



Scottish Information  
Commissioner

**Decision 090/2005 Isobel Marshall and North Lanarkshire  
Council**

*Request for documentation relating to a Council meeting held on 6  
August 2005*

**Applicant: Isobel Marshall  
Authority: North Lanarkshire Council  
Case No: 200501718  
Decision Date: 22 December 2005**

**Kevin Dunion  
Scottish Information Commissioner**

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## **Decision 90/2005 – Isobel Marshall and North Lanarkshire Council**

**Request for background papers and documentation relating to a Council meeting – some information supplied – certain information withheld – section 38(1)(b) personal information – section 30(b)(i) free and frank provision of advice and section 30(b)(ii) free and frank exchange of views**

### **Facts**

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Ms Marshall requested committee papers and background documentation and correspondence in relation to a meeting of the Policy & Resources (Personnel Appeals) Sub-Committee held on 6 August 2004. North Lanarkshire Council provided certain information to Ms Marshall but withheld other information on the basis of section 38(1)(b), section 30(b)(i) and section 30(b)(ii) of the Freedom of Information (Scotland) Act 2002. Ms Marshall was dissatisfied with this response and sought a review of this decision. North Lanarkshire Council upheld its original position on review. Ms Marshall applied to the Commissioner for a decision.

### **Outcome**

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I find that North Lanarkshire Council partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in withholding the following information:

1. Document 6(a) final three paragraphs
2. Documents 6(e), 6(f), 6(g), 6(h), 6(i), 6(j) and 6(m) subject to any necessary redactions to protect the identity of the appellant.

This information should be released to Ms Marshall within two months of the date of this decision.

I find that North Lanarkshire Council partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in failing to list all information it held relevant to Ms Marshall's request in contravention of section 16(1)(a) and in contravention of section 15(1) the duty to provide advice and assistance.



## Appeal

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Should either North Lanarkshire Council or Ms Marshall wish to appeal against this decision, there is a right to 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. On 10 January 2005 Ms Marshall requested the following information from North Lanarkshire Council (the Council):
  1. All documentation and background papers relating to the decision made by the Policy & Resources (Personnel Appeals) Sub-Committee on 6 August 2004 relating to the Department of Planning and Environmental Grievance Appeal.
  2. All emails, letters, notes and memos between Planning & Environment and Personnel Services in relation to the above.
2. The Council responded to this request on 9 February 2005. It advised that in relation to the first bullet point it was enclosing all background papers relating to the decision, adjusted to exclude anything which might constitute personal data in respect of which the first condition referred to in section 38 of the Freedom of Information (Scotland) Act 2002 (FOISA) was satisfied.
3. The Council advised that in relation to the second bullet point the information sought fell within the exemption detailed in section 30 of FOISA in as much as its disclosure would or would be likely to inhibit the free and frank discussion of advice. The Council concluded that, in all the circumstances of the case, the public interest in disclosing the information was outweighed by that in maintaining the exemption.
4. On 28 February 2005 Ms Marshall sought a review of this decision. She indicated that in relation to question 1 of her letter little had been provided to substantiate or otherwise the decision made by the Council on 6 August. She advised that most of the information related to the Planning and Environment Departmental Review in 2001.
5. In relation to question 2 Ms Marshall indicated that she did not feel the Council had sufficient grounds to claim the exemption under section 30 of FOISA.



6. The Council responded to Ms Marshall's request for review on 15 March 2005. The Council advised that in carrying out the review it had firstly examined the papers which were assembled and assessed when Ms Marshall's original request of 10 January 2005 had been considered. The second part of the process had been discussion with the officer responsible for making the original decision to clarify what papers were considered and in relation to which the statutory tests were applied.
7. On review, the Council confirmed that it had supplied documentation which concerned the procedure for consideration of the appeal along with the Director of Planning and Environment's report of March 2001 on his Department's departmental review. The Council confirmed that in relation to the remaining papers considered associated with the Personnel Appeals process this had been released having adjusted the information within it so as to anonymise the identity of the individual member of staff concerned.
8. The Council advised that that process fell correctly within the requirements of Section 38 of FOISA.
9. The Council confirmed that in relation to the second category of information sought by Ms Marshall the correct decision had also been reached in that disclosure would or would be likely to inhibit substantially the free and frank provision of advice. The Council advised that this information would disclose details of the nature of advice given and received at senior officer level in relation to individual personnel and grading issues.
10. The Council indicated that while to disclose information of this nature in some cases might not be significantly prejudicial to the public interest, as a general rule the Council took the view that it should not disclose under FOISA advice and assessments arrived at as part of the consideration of staff grading issues and their subsequent consideration as part of grievance proceedings. The Council advised that it had already provided Ms Marshall with the written submissions made to the Sub-Committee which determined the grievance proceedings and the basis of the Sub-Committee determination.
11. On 6 May 2005 Ms Marshall applied to me for a decision.
12. The case was allocated to an Investigating Officer.



## Investigation

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13. Ms Marshall's appeal was validated by establishing that she had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its original decision.
14. The investigating officer contacted the Council on 15 June 2005 giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was asked to comment on the issues raised by Ms Marshall's case and to provide supporting documentation for the purposes of the investigation.
15. In relation to Ms Marshall's first request (question no.1) the investigating officer advised that Ms Marshall did not consider the information supplied to be adequate. Therefore the Council was asked to indicate:
  - What information it held relevant to Ms Marshall's request
  - What steps it had taken to determine the information it held relevant to this request
  - Whether all information had been supplied to Ms Marshall (excluding information which constituted personal data). The Council was asked to provide copies of any information not supplied to Ms Marshall and to explain why it had not been supplied
  - The kind of information that the Council would normally hold in relation to a decision made by the Policy & Resources (Personnel Appeals) Sub-Committee
16. In relation to Ms Marshall's second request (question no.2) the Council was asked to supply copies of the information withheld. It was also asked to provide a detailed analysis of the exemptions relied on in relation to all information withheld as well as details of the application of the public interest test.
17. The Council was asked to provide information about the review process, any internal correspondence relating to the consideration of the requests and any guidance relied on by the Council in deciding whether the information requested should be disclosed or withheld.
18. The Council responded to this letter on 30 June 2005.



## **Council submissions in respect of Question no.1**

19. The Council advised that it held the following information in relation to Question 1:
  - a) A Notice, including agenda and background papers, calling the meeting in relation to the Policy and Resources (Personnel Appeals) Sub-Committee held on Friday 6 August 2004 and
  - b) The Minute of the meeting of the Policy and Resources (Personnel Appeals) Sub-Committee held on 6 August 2004
20. The Council advised that all of the above information was supplied to the applicant (excluding information which constituted personal data) with a number of exceptions. The Council then listed 16 documents (documents 2(a) to 2(p)) which had not been supplied to the applicant. The Council described the content of each document and explained why the information had not been provided to Ms Marshall.
21. The Council explained that document 2(a) was the Notice and agenda dated 30 July 2004 calling the meeting. The Council advised that these documents were publicly available on the Council's website, and in hard copy form at the Council Offices and in all public libraries in the North Lanarkshire area.
22. In the case of documents 2(b) to 2(m) inclusive and document 2(p) the Council advised that the information constituted personal data the disclosure of which to a member of the public would contravene the data protection principles and was information for which the consent of the subject of the Personnel Appeal, for disclosure, had not been obtained.
23. In respect of documents 2(n) and 2(o) the Council advised that this information constituted personal data the disclosure of which to a member of the public would contravene the data protection principles, and was information the disclosure of which would or would be likely to inhibit the free and frank discussion of advice. It advised that in all the circumstances of the case it was concluded that the public interest in disclosing this information was outweighed by that in maintaining the exemption.
24. The Council advised that in relation to the first category of documents it was accepted that even if it had been possible to provide all of the papers which were before the Sub-Committee this information would not provide a full picture of the material considered by the Sub-Committee, much of which took the form of oral evidence. The Council indicated that given its procedures this was unavoidable and advised that a full statement of reasons for personnel appeal decisions was provided only in cases in which this was requested by the appellant. No such request was received in this case and, accordingly, no statement of reasons was compiled.



25. The Council advised that account was taken of the legitimate expectation of an appellant that he or she could provide full information to the Personnel Appeal Sub-Committee for the purpose of determination of an appeal in privacy and with an assurance of confidentiality. It appeared to the Council that the appeal documents withheld required to be so to preserve and protect that privacy and confidentiality.
26. In considering this matter, the Council advised that it had regard not only to data protection principles but, also, to the public interest in the maintenance of confidence in the personnel appeal procedures adopted by the Council and considered that this interest, which required the maintenance of the privacy of the appellant, outweighed the public interest in the provision of that information.
27. The Council provided information on the steps taken to determine what information was held in regard to the applicant's request. The Corporate Freedom of Information Officer contacted the Clerk to the Committee of the Policy and Resources (Personnel Appeals) Sub-Committee and retrieved all papers relative to the Appeal.
28. The same Officer also contacted the Department of Planning and Environment and the Personnel Division of the Department of Administration and ascertained from the relevant officers in these Departments that there were no background papers relative to the appeal other than those submitted to the Policy and Resources (Personnel Appeals) Sub-Committee.
29. The Council confirmed that these were the only papers which would normally be held in relation to a decision made by the Policy and Resources (Personnel Appeals) Sub-Committee. The Council advised that a Statement of Reasons would be compiled only if requested. In this case no request was received for such a statement.

### **Council submissions in respect of Question no.2**

30. The Council advised that 17 documents were held in relation to Ms Marshall's second question. The Council advised that in many cases the documents would have identified the member of staff who had initiated the grievance appeal (the appellant). The appellant's principal entitlement in this context was to anonymity and release of the information in the absence of their consent would breach the data protection principles. In relation to the remaining documents it was considered that they related to and were essential components of the free and frank discussion of advice and that their disclosure would prejudice the effective conduct of public affairs.



31. In each case, the Council advised that consideration was given to the question of whether the public interest in revealing the information was outweighed by that in maintaining the exemption. The Council advised in regard to the free and frank discussion and exchange of views it was necessary to the valid provision of advice and would not be possible were the documents containing those views made available for public inspection or public access. Accordingly, it concluded that in all the circumstances of the case the public interest in disclosing the information was outweighed by that in maintaining the exemption.
32. The Council then listed each of the documents with a brief description, explained why the information was being withheld and referred to the public interest where appropriate.
33. The Council advised that information within this second category, that is, the documents relating to the prior communications and advice between the employing Department and its personnel advisers did, to a great extent, relate to the individual circumstances of the appellant, and to that extent, the conclusion was reached that the entitlement of the appellant to privacy extended also to those documents.
34. The Council also took the view that there was a need for full and frank discussion of individual factors between employing departments and their personnel advisers in order that valid advice may be formulated and provided. The Council submitted that this would not be possible were such communications to be publicly available. The Council concluded that not only was the information exempt but that, in this instance, the public interest in disclosing the information was outweighed by that in maintaining the exemption.
35. The Council also provided me with copies of internal correspondence relating to the consideration of the requests.
36. Further correspondence with the Council ensued to clarify a number of these points.

### **Submissions from Ms Marshall**

37. Ms Marshall has advised me that she is seeking information to justify the decision of the Council made at the meeting of 6 August 2004. She is dissatisfied with the information provided.





## Analysis and findings

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38. Before I begin my analysis of the information withheld I consider it helpful to put the information in context. I understand that a member of staff at the Council (the appellant) had initially sought a post regrading and then subsequently initiated a grievance appeal culminating in appeal on 6 August 2004. For the sake of clarity this member of staff is not Ms Marshall. The information Ms Marshall seeks relates to the grievance appeal but necessarily includes documentation relating to the proposed regrading.
39. Ms Marshall made two requests for information. I will consider each request in turn.

### Question no. 1

40. Ms Marshall requested:
- All documentation and background papers relating to the decision made by the Policy & Resources (Personnel Appeals) Sub-Committee on 6 August 2004 relating to the Department of Planning and Environment Grievance Appeal
41. In its response to Ms Marshall the Council advised that it was supplying all background papers relating to the decision, adjusted to exclude anything which might constitute personal data in respect of which the first condition referred to in Section 38 of FOISA was satisfied.
42. The Council supplied a series of documents to Ms Marshall in response to her first request. In some cases the names of staff were blanked out. In one incidence the name of the Chief Personnel Officer (Operations) was redacted. It was not clear to me from the correspondence between the Council and Ms Marshall whether the Council was intimating that:
- a) it was providing all relevant documentation in relation to this request but with staff names blanked out on the grounds that this information constituted personal data
- or
- b) it was providing certain documentation to Ms Marshall but that other information (that is, actual documents) was being withheld on the grounds that the information constituted personal data.
43. From the wording of the Council's letters of 9 February and 15 March to Ms Marshall I understood the statement to mean the former.



44. I sought clarification on this point from the Council and queried whether Ms Marshall would be aware that 16 other documents existed relevant to her request, the first of which was publicly available and that the remaining documents had been withheld under certain exemptions.
45. The Council revisited its wording in its letters of 9 February and 15 March to Ms Marshall and conceded that they could bear the interpretation that all documents had been provided but with merely the blanking out of names. However, the Council did not believe that Ms Marshall was under this misapprehension and was fairly certain that Ms Marshall would be aware of at least some of the 16 other documents.
46. Although this point had not been specifically raised by Ms Marshall in her application to me I also queried some of the redactions that the Council had made to the information supplied to her. I consider this point below at paragraphs 61 to 64.

Information withheld – application of section 25(1)(a)

*Document (2)(a)*

47. The Council advised that the Notice and agenda dated 30 July 2004 calling the meeting were publicly available on the Council's website, and in hard copy at the Council Offices and public libraries. In its original response to Ms Marshall the Council should have referred to these documents and advised that they were otherwise accessible under section 25(1) in that the applicant could reasonably obtain this information other than by requesting it under section 1(1) of FOISA. I am satisfied that this information is otherwise accessible and therefore exempt by virtue of section 25(1). However, the Council should have explained to Ms Marshall how, where and in what format the information was available. In failing to do this NHS Borders was in breach of its duty to provide advice and assistance in accordance with section 15(1) of FOISA.

Information withheld – application of section 38(1)(b)

48. The Council has relied on section 38(1)(b) to justify the redactions made to the information supplied to Ms Marshall and to withhold 16 further documents. Section 38(1)(b) states that information is exempt if it constitutes personal data and disclosure of the information to a member of the public would contravene any of the data protection principles.



49. Therefore, to rely on section 38(1)(b) an authority needs to carry out a two step process. It must first determine whether the information constitutes personal data. By virtue of section 38(5) of FOISA the definition of personal data is that contained in section 1(1) of the Data Protection Act 1998 (DPA). This defines personal data as:
- “data which relate to a living individual who can be identified from those data”
50. Even if the authority is satisfied that the information constitutes personal data it must go on to consider whether its disclosure would contravene any of the data protection principles. An authority relying on section 38(1)(b) should cite the relevant data protection principle that would be contravened in the event of disclosure and explain why.
51. The Council submitted that all of this information relates to the exercise by an employee of the Council of the right afforded under the conditions of service to secure the hearing of a grievance by a Committee of the Council. The Council advised that the substance of the grievance related to the work and performance of the officer in question and the extent to which this was correctly reflected in post grading. Given that the information related to the officer’s personal performance, the Council did not doubt that the information constituted personal data under the definition provided in section 1(1) of the DPA.
52. It was also the Council’s view that the important part played by the grievance process in the employer/employee relationship carried a clear requirement that an individual submitting information for the purpose of determination of his or her grievance had a legitimate expectation that the information provided would remain confidential and certainly had not any reason to expect that that information might be disclosed to others for any purpose other than that of considering the grievance.
53. The Council concluded that release of this information would be in breach of section 38(1)(b). It should be noted that the Council did not refer specifically to section 38(1)(b) in earlier correspondence with my office or with Ms Marshall although its correspondence made clear implicitly which part of section 38 it was relying on. In the future the Council should ensure that it refers specifically to the part, sub-section or paragraph of the exemption that applies to the information withheld.
54. I understand from the submissions made by the Council that it considers that disclosure of this information would be in breach of the first protection principle. The first principle requires personal data to be processed fairly and lawfully. Disclosure would be unlawful, for example, if there would be a breach of confidence.



55. The concept of “fairness” is harder to define. The kinds of questions which an authority should address are:
- Would the disclosure cause unnecessary or unjustified distress or damage to the person who the information is about?
  - Would the third party expect that his or her information might be disclosed to others?
  - Had the person been led to believe that his or her information would be kept secret?
  - Has the third party expressly refused consent to disclosure of the information?
56. It seems to me reasonable that information relating to an individual’s grievance appeal constitutes that individual’s personal data, particularly in this case where the focus of the appeal is the individual’s work and performance. Therefore I accept that in general terms information supplied by or concerning the appellant in this case constitutes personal data.
57. I also accept that the nature of the information is such that the appellant would not expect this information to be disclosed to third parties or to enter the public domain.
58. Although the Council has not explicitly submitted that disclosure of this information would result in an actionable breach of confidence, I consider that the appellant would expect this information to be kept confidential and would have been led to believe that this information would be made available only to those involved in the regrading and, subsequently, the grievance processes.
59. I am therefore satisfied that where the information relates to the appellant’s personal data than disclosure of this information would be unfair and therefore in breach of the first data protection principle.
60. I must consider whether the information contained within documents 2(b) to 2(m) constitutes the personal data of the appellant as submitted by the Council. Before I do so, however, I will consider whether it was appropriate for the Council to redact the appellant’s name from the information supplied to Ms Marshall.
61. As stated above, the name of the appellant has been blanked out of the information supplied to Ms Marshall on the basis of section 38(1)(b) of FOISA. I queried whether these redactions were appropriate and, in particular, whether Ms Marshall would know the identity of the appellant and whether this information would be in the public domain.



62. The Council advised that it had no means of knowing whether Ms Marshall knew the name of the appellant. The Council advised that from its correspondence with Ms Marshall it had no reason to believe that that information was known. The Council confirmed that it had taken every measure possible to ensure that such information was not in the public domain.
63. I have not asked Ms Marshall whether she is aware of the identity of the appellant. It seems to me that even if Ms Marshall was aware of the identity of the appellant it does not follow that this information should be released under FOISA. Under FOISA the authority must consider whether the information should be supplied to "a member of the public". I do not consider that the appellant would expect or desire this information to enter the public domain even if the circumstances were known to individual colleagues.
64. I therefore consider that the identity of the appellant constitutes the personal data of the appellant in this matter and that disclosure of this information would be in breach of the first data protection principle. It follows that I consider it proper that the Council redacted this information from the documents supplied to Ms Marshall.
65. The Council conceded that, on reflection, the blanking out of the name of the Chief Personnel Officer (Operations) in one of the documents provided was not appropriate.
66. I will now go on to consider the application of section 38(1)(b) to the documents withheld.

*Documents 2(b) to 2(m)*

67. These documents are correspondence between the appellant, the appellant's Union representative and the Council relating to the appellant's grievance appeal.
68. Documents 2(c) to 2(g), 2(m) and 2(p) are all correspondence between the appellant and the Council. I consider that the information relates to the appellant and the grievance procedure and therefore constitutes the appellant's personal data. It follows from my reasoning in paragraphs 56 to 59 above that the release of this information would be in breach the first data protection principle in that the appellant would have an expectation that this information would remain confidential and private to those involved in the process.



69. The remaining correspondence, that is, documents 2(b), 2(h) to 2(l) are correspondence between the appellant's Union representative and the Council. The information contained in some of these documents is not always sensitive in that it discusses arrangements for the hearing. Nevertheless, there is no doubt that the focus of this information is the appellant and the grievance hearing and therefore constitutes the appellant's personal data. I also have to bear in mind that information relating to the appellant's Union membership is sensitive personal data for the purposes of the DPA. In all the circumstances, for the reasons set out in paragraphs 56 to 59 above I consider that release of this information would be in breach of the first data protection principle.
70. I am satisfied that items 2(b) to 2(m) and 2(p) are exempt by virtue of section 38(1)(b) and therefore cannot be disclosed under FOISA.
71. I have considered separately items 2(n) and 2(o). This is because the Council submitted that not only was the information exempt by virtue of section 38(1)(b) but also submitted that disclosure of this information was exempt under section 30(b)(i) in that disclosure would or would be likely to inhibit the free and frank discussion of advice and in all the circumstances of the case it was concluded that the public interest in disclosing this information was outweighed by that in maintaining the exemption.
72. In subsequent correspondence with my office the Council seemed to imply that section 30(b)(ii) also applied to this information in that disclosure would inhibit substantially the free and frank exchange of views for the purposes of deliberation.
73. Items 2(n) and 2(o) are correspondence between Head of Personnel Services and the Director of Planning & Environment. The focus of the information, however, is the appellant and the regrading claim. Therefore, I consider that this information constitutes the appellant's personal data and for the reasons set out in paragraphs 56 to 59 above that disclosure of this information would be in breach of the first data protection principle. I also consider that this information would be exempt under section 30(b) of FOISA.
74. Section 30(b) states that information is exempt if its disclosure 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



75. As I said in my previous decision *Mr Luyken and the Scottish Executive Decision no. 041/2005*, it is my view that the standard to be met in applying the test in sections 30(b) is high. In applying this exemption the chief consideration is not whether the information constitutes advice or in this case, the exchange of views, but whether the release of the information would inhibit substantially the provision of advice or exchange of views. The word “inhibit” suggests a suppressive effect, so that communication would be less likely, or would be more reticent or less inclusive.
76. The information in this case constitutes internal communications in the course of which advice is sought and provided on a staff regrading matter relating to a particular individual. The focus of the information is the appellant and the proposed regrading. Given these particular circumstances I consider that the harm test is met and that disclosure of this kind of communication involving an individual member of staff would inhibit substantially the free and frank provision of advice and exchange of views envisaged by section 30(b).
77. Section 30(b) is subject to the public interest, however, and therefore I must go on to consider whether the public interest in disclosing the information requested is outweighed by that in withholding it. Given that the information involves a named individual in connection with a personal matter I consider that there would have to be compelling public interest arguments to override the exemption in this case. I find that there is not in this case and therefore consider that the information is also exempt by virtue of section 30(b)(i) and (ii).
78. In summary, therefore, I find that the appellant’s name was properly redacted from the information supplied to Ms Marshall. I accept that item 2(a) is otherwise accessible and therefore exempt under section 25(1) of FOISA. However, the Council should have advised Ms Marshall of its existence and relevance. I find that items 2(b) to 2(p) inclusive are exempt by virtue of section 38(1)(b) and that items 2(n) and 2(o) are also exempt by virtue of section 30(b)(i) and (ii).

## **Question no.2**

79. Ms Marshall also requested:
- All emails, letters, notes and memos between Planning & Environment and Personnel Services in relation to the above
80. The Council advised that 17 documents were held in relation to Ms Marshall’s second request. The Council advised that in many cases the documents would have identified the appellant. In relation to the remaining documents it considered that they related to and were essential components of the free and frank discussion of advice and that their disclosure would prejudice the effective conduct of public affairs.



81. In each case, the Council advised that consideration was given to the question of whether the public interest in revealing the information was outweighed by that in maintaining the exemption. In regard to the free and frank discussion and exchange of views the Council argued it was necessary to the valid provision of advice and would not be possible were the documents containing those views made available for public inspection or public access. Accordingly, it concluded that in all the circumstances of the case the public interest in disclosing the information was outweighed by that in maintaining the exemption.
82. The Council advised that items 6(a) to 6(d), 6(j), 6(k), 6(m) were all exempt in that disclosure would or would be likely to inhibit substantially the free and frank discussion of advice. It considered that in all the circumstances of the case, the public interest in disclosing this information was outweighed by that in maintaining the exemption.
83. From the submissions made by the Council it was not clear to me whether the Council was relying on section 30(b)(i) which relates to the provision of advice or section 30(b)(ii) which relates to the free and frank exchange of views. The Council subsequently confirmed that it was relying on both parts of section 30(b).

*Documents 6(a) to 6(d)*

84. These documents are correspondence between Personnel Services and the Environment & Planning Department. The focus of the information is on the proposed regrading and the corresponding job description.
85. In many cases discussions about departmental or organisational restructuring within a public authority, including the creation of new positions, will not raise issues of personal data. Rather they will involve generic discussions about the needs and capacity of the organisation, department or division. However, in this case we know that the discussions about the proposed new post and corresponding job description are linked to an identifiable individual, that is, the appellant.
86. Therefore I consider that any information in this case discussing the proposal for the new post and corresponding job description potentially raise issues of personal data. Accordingly, in my view, the email exchanges in documents 6(a) to 6(c) contain information relating to the appellant and are therefore the appellant's personal data. For the reasons set out in paragraph 56 to 59 above I consider that disclosure of this information would be unfair and therefore in breach of the first data protection principle.





87. However, I do not consider that the last three paragraphs in document 6(a) are exempt by virtue of section 38(1)(b). This information concerns general departmental restructuring issues. I have therefore considered whether this information is exempt by virtue of section 30(b). Section 30(b) states that information is exempt if its disclosure 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
88. As I have said, it is my view that the standard to be met in applying the test in sections 30(b) is high. When considering the application of section 30(b) each request should be considered on an individual basis, taking into account the effects anticipated from the release of the particular information involved. This would have to consider:
- the subject matter of the advice or exchange of views
  - the content of the advice or exchange of views
  - the manner in which the advice or exchange of view is expressed, and
  - whether the timing of release would have any bearing (releasing advice or views whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once a decision has been taken).
89. I asked the Council to provide me with information about the context of these discussions and whether they were ongoing. It seemed to me that the timing of these discussions was also pertinent given that they had taken place in September 2003.
90. The Council has advised me that none of the issues referred to in the last three paragraphs of document 6(a) formed any part of any future structure report. The Council advised that while there have been further reports on restructuring they have been on specialised areas or involving more senior posts. Given the terms of my request for clarification, I am satisfied that the matter is no longer current.
91. Section 30(b) sets a high harm test to be met before the exemption can apply. Given the period of time that has elapsed since these discussions took place, that the issues under discussions are no longer current and the content of these discussions I am not satisfied that the Council has demonstrated that disclosure would substantially prejudice the free and frank exchange of views in this regard. Therefore I am not satisfied that the final three paragraphs of document 6(a) are exempt.



92. Document 6(d) is a draft memorandum from the Head of Personnel Services to the Director of Planning & Environment. The content of the memorandum informs the recipient of the outcome of the regrading claim. I consider that in this case the information relates not simply to the proposed new post but to an identifiable individual, namely the appellant, and for that reason consider it to be personal information. For the reasons set out in paragraphs 56 to 59 above I consider that this information is exempt by virtue of section 38(1)(b)

*Documents 6(e), 6(h) and 6(i)*

93. These documents have been withheld by virtue of section 38(1)(b) on the basis that the information constitutes personal data and disclosure of this information would contravene the data protection principles. These documents are internal memorandums setting out the arrangements and findings in relation to the appellant's grievance appeal. Documents of a similar nature have already been supplied to Ms Marshall with the name of the appellant blanked out.
94. I raised this point with the Council and the fact that similar redacted documents had already been supplied. The Council advised that these documents could be made available to Ms Marshall subject to the deletion of anything which could identify the appellant. I agree. I consider that these documents should be supplied to Ms Marshall subject to the necessary redactions to protect the identify the appellant.

*Document 6(f) and 6(g)*

95. These documents have been withheld under section 38(1)(b) and are emails referring to the attached Committee report. The Committee report has already been supplied to Ms Marshall in an amended form to protect the identity of the appellant. The Council has confirmed that Document 6(f) is simply the email rather than the attachment. I have already accepted that the redactions in relation to the Committee report were appropriate (see paragraphs 61 to 64 above). There seems to be no reason why Document 6(f) (that is, the email) should be withheld as it makes no reference to the identity of the appellant. Therefore this document should be supplied to Ms Marshall.
96. Document 6(g) is a brief email referring to the Committee report. It refers to the appellant by name and also refers to amendments that have been made to Committee report. I accept that section 38(1)(b) applies to the name of the appellant. In addition to section 38(1)(b) the Council has argued that disclosure of this information would inhibit the free and frank provision of advice or exchange of views under section 30(b)(i) and (ii). I consider that the Council has not demonstrated the necessary harm that would result if these fairly standard comments were to be released. Therefore I consider that this email should be released subject to the redaction of the appellant's name.



#### *Documents 6(j)*

97. This document is an email exchange in which the author provides advice to the Department on the appropriate response to employee complaints about the grievance appeal. The Council has argued that it is exempt by virtue of section 30(b). I consider that this information could be covered by section 30(b)(i) in that the information is advice. However, the Council needs to demonstrate that disclosure of the information would substantially inhibit the free and frank provision of advice.
98. In this case, the author suggests that the advice is passed on to the employees who have raised the complaints. The author does not provide the advice in confidence or suggest that a more temperate view be expressed to the employees. Therefore I cannot see why release of this information would inhibit staff from providing similar advice in the future.
99. I am not satisfied that this information is exempt under section 30(b) of FOISA because I do not consider that disclosure of this information in this case would inhibit substantially the free and frank provision of advice.

#### *Document 6(k)*

100. This document has been withheld under section 30(b) of FOISA. It is the proposed job description for the Senior Area Admin Officer with annotations. The final job description has already been supplied to Ms Marshall. The Council advised that this was a working document used for the preparation of the job description already provided. The Council submitted that this reflects a preliminary stage in a professional officer's consideration, and in common with other preliminary drafts compiled or annotated for general consideration prior to determination of advice, does require to remain confidential in the interests of the provision of advice.
101. As I have indicated above, in order to rely on section 30(b) an authority needs to demonstrate that real harm will occur if the information is disclosed. In particular, an authority has to demonstrate that release of this information in this case would inhibit substantially the free and frank provision of advice or exchange of views. I do not consider that the Council has demonstrated why these annotations are sensitive or why disclosure would cause real harm in this instance. I consider that the information is not exempt by virtue of section 30(b) and should be supplied to Ms Marshall.

#### *Document 6(l)*

102. This document constitutes a handwritten note. The Council advised that it was being withheld on the basis that it constituted personal data the disclosure of which to a member of the public would contravene the Data Protection principles and was therefore exempt by virtue of section 38(1)(b).



103. It was not clear to me who had written this note and why it constituted personal data. The Council subsequently advised that the information constituted notes taken by an officer at the grievance hearing and related to information and evidence given by the member of staff who initiated the grievance appeal. Given that this information relates to the appellant I am satisfied that this information constitutes the personal data of that individual and for the reasons set out in paragraphs 56 to 59 above I consider that release of this information would be in breach of the first data protection principle. I am satisfied that it is exempt under section 38(1)(b).

*Document 6(m)*

104. This document is a support services organisational chart with handwritten notes. The Council has argued that disclosure of information would or would be likely to inhibit the free and frank discussion of advice under section 30(b) of FOISA.
105. I queried the nature of this document and why it was being withheld. The Council advised that it was unable to ascertain exactly who effected the alterations to this organisational chart. From its contents, the Council advised that it was a preliminary working document in relation to consideration of a wider report. In further correspondence the Council advised that the document was an historical working document which had been drawn up prior to the point at which, in October 2002, the Department of Planning and Environment were considering the restructure of the Support Services Division.
106. I do not consider that the Council has demonstrated why disclosure of this information would inhibit substantially the free and frank provision of advice or exchange of views. In each case the Council must show that harm would result if this particular information was released.
107. The Council seems to be protecting this information because it constitutes a working document rather than because it contains particularly sensitive information. Therefore, I consider that the Council has not demonstrated that this information is exempt under section 30(b) and it should be released to Ms Marshall.

*Documents 6(n) to 6(p)*

108. The Council subsequently advised that following further consultation with the officers concerned, it discovered that Documents 6(n) to 6(p) had no relation to this application for information. They advised that the papers should not, accordingly have been sent to me.



*Document 6(q)*

109. This document is a copy of the job description that has already been supplied to Ms Marshall. This document had been withheld because it contained the name of an employee. The Council has advised that the employee is the appellant. I accept that this information is the appellant's personal data and for the reasons set out above am satisfied that this information is exempt. Therefore, I agree that the Council was right to supply this information to the applicant with the appellant's name redacted.

## **Decision**

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I find that North Lanarkshire Council partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in withholding the following information:

1. Document 6(a) final three paragraphs;
2. Documents 6(e), 6(f), 6(g), 6(h), 6(i), 6(j) and 6(m) subject to any necessary redactions to protect the identity of the appellant,

there being insufficient grounds for withholding the information under the exemptions claimed by the Council.

This information should be released to Ms Marshall within two months of the date of this decision.

I find that North Lanarkshire Council partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in failing to list all information it held relevant to Ms Marshall's request in contravention of section 16(1)(a) and in contravention of section 15(1) the duty to provide advice and assistance.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**22 December 2005**