

Decision Notice



Decision 091/2010 Mr C and Glasgow City Council

Information relating to the applicant

Reference No: 201000333
Decision Date: 14 June 2010

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Kevin Dunion
Scottish Information Commissioner

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St Andrews KY16 9DS
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Summary

Mr C requested from Glasgow City Council (the Council) information relating to an investigation in which he was directly involved. The Council responded by withholding all of the information in accordance with the exemption in section 35(1)(a) of FOISA. Following a review in which the Council additionally indicated that it did not hold some of the information within the scope of his request, Mr C remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr C's request for information in accordance with Part 1 of FOISA, by indicating that it did not hold some of the information requested and withholding the remainder in accordance with the exemption in section 38(1)(a) of FOISA. He did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and(2)(e)(i) (Effect of exemptions); 38(1)(a) and (5) (Personal information) (definitions of "data subject" and "personal data")

Data Protection Act 1998 (DPA) section 1(1) (Basic interpretative provisions) (definition of personal data)

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

Background

1. On 22 September 2009, as part of an ongoing exchange of correspondence, Mr C wrote to the Council requesting the following information in relation to an investigation undertaken by the Council's internal audit team in which he was directly involved:
 - a. copies of all emails, internal memos and telephone calls regarding this issue;
 - b. names of all individuals who have been involved in the discussions, and the details of all information which has been passed on



- c. minutes of the meeting between three named individuals
2. The Council responded on 7 October 2009, refusing to provide any of the information requested as it considered it exempt information by virtue of the exemptions contained in section 35 of FOISA.
3. On 13 October 2009, Mr C wrote to the Council requesting a review of its decision. In particular, Mr C suggested that the Council may have misinterpreted section 35 of FOISA.
4. The Council notified Mr C of the outcome of its review on 11 November 2009. It upheld the application of section 35 to the information requested in parts a. and b. of his request, in particular identifying the relevant exemption to be section 35(1)(a). The Council substituted the original decision in relation to part c. indicating that it did not hold the information requested.
5. On 15 February 2010, Mr C wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr C had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 2 March 2010, the Council was notified in writing that an application had been received from Mr C and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. The Council responded indicating that in addition to the exemption in section 35(1)(a) of FOISA it also wished to rely on the exemptions contained in sections 34(1)(a)(i) and 38(1)(a) of FOISA to withhold the information falling within the scope of parts a. and b. of Mr C's request. The Council also confirmed that it was relying on the provisions in section 17(1) of FOISA in relation to part c. of Mr C's request. During the course of the investigation the Council subsequently withdrew its reliance on the exemption in section 34(1)(a).



10. Mr C was informed of the additional exemptions cited by the Council and invited to submit comments regarding their application to his request. The investigator advised Mr C that his initial view was that the information withheld by the Council was his own personal data and so exempt in terms of section 38(1)(a) of FOISA. He also asked Mr C whether he still wanted the Commissioner to issue a decision on this case. Mr C confirmed that he did want a decision to be issued, and provided comments about the case.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr C and the Council and is satisfied that no matter of relevance has been overlooked.

Consideration of Section 38(1)(a) – Personal Information

12. Section 38(1)(a) of FOISA contains an absolute exemption in relation to personal data of which the applicant is the data subject. The fact that it is absolute means that it is not subject to the public interest test set out in section 2(1) of FOISA.
13. This exemption exists under FOISA because individuals have a separate right make a request for their own personal data (commonly known as a “subject access request”) under section 7 of the DPA. The DPA will therefore usually determine whether a person has a right to their own personal data. Section 38(1)(a) of FOISA does not deny individuals a right to access to information about themselves, but ensures that the right is exercised under the DPA and not under FOISA.
14. Personal data is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in the Appendix).
15. Mr C's request clearly concerns matters in which he was directly involved, and seeks details of the individuals involved in dealing with those matters and related information. The Commissioner is satisfied that the information requested by Mr C in parts a. and b. of his request relate to him as an individual and that he can be identified from this data either directly or with reference to other information in the possession of the Council.
16. The Commissioner has therefore concluded that the information withheld by the Council is entirely Mr C's personal data. He therefore finds that the Council was correct in its application of section 38(1)(a) of FOISA to this information.
17. As noted above, the exemption in section 38(1)(a) is an absolute one and the Commissioner is therefore not required to go on to consider whether the public interest lies in the information being released or withheld.



Consideration of section 17(1) – Information not held

18. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that it does not hold the information.
19. As noted above, the Council initially responded to Mr C's request for information by advising that all of the information was exempt from disclosure under FOISA. However, in responding to his request for review the Council informed Mr C that it did not hold the information requested in part c. of his request. The Council clarified this by indicating that no minutes of the meeting were taken by those present.
20. In order to determine whether the Council dealt with Mr C's request correctly, the Commissioner must be satisfied as to whether, at the time it received Mr C's request, the Council held any information which would fall within the scope of that request.
21. In its submissions to the Commissioner, the Council explained that the investigation was conducted by its internal audit team and, in accordance with normal practice, information regarding such investigations is held only by the internal audit team. The Council confirmed that it had checked records held by the internal audit team and identified that no minute of the meeting was held. The Council also informed the Commissioner that it had contacted the persons named by Mr C in his request and all had indicated that no notes or minutes were taken at the meeting.
22. The Council further explained that, given the nature of the particular meeting identified by Mr C, the only locations where a minute would be held, had one existed, would be within the internal audit team or by a person who had attended the meeting.
23. The Commissioner, when dealing with an investigation involving section 17 of FOISA, can only examine whether or not the information requested was held by the public authority. It is not within the remit of the Commissioner to examine, or comment upon, whether the information requested should have been held or the appropriateness of the extent of any information that is held.
24. Having considered the terms of Mr C's request and the submissions provided by the Council, the Commissioner's view is that the Council did not hold any information that would address part c. of Mr C's request. The Commissioner therefore accepts that the Council was correct to respond to part c. of Mr C's requests in terms of section 17 of FOISA.
25. Having ascertained that all of the information within the scope of Mr C's request is either not held by the Council or exempt in terms of section 38(1)(a), the Commissioner is not required, nor does he intend, to go on to consider the exemption in section 35(1)(a) of FOISA.



DECISION

The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr C.

Appeal

Should either Mr C 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.

Margaret Keyse
Head of Enforcement
14 June 2010



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.

...

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

2 Effect of exemptions

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

- (a) the provisions do not confer absolute exemption; and

...

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

...

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

- (i) paragraphs (a), (c) and (d); and

...

38 Personal information

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

- (a) personal data of which the applicant is the data subject;

...

- (5) In this section-



...

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act [Data Protection Act 1998];

Data Protection Act 1998

1 Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...