

# Decision Notice

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## **Decision 169/2015: Mr Sam Cook and Renfrewshire Council**

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### **Information presented to the Council's Procurement Sub-Committee**

Reference No: 201501456

Decision Date: 6 November 2015



Scottish Information  
Commissioner

## Summary

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On 23 June 2015, Mr Cook asked Renfrewshire Council (the Council) for information relating to a meeting of its Procurement Sub-Committee.

The Council informed Mr Cook that the information was exempt from disclosure in terms of section 25(1) of FOISA on the basis that it was available to him on its website. The Council also provided the relevant links to Mr Cook. Following a review, Mr Cook remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had complied with FOISA in dealing with Mr Cook's request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 15(1) (Duty to provide advice and assistance); 25(1) (Information otherwise accessible)

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 23 June 2015, Mr Cook made a request for information to the Council. Mr Cook asked for the minutes of the Council's Procurement Sub-Committee meeting of 18 February 2015. Additionally, he asked for all documents presented at that meeting and any documents or minutes named at that meeting which had been recommended by a separate committee or board.
2. The Council responded on 26 June 2015. The Council withheld the information under section 25(1) of FOISA on the basis that it was available to Mr Cook on its website. The Council provided links to the relevant information on its website.
3. On 1 July 2015, Mr Cook wrote to the Council requesting a review of its decision. At this stage, Mr Cook informed the Council that he was prepared to narrow his request to include only documents concerning nursery tenders presented to the Sub-Committee meeting. Mr Cook considered there must be documents missing from the minutes of the meeting, in particular briefing documents regarding each tender.
4. The Council notified Mr Cook of the outcome of its review on 29 July 2015. The Council upheld its previous decision that the information was exempt from disclosure under section 25(1) of FOISA. The Council explained that it had provided clear links to the information sought by Mr Cook and that all information covered by the request was contained within the links provided.
5. The Council further explained that the documents which Mr Cook considered were missing (i.e. briefing documents regarding each tender) had not been presented to the Procurement Sub-Committee meeting. At this stage, the Council also explained to Mr Cook that, in any

event, it considered that information concerning the evaluation of the tenders would be exempt from disclosure in terms of section 33(1)(b) of FOISA (Commercial interests and the economy).

6. On 5 August 2015, Mr Cook wrote to the Commissioner. Mr Cook applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Cook stated he was dissatisfied with the outcome of the Council's review because he considered that if the Committee members had been provided with information on the individual tenders, that would fall within the scope of his request.

## Investigation

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7. The application was accepted as valid. The Commissioner confirmed that Mr Cook 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.
8. On 3 September 2015, the Council was notified in writing that Mr Cook had made a valid application. The case was then allocated to an investigating officer.
9. 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 including justifying its reliance on any provisions of FOISA it considered applicable to the information requested. The Council was also asked to explain the steps it had taken to establish that the information sought in Mr Cook's information request was contained within the links it had provided to him.

## Commissioner's analysis and findings

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

### Section 25(1) of FOISA – Information otherwise accessible

11. Under section 25(1) of FOISA, information which a requester can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.
12. In its initial response, the Council informed Mr Cook that the requested information was available on its website and provided links to the relevant pages on its website. In its review outcome, the Council informed Mr Cook that all of the information he requested had been provided to him via the links supplied in its previous response. The Council also explained to Mr Cook that the documents which he considered were missing (i.e. information on tenders and the evaluation of tenders) had not been presented to the Procurement Sub-Committee meeting.
13. In his application to the Commissioner, Mr Cook stated that he did not think that the full tender documents would have been presented to the meeting, but stated that "*if it transpires that each member of the Committee was provided with this information, then I believe that would have been within the scope of my original request*".

14. In its submissions to the Commissioner, the Council stated that, in its view, Mr Cook's initial request was based on an assumption that the documents presented to the Procurement Sub-Committee would include nursery tenders and associated briefing documents regarding each tender.
15. The Council submitted that, although the scope of the request appeared to have changed when Mr Cook asked for a review, the fact remained that it had directed him to the relevant information on its website. This contained the minutes of the Procurement Sub-Committee meeting and all information presented to that meeting.
16. The Council explained that it was not Council practice for specific tender documentation to be discussed at a Sub-Committee meeting. Specific tender documentation would be considered in private by the relevant officers who would then report and advise Committees in a general, high-level manner.
17. The Council also explained that it had carried out checks to ensure that all information falling within the scope of Mr Cook's request was publicly available on its website. The Council stated that the relevant officers from its Procurement and Education Services who were involved in the tender process were consulted prior to responding to Mr Cook's request. Those officers were clear that all information falling within the scope of the request was publicly available. In the Council's view, the information was exempt therefore under section 25(1) of FOISA.
18. The Commissioner considers that the narrowed scope of Mr Cook's request (for specific information on tenders submitted to the Procurement Sub-Committee), which was presented in his request for review, essentially sought a sub-set of the information contained in his original request. The Commissioner is satisfied that the specific information regarding tenders and the evaluation of tenders was not presented to the Procurement Sub-Committee meeting for the reasons explained by the Council.
19. Having considered all of the Council's submissions, the Commissioner is satisfied that the information covered by Mr Cook's request of 23 June 2015 (as phrased) was reasonably obtainable on the Council's website otherwise than by making a request for it under section 25(1) of FOISA. Therefore, she is satisfied that the Council was entitled to withhold it under section 25(1) of FOISA.

#### **Section 15 of FOISA – Duty to provide advice and assistance**

20. Section 15(1) of FOISA requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
21. It is clear from Mr Cook's application to the Commissioner that the Council's review response has caused some confusion to him. He noted that the Council had initially stated that the information requested was in the public domain, but subsequently appeared to change its position.
22. In its response to Mr Cook's requirement for review, the Council explained that the relevant information concerning the evaluation of tenders had not been presented to the Procurement Sub-Committee. As noted above, it went on to explain that (in its view) such information would be exempt from disclosure in terms of section 33(1)(b) of FOISA.
23. In its submissions to the Commissioner, the Council explained that, in addition to considering the application of section 25(1) of FOISA in its review response, it went on to consider

whether the specific information that Mr Cook was seeking concerning tender evaluations could be disclosed. The Council stated it had provided Mr Cook with some general information which it had hoped would be helpful to him.

24. In the circumstances, the Commissioner appreciates that the Council had attempted to be helpful to Mr Cook and to explain why the specific information on tender evaluations was not contained within the minutes of the Sub-Committee meeting. The Commissioner also understands why the Council had tried to explain that such information would likely be exempt from disclosure under section 33(1)(b) of FOISA. Although this may inadvertently have resulted in some confusion, the Commissioner finds that the Council complied with section 15(1) of FOISA by providing reasonable advice and assistance to Mr Cook.

## **Decision**

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

## **Appeal**

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Should either Mr Cook or Renfrewshire 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**

**6 November 2015**

### 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 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;

...

- (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

...

#### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

#### 25 Information otherwise accessible

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

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