

# Decision Notice

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**Decision 107/2016: Mr Williams and South Ayrshire Council**

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**Contact details, Manager of Children's Leaving Service**

Reference No: 201600182  
Decision Date: 5 May 2016



Scottish Information  
Commissioner

## Summary

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On 1 December 2015, Mr Williams asked South Ayrshire Council (the Council) for contact details for manager(s) for children leaving care.

The Council responded by disclosing some information. Mr Williams queried the fullness and clarity of the response and requested a review. Following the Council's review, in which it gave further explanations, Mr Williams remained dissatisfied and applied to the Commissioner for a decision.

Mr Williams challenged elements of the Council's review decision. The Commissioner investigated. She was not satisfied with aspects of its responses to part 2 of the Mr Williams' request, as set out in this notice, although she was satisfied with the response given for part 1.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 38(1)(b), (2)(a)(i), (2)(b) and (5) (definitions of "data protection principles", "data subject" and "personal data") (Personal information)

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

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1. On 1 December 2015, Mr Williams made a request for information to the Council. He asked two questions, referred to here as parts 1 and 2 of his request:  
  
Part 1: "Can I have the name and contact details including email for the manager directly responsible for the Children's Leaving Care Service."  
  
Part 2: "Can I also have the same details for the post responsible to the service at third tier if different."  
  
2. The Council responded on 22 December 2015. For part 1, it released the name of the Head of Service with her direct email address and telephone number. For part 2, it withheld information which it considered to be personal data under section 38(1)(b) of FOISA, with an explanation of why it considered the exemption to apply.  
  
3. On 23 December 2015, Mr Williams emailed the Council requesting a review of its decision, on the basis that it misinterpreted his request as seeking "all names" of "all Social Work management staff", rather than the more limited range specified in his request. He also complained that the Council's response failed to make clear what information it actually held, which he believed was a failure to comply with section 16 of FOISA, and queried the Council's application of section 38(1)(b): he submitted that there was no evidence that the Council had verified whether any of the contact details in question were published already.  
  
4. The Council notified Mr Williams of the outcome of its review on 22 January 2016. It was satisfied it had addressed part 1 of Mr Williams' request. It also argued that section 38 was correctly applied to withheld data for part 2, confirming that it held the information for the

relevant third tier manager and this was what it was withholding. However, it apologised for the incorrect reference which had caused confusion in its original response.

5. On 22 January 2016, Mr Williams wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Williams stated he continued to believe the Council misinterpreted his request and he remained confused as to what information was actually held. He disputed the application of section 38 to the withheld information, noting that information which appeared to correspond to what he sought was available publicly online (in a staff directory): he provided a copy of the document in question.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that Mr Williams made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 12 February 2016, the Council was notified in writing that Mr Williams had made a valid application. 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 Council was invited to comment on this application and answer specific questions, with reference to the information it held and any exemptions it considered applicable.
9. The Council provided submissions on 4 April 2016 with clarification of its structures and the posts it considered relevant. It withdrew its reliance on section 38(1)(b) of FOISA, acknowledging that it had already published the relevant staff contact details online (which Mr Williams had obtained himself).

## **Commissioner's analysis and findings**

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10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Williams and the Council. She is satisfied that no matter of relevance has been overlooked.

### **Part 1**

11. The Council disclosed the name, direct email address and telephone number of the Head of Service, this being the person it considered responsible for its "Through-Care" service, which it understood to be equivalent to what Mr Williams had specified in his request. At review, the Council also acknowledged an incorrect reference which had led to some confusion on Mr Williams' part, apologising for this.
12. The Council confirmed the position clearly in its submissions to the Commissioner and the Commissioner is satisfied that the Council identified, located and disclosed to Mr Williams everything it held and which fell within the scope of part 1 of the request.

### **Part 2**

13. In his application, Mr Williams complained that it remained unclear what information the Council held for this part of his request. He pointed out that he could surmise which was the relevant manager responsible to the Head of Service, but could not confirm this.

14. In its submissions to the Commissioner, the Council acknowledged that its review outcome may have caused additional confusion to Mr Williams and provided him with misleading information. It explained that, in its view, the Head of Service post in fact sat at third tier level.
15. Clearly, given the terms of Mr Williams' request, the applicable tier is important in determining which staff members fall within the scope of part 2. It would be usual to consider the Head of Service post in this case, sitting just below Director level, as second tier. This appears to have been the premise underlying Mr Williams' request.
16. In the circumstances, as the Council has confirmed (while differing on the applicable tier), the Commissioner is satisfied that the name and contact details which fell within the scope of part 2 of the request are those belonging to the "Manager of Children & Families" as published online. This is as Mr Williams has surmised, and he has confirmed he has this information. It would appear to be the information referred to in the Council's review outcome.
17. The Commissioner is satisfied that Mr Williams now has the information which addresses part 2 of his request. She will now consider whether it handled part 2 of the request appropriately in responding to Mr Williams.

*Procedural matters*

18. The Commissioner accepts that the Council's submissions withdrew the exemption in section 38(1)(b) of FOISA. The information in question has been published in any event, as Mr Williams and the Council have both noted. The Commissioner notes the Council's view that it would have been helpful for Mr Williams to identify any contact information he had found in the public domain. She would remind the Council that it was its responsibility to identify whether the requested information was available in any published source: she fails to see how it could have applied any exemption properly (even section 25(1), which relates to information otherwise accessible) without doing this.
19. The Council withheld this information under section 38(1)(b) of FOISA (which it has now withdrawn), on the basis that disclosure of these particular personal data would breach the first data protection principle. Without going into any detail on the requirements of the first data protection principle, it must have been apparent to the Council that it could not operate to prevent the disclosure of information the Council had placed in the public domain already. If it had checked that, then presumably it would never have applied this exemption.
20. In the circumstances, the Commissioner must find that the Council was not entitled to apply section 38(1)(b) of FOISA to the information covered by part 2 of the request.

## Decision

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The Commissioner finds that South Ayrshire Council partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Williams.

The Commissioner finds that the Council fully addressed the first part of Mr Williams's request. By so doing, she is satisfied that the Council complied with Part 1 of FOISA.

However, she finds that the Council incorrectly applied section 38(1)(b) of FOISA to information which it had already published in responding to the second part of the request. By so doing, she considers that the Council failed to comply with Part 1 (and in particular section 1(1)) of FOISA.

Given that this decision notice has clarified to Mr Williams which information addressed part 2 of his request, and as it is already published, the Commissioner does not require the Council to take any action in respect of this failure in response to Mr Williams' application.

## Appeal

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Should either Mr Williams or South Ayrshire Council 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**

**5 May 2016**

### 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.

...

#### 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

...

- (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;

...

#### 38 Personal information

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

...

- (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

...

- (2) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles; or

...

- (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...

- (5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

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

...

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**