

**Decision 085/2006 Mr H and Glasgow City Council**

*Councillor's Council Tax arrears*

**Applicant: Mr H**  
**Authority: Glasgow City Council**  
**Case No: 200503012**  
**Decision Date: 19 May 2006**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
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## **Decision 085/2006 - Mr H and Glasgow City Council**

### ***Request for information regarding a councillor's Council Tax arrears – section 26 prohibitions on disclosure – section 38(1)(b) personal data***

#### **Facts**

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Mr H requested a copy of documents relating to the Council Tax arrears of a local councillor. Glasgow City Council (the Council) refused this request, citing sections 26 and 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA).

#### **Outcome**

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The Commissioner found that Glasgow City Council had been justified in the withholding of the requested information under section 38(1)(b) of FOISA.

#### **Appeal**

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Should either Glasgow City Council or Mr H 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 of receipt of this notice.

## Background

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1. Between 6 and 21 September 2005 Mr H submitted various emails to the Council (including one of 19 September 2005) asking about his own Council Tax and about the Council Tax arrangement of a councillor (whom it had been reported by the media had incurred Council Tax arrears). Some of these appear to have been misdirected. Mr H asked how a local councillor could be elected to office and then appointed to a particular office whilst owing in excess of £1000 (as reported in the local media), whether there were any checks before the councillor's appointment to the specified office and whether the councillor had been treated in the same way as a member of the public in respect of the Council Tax arrears.
2. On 30 September 2005, Glasgow City Council responded to Mr H's emails stating that it was treating them as a Freedom of Information request. The Council stated that it was unable to supply information about the Council Tax situation of a person as this was personal data and exempt under section 38(1)(b) of FOISA because disclosure would breach the Data Protection Principles. The Council explained the procedure for dealing with Council Tax arrears and stated, in answer to Mr H's question, that this procedure was applied with no preferential treatment. It provided more information on Mr H's Council Tax position.
3. Mr H wrote by email to the Council on 30 September 2005 (and again on 2 October 2005) asking if the Council had issued a final notice and summary warrant in the case of the tax arrears of the councillor, and also of the timing of the Council's awareness of the arrears and its subsequent arrangement with the councillor in relation to the publication of a press story. The email of 2 October 2005 was treated by the Council as a requirement for review of its earlier decision.
4. The Council conducted a review and upheld its original decision to withhold the information on the procedures followed by the Council regarding the Council Tax arrears of the councillor. This was communicated to Mr H by letter of 28 October 2005. The review decided it was correct to withhold disclosure on the grounds of section 38(1)(b) and section 26 (the enactment prohibiting disclosure being the Local Government Finance Act 1992) of FOISA.
5. Mr H applied to me for a decision in respect of the Council's handling of his request by letter to my Office dated 2 November 2005.
6. The case was allocated to an investigating officer.

## The Investigation

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7. Mr H's appeal was validated by establishing that he had made a valid information request to a Scottish public authority and had appealed to me only after asking the public authority to review its response to his request.
8. The investigating officer contacted the Council on 7 December 2005 for its comments on the application (in terms of section 49(3)(a) of FOISA) and for further information, in particular the application of sections 26 and 38(1)(b). The Council responded on 2 March 2006, providing:
  - Copies of its correspondence with Mr H and internal correspondence in relation to the handling of his case
  - Assorted press coverage relating to expenses
  - Copy of deductions mandate signed by the councillor
  - Council internal e-mail describing the councillor's repayment arrangement
  - Council internal e-mail discussing a press release
  - Copies of Council Tax documentation relating to the councillor
  - Extracts from Council's Council Tax system
  - Explanation of Council Tax system codes
  - Samples of a final reminder and a summary warrant notice (both anonymised)
  - Extract from Scottish Executive Guidance "Data Sharing: Legal Guidance for the Scottish Public Sector"  
<http://www.scotland.gov.uk/library5/government/osds-00.asp>
  - Extract from the Department of Constitutional Affairs (DCA) publication "Public Sector Data Sharing: Guidance on the Law" (November 2003)  
<http://www.dca.gov.uk/foi/sharing/toolkit/lawguide.htm#part4>
  - Copy of Information Commissioner's Guidance "Council Tax: Secondary use of personal information held for the collection and administration"  
<http://www.ico.gov.uk/documentUploads/Secondary%20uses%20of%20CT%20data.pdf>.
  - Extract from the Stair Memorial Encyclopaedia of the Laws of Scotland
  - Agenda of Glasgow City Council Meeting (9 February 2006 – the meeting setting the following year's Council Tax)

9. The investigating officer had asked Glasgow City Council to explain its Council Tax system in the context of Mr H's request. The Council explained that it was the Council Tax levying and collecting authority for the City of Glasgow. When a person was elected to the Council, a data matching exercise was conducted to ascertain if that person had any debts owing to the Council. The Council could then recover such debts by direct deduction from the Councillor's allowances. The Council stated that the timing of this exercise was variable, but that it checked the Council Tax arrears position of all councillors ahead of the budget votes, normally taken in January/February. This enabled it to advise councillors on the applicability of section 112 of the Local Government Finance Act 1992, which prohibits councillors from participating in the vote to set the level of Council Tax if they have two months or more unpaid Council Tax.
10. The Council advised that it did not consider someone who was adhering to an agreed repayment arrangement to be in arrears for the purposes of the statutory prohibition (section 112 of the Local Government Finance Act 1992). When asked, the Council explained that it took this approach in relation to all Council Tax payers. The Council said that it interpreted 'arrears' as 'failure to pay Council Tax in accordance in terms of the Council's request for this to be paid'. The reasoning for this interpretation was that Council Tax liability commenced at the start of the financial year and accrued on a daily basis, and consequently all Council tax payers were in arrears to a greater or lesser extent. The Council therefore considered it incorrect to interpret 'arrears' as meaning 'having a Council Tax liability which has not been discharged'. This interpretation reflected long standing practice, which the Council believed to be common. The Council provided the Agenda of Glasgow City Council Meeting (9 February 2006) where the provisions of section 112 were highlighted to councillors.
11. The Council provided further information about its Council Tax procedures and explained that its computerised Council tax system did not allow the reproduction of any actual final notice or summary warrant sent to a person. It also provided information about the actual Council Tax position of the councillor.

### **Submissions from the Council on the exemptions applied**

12. The Council stated that it had difficulty assessing the information which Mr H was requesting and that initially it had regarded Mr H's e-mails as a general enquiry rather than as a request for particular recorded information. It was only through further correspondence that the request, the Council stated, began 'to crystallise' into a valid information request. It stated that it regarded Mr H's e-mail of 19 September 2005 as the first valid information request.
13. The Council stated that information relating to a person's Council Tax arrangements was personal data the release of which would breach the data protection principles in Part I of schedule 1 to the Data Protection Act 1998 (DPA), and therefore was exempt under section 38(1)(b) of FOISA.
14. Firstly, the Council stated that it considered it self-evident that the information of the Councillor's payments of Council Tax, and any steps taken by the Council in relation to these, fell within the definition of personal data. It argued that the fact that the Information Commissioner had published guidance on secondary use of personal information held for the collection and administration of Council Tax (Council Tax: Secondary Use of Personal Information Held for the Collection and Administration) reinforced this view.
15. The Council explained that provision of information to the Council for Council Tax administration was mandatory, and it was a criminal offence to fail to do so in most circumstances. It referred to my decision 025/2006 - R and Glasgow City Council - stating that where information is provided for statutory functions, it would be unfair and not in accordance with schedule 2 of the DPA for such information to be processed in a way going beyond that for which the information was originally obtained.
16. Additionally, the Council maintained that the fact that Mr H's request related to a councillor did not alter this position that the information was exempt as personal data. The only schedule 2 (of the DPA) condition the Council considered could apply was paragraph 6(1), processing for the purposes of legitimate interests pursued by (in this case) a third party to whom the data were disclosed. However, it argued that this did not apply where the processing was unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject. In standing for, and becoming elected to, the Council, the councillor could not be said to have forfeited expectations of personal privacy. Elected members agreed to aspects of their lives being made public, such as having publicly to declare whether they had Council Tax arrears such as prevented them from participating in certain financial votes taken by the Council. They were also subject to scrutiny from the electorate and the media and this was reinforced by FOISA. However, the Council would not interpret schedule 2 paragraph 6 (of the DPA) to suggest that this public interest outweighed the safeguards for personal privacy created by the entire scheme of the Data Protection Act.

17. In terms of section 38(1)(b), the Council noted that most discussions and guidance on this exemption (and its UK counterpart) focused on the aspect of fair processing and compliance with appropriate schedule 2 conditions. However, the first data protection principle referred to personal data being processed fairly and lawfully. The Council made the additional point that if the Council's submissions regarding section 26 were upheld, this would also have the consequential effect of additionally rendering the processing in question unlawful for purposes of the first principle, and therefore exempt in terms of section 38(1)(b).
18. The Council stated that the Local Government Finance Act 1992 (the 1992 Act) prohibited the release of Council Tax information and consequently the information was exempt under section 26(a) of FOISA. The Council stated that paragraph 17 of schedule 2 to the 1992 Act allowed for regulations to be made under which Council Tax information, but not personal information, could be supplied. Paragraph 17 provides:

(1) Regulations under this Schedule may include provision that an authority-

(a) may supply relevant information to any person who requests it for a purpose not relating to Part I or II of this Act; and

(b) may charge a prescribed fee for supplying the information.

(2) For the purposes of sub-paragraph (1) above information is relevant information if-

(a) it was obtained by the authority for the purpose of carrying out its functions under Part I or II of this Act; and

(b) it is not personal information.'

The Council stated that rules of statutory interpretation meant that where there was provision for an exception to a rule in one specific set of circumstances, the presumption was that Parliament did not intend there to be any other exceptions. The application of this rule to paragraph 17 (above) meant that Parliament, in making provision for release of non-personal Council Tax information, should be understood as having intended that there be no permitted disclosure of Council Tax information which included personal information, and so the statute read as a whole prohibited such use.

19. This interpretation of the law was supported, the Council argued, by the Information Commissioner, in his 2004 'Guidance on Secondary Use of Personal Information held for the Collection and Administration of Council Tax' and was also the view taken by the Department for Constitutional Affairs (DCA) publication "Public Sector Data Sharing: Guidance on the Law" (November 2003). Section 3 paragraphs 28 and 29 of the DCA guidance explicitly followed this position, paragraph 29 stating:

"This provision [i.e. paragraph 17 of schedule 2] is taken to mean that, as it is prohibited to make regulations allowing for the supply of personal information, all disclosures of personal information for non-council tax purposes are prohibited."

This passage was repeated *verbatim* in its Scottish counterpart, the Scottish Executive's "Data sharing: legal guidance for the Scottish public sector".

20. Lastly, the Council stated that it did not consider that its powers under section 20 of the Local Government in Scotland Act 2003 (the power to advance well-being) could be relied on to address this issue. It said that it did not consider that unforeseen and unconsented-to disclosures of information acquired under statutory compulsion could be said to promote or improve the well-being of either the City of Glasgow or of persons within it. It added that section 22(1) of the 2003 Act stated that:

‘The power under section 20 above does not enable a local authority to do anything which it is, by virtue of a limiting provision, unable to do.’

### **Submissions from Mr H**

21. Mr H stated that it was in the public interest for information which indicates whether an elected representative (a local councillor) was subject to the same judicial and administrative processing regarding Council Tax, and in particular in regard to Council Tax arrears, as an ordinary person. He stated that whilst he accepted that Council Tax data could be regarded as confidential, he said that he thought it was in the public interest that a person could obtain evidence to satisfy themselves that a person in a position of public office, with powers in relation to Council Tax, had not received any preferential treatment in relation to any arrears of tax.

### **The Commissioner’s Analysis and Findings**

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22. Mr H has asked that I investigate whether the Council should have supplied the information he had requested.
23. An authority has a duty to assist an applicant with a request and an applicant should not be expected to have to address an information request to a specific department or FOI Unit. In reading the correspondence I accept that it was not unreasonable for the initial e-mails to be regarded by the Council as general enquiries rather than as a section 1 FOISA request. The fact that Mr H did not receive a full answer to these initial emails is not relevant to his application to me since they did not comprise a section 1 FOISA request. I would, however, expect authorities to have internal guidance to their staff about communicating requests which could potentially be FOISA requests, whether as they stand or with sufficient advice and assistance, to the appropriate part of the authority. Mr H’s email of 6 September 2005 was not obviously a section 1 request. Mr H had posed questions to the Council about the Council’s dealings with a local councillor regarding his tax arrears. In his email of 19 September 2005, Mr H asked what the arrangement (mentioned in a press article on the councillor’s resignation) was that was in place between the Council and the councillor regarding the councillor’s tax arrears. I accept that this was the first information request.



24. Mr H made a request for information which the Council eventually treated as a section 1 request for the Council Tax situation of the councillor. His request for review was interpreted as asking whether the Council had dealt with the councillor by issuing a final notice or a summary warrant. The relevant documents which hold this information comprise the councillor's Council Tax file (with accompanying transaction tax codes) or copies of any final notice or summary warrants that exist, or any correspondence which mentions the councillor's tax situation. I think that it is fair to say that the Council should, under its duty to advise and assist in section 15 of FOISA, have attempted to clarify Mr H's request to assess exactly what information he was wanting. His requests as a whole indicate that he was wanting access to information to satisfy himself that a councillor had not received preferential treatment. The Council should have at an early stage clarified Mr H's request and considered what information it could provide to deal with that request.

### **Section 38(1)(b) – Personal Information of a third party**

25. The Council withheld the information on the councillor's Council Tax file on the ground that it was exempt from disclosure under section 38(1)(b) of FOISA.
26. Section 38(1)(b) of FOISA allows a public authority to withhold information if it is personal data and disclosure would contravene any of the data protection principles laid down in the DPA.
27. In reaching my decision I have considered two questions:
- (a) is the information withheld personal data as defined by the DPA?
  - (b) if so, would disclosure contravene any of the data protection principles laid down in the DPA?
28. Section 1(1) of the DPA defines "personal data" as data relating to a living individual who can be identified from those data. I must also bear in mind the gloss placed on this definition by the Court of Appeal in the case of *Durant v Financial Services Authority* [2003] EWCA 1746. The information in question must be biographical in respect of the individual concerned to a significant extent and must have that individual as its focus – in short, it must affect the individual's privacy.

29. I am satisfied that the Council Tax information of the councillor is that individual's personal data. The Council stated that no tax payer received preferential treatment in respect of Council Tax arrears. Proof of this statement in respect of the councillor would require access to information showing, for example, that a final notice and/or summary warrant had been issued if the situation required. This would require access to the councillor's Council Tax file. This tax file would show, amongst other things, an address, account number, payment method, charges, rebates, tax reference number, dates, allowances and deductions, details of any agreed repayment arrangement, etc – all of which comprise personal data. This information, including any final notices or any summary warrants, which would be required for a person to substantiate the Council's claim that the councillor was dealt with according to the Council's procedure for dealing with Council arrears (or, for that matter, to establish whether they were in arrears), is personal data.
30. The second question is whether disclosure would contravene any data protection principles. The first data protection principle will, in most circumstances, be the most relevant principle to consider. It states that the processing of personal data (such as the release of data in response to a request made under FOISA) must be fair and lawful. The Information Commissioner, who is responsible for enforcing the DPA, has provided guidance (Freedom of Information Act Awareness Guidance No 1) on the consideration of the data protection principles within the context of freedom of information legislation. This guidance recommends that public authorities should consider the following questions when deciding if release of information would breach the first data protection principle:
- a) would disclosure cause unnecessary or unjustified distress or damage to the data subject?
  - b) would the data subject expect that his or her information might be disclosed to others?
  - c) has the person been led to believe that his or her information would be kept secret?
31. The first data protection principle requires personal data to be processed fairly and lawfully. Assessment of fairness includes whether a person would expect that his or her information might be disclosed to others and/or whether the person had been led to believe that his or her information would be kept private. In my view, information held by local authority in its capacity as tax levying and collecting authority fulfils the criteria of information which it would be unfair to disclose to third parties. Persons would not normally expect this information to appear subsequently in the public domain.

32. Having considered the Council's submissions, I conclude that it was correct in determining that to release the information requested would be to contravene the first principle of the DPA, and consequently I accept that the information is exempt from disclosure under section 38(1)(b) of FOISA. I am not satisfied that any of the conditions in schedule 2 of the DPA (at least one of which would have to apply for the data to be processed in conformity with the first principle) could be met if the information were to be released. Whilst I understand Mr H's claim that a member of the public should be able to ensure that a person in a position of public trust does not receive preferential treatment or abuse that office, I note that there are statutory arrangements in place to ensure this – in particular, the Standards Commission for Scotland exists to regulate the conduct of councillors and others appointed to public bodies. The public may have a more particular legitimate interest in being satisfied that councillors are paying the local taxes which they are responsible for setting and spending. There is, however, statutory provision to ensure that councillors who are in arrears cannot vote on the setting of the Council Tax and I think Parliament must be deemed to be satisfied that this provides an adequate safeguard for the public interest in this area. I note the arrangements the Council has in place to ensure that such councillors are identified prior to the relevant vote.
33. In all the circumstances, I accept the Council's argument that the information requested by Mr H is personal information and that to disclose it would breach the data protection principles laid down in the DPA.
34. Since the information requested is personal data and is exempt by virtue of section 38(1)(b) of FOISA, I shall not consider the application of the additional exemption (section 26) claimed by the Council. I would note that, as I said in Decision 076/2005 - Mr David Laing and the Chief Constable of Fife Constabulary, release of personal information would breach the provisions of the DPA, and inasmuch as the DPA is an enactment, section 26(a) of FOISA could be cited. I accept that by disclosing personal data without statutory authority there will be a breach of the DPA and a consequent breach of section 26(a). However, it is more appropriate to cite section 38(1)(b) of FOISA, which refers specifically to personal data, as the relevant exemption

35. While I accept that Mr H was seeking Council Tax information in respect of a particular individual and I am satisfied that this could not have been released in conformity with the data protection principles, I am aware of nothing which would have prevented the Council from advising Mr H either of the checks which are carried out routinely on the Council Tax arrangements of councillors, or of the fact that a councillor who is adhering to an agreed repayment arrangement with the Council is not regarded as being in arrears for the purposes of the section 112 disqualification (this reflecting the Council's general interpretation of 'arrears'). This information may not have answered Mr H's request in full, but he may have found it helpful.

## **Decision**

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I find that Glasgow City Council has dealt with Mr H's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA).

In particular, I find that Glasgow City Council correctly applied the exemption in section 38(1)(b) of FOISA in withholding information on the Council Tax of a local councillor.

I require no further action of the Council.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**19 May 2006**