicant had access to the Help Statements. As such, the SPS considered that section 25(1) of FOISA would also apply.
11. Both the SPS and the Applicant provided submissions on section 25(1) of FOISA.

Commissioner's analysis and findings

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

Section 25(1) of FOISA – Information otherwise accessible

13. Under section 25(1) of FOISA, information which a requester can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is not subject to the public interest test in section 2(1)(b) of FOISA.

Submissions from the SPS

14. The SPS stated that it was aware of the Applicant's trade union position and that his request for the information had been made from his SPS email address. It was, therefore, evident who was making the request. The SPS stated it was also clear that in his role as a Union representative he has access to the information he was requesting as the document is made available to him in his role as an observer at job evaluation hearings.
15. The SPS provided further detail of how and where the Applicant has access to the information requested and explained the requirements and restrictions that are placed on the attendees at the job evaluation review meetings: the Help Statements are provided to all attendees during the meeting, including observers, but must be returned at the end of the meeting to maintain the integrity of the job evaluation process.
16. The SPS confirmed that the Applicant has attended the review meetings as an observer and has, therefore, previously had sight of the Help Statements and will be afforded access to them again at any further meeting attended.
17. Therefore, the SPS considered that the Applicant already had reasonable access to the information as a result of his trade union role and that that access was a more appropriate route to the information than making an information request.

Submissions from the Applicant

18. The Applicant did not accept that section 25 applied. He considered that access through the union route has unacceptable restrictions, given that his access to the information would be in the confines of the job evaluation review meetings.

The Commissioner's conclusion on section 25(1)

19. The question the Commissioner must consider is whether the Help Statements can reasonably be obtained by the Applicant other than by requesting them under FOISA.
20. It is clear that the Applicant has access to the information because of his role as a trade union representative. However, there are restrictions on the Applicant's access to and use of the information: he only has access to the document during a job evaluation review meeting. He is not able to copy the document or take it out of the meeting. In some situations, information might still be reasonably accessible even where these restrictions apply. However, in this case, the document the Applicant has asked for is almost 60 pages long.
21. In all the circumstances, given the restrictions on the Applicant's access to and use of the information, and given the volume of the information, the Commissioner does not consider that the information can be described as being reasonably obtainable by the Applicant other than requesting it under FOISA. As such, he does not consider the information to be exempt from disclosure under section 25(1) of FOISA.
22. The Commissioner will therefore go on to consider whether the Help Statements are exempt from disclosure under section 30(c) of FOISA.

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

23. Under section 30(c) of FOISA, information is exempt information if its disclosure would "otherwise" prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This exemption is subject to the public interest test in section 2(1)(b) of FOISA. The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in sections 30(a) and (b).
24. Section 30(c) is a broad exemption and the Commissioner expects any public authority applying 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.
25. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the harm in question would require to be of real and demonstrable significance. The authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur. Therefore, the authority needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some time in the near (certainly foreseeable) future, not simply that the harm is a remote possibility.
26. The SPS provided an explanation of its job evaluation process. The process provides a systematic and consistent approach to defining the relative worth of jobs within the SPS. This is achieved by providing a set of benchmark jobs which the majority of roles within the SPS are aligned to; roles which do not match one of these benchmark jobs require a separate evaluation. The job evaluation process centres on the role. The incumbent in the role has no impact on the outcome of the evaluation. To this end, the resource materials provided have been designed to capture the salient points relating to the role, allowing the evaluation panel to distil this further into the appropriate input for the job evaluation algorithm. The SPS consider that disclosure of the Help Statements would switch the focus away from the unbiased provision of the major tasks of a role, to a manipulated version of the role that will be focussed on meeting the perceived key elements to maximise the outcome.

27. Prior to responding to the request, the SPS consulted with job evaluation stakeholders to identify any concerns regarding disclosure of the Help Statements. Discussions identified that a number of resources were already available to line managers and job holders to assist them through the job evaluation process. This information was provided to the Commissioner for consideration.
28. The SPS explained that the Help Statements provide specific indicators of the job roles which suggest the correct pay grading for the job. Disclosure of this information into the public domain, which would be the consequence of providing the information to the Applicant under FOISA, would enable job evaluation statements to be drafted which may then claim functions and responsibilities which the job does not require in order to inflate the job value and inflate the scope of other jobs.
29. The SPS submitted that disclosure of the Help Statements into the public domain would negate their value and, as such, prejudice substantially the ability of the SPS to conduct job evaluations. The disclosure of the Help Statements would result in them being removed from use and would then require an alternative system for evaluation to be developed.
30. The SPS submitted that this was a process which would take several months to complete and, given that the present system would be compromised to the point where it could no longer be used, job evaluations would need to be paused for an unacceptable duration until a robust replacement could be put in place. Without accurate job evaluations, the SPS would not be able to recruit suitable staff into key posts or to recognise appropriately those staff whose job has developed and grown. This, the SPS submitted, could realistically result in the loss of key staff and in the SPS being unable to recruit or promote replacements. Both the effectiveness and the efficiency of the authority would be severely compromised. The SPS therefore concluded that disclosure would prejudice substantially the effective conduct of public affairs.
31. The Applicant did not accept that the information should be withheld under section 30(c) of FOISA.
32. In all the circumstances, the Commissioner is satisfied that the exemption contained in section 30(c) of FOISA does apply to the Help Statements. In reaching this conclusion, he is satisfied that disclosure of the Help Statements would, or would be likely to, prejudice substantially the conduct of the job evaluation process. He accepts that there is a realistic prospect of job roles being drafted to align with certain aspects of the Help Statements, which would substantially prejudice the job evaluation process to the extent that the current process would become obsolete and require a new process to be established. He accepts that this would prejudice substantially the effectiveness of the SPS and therefore the effective conduct of public affairs.

Public interest test

33. 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.
34. 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.

35. The SPS noted that, in considering the public interest in this case, public accountability and transparency were valid arguments for disclosure but consider that public accountability would be better served in withholding the information as disclosure would result in the suspension of the job evaluation process and substantially impact on the ability of the SPS to operate efficiently. The SPS consider that independent scrutiny of the procedures by benchmarking exercises with other organisations ensures robust and fair practice and therefore disclosure of the Help Statements into the public domain would be contrary to the public interest.
36. The Applicant argued that the public interest in transparency, openness and understanding of the job evaluation process would outweigh the public interest in maintaining the exemption.

Commissioner's conclusions

37. The Commissioner accepts there is a general public interest in ensuring transparency and accountability and in understanding of how public authorities determine the grading and worth of posts. The job evaluation process is in place to ensure fairness and equity in the grading of posts to ensure job requirements are met without favour or manipulation.
38. However, the public interest in the disclosure of the information must be balanced against the public interest in withholding the information. The Commissioner has accepted that disclosure would, or would be likely to, cause substantial prejudice to the effective conduct of public affairs, because the information could lead to the SPS being unable to carry out its functions and require it to establish a new job evaluation process. Whilst there is inevitably public interest in understanding how public authorities determine the grading of posts, the release of the Help Statements would provide all of the information considered and used to evaluate benchmarks and would negate the effectiveness of the whole job evaluation process and, as such, would be likely to substantially prejudice the SPS's ability to conduct the process in an unbiased and effective manner and the viability of the job evaluation process.
39. Although there is a public interest in the disclosure of the information, the Commissioner does not consider it strong enough to outweigh the public interest in maintaining the exemption. On balance, therefore, the Commissioner is of the view that the public interest in withholding the information outweighs the public interest in disclosing it.
40. The Commissioner therefore finds that the SPS was entitled to withhold the information under section 30(c) of FOISA.
41. In reaching this conclusion, the Commissioner notes that the Applicant, as noted above, is an observer to the process (as acknowledged by both parties) and has access to the Help Statements, albeit in limited circumstances. This goes some way in addressing the public interest in the transparency of the process.

Decision

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

Appeal

Should either the Applicant or the Scottish Prison Service 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.

Margaret Keyse
Head of Enforcement

15 March 2021

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.
...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
...
- (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 –
 - (a) section 25;
 - ...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.
...

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

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