

Decision Notice

Decision 196/2016: Ms Angela Kimmett and South Ayrshire Council

Complaints Review Committee Minutes

Reference No: 201600944

Decision Date: 16 September 2016



Scottish Information
Commissioner

Summary

On 23 February 2016, Ms Kimmitt asked South Ayrshire Council (the Council) for the Minutes of a Complaints Review Committee meeting. The Council refused to disclose the information, stating that disclosure was prohibited under a specified enactment and upheld that position on review.

During the investigation, the Council withdrew its reliance on section 26(a) of FOISA, relying instead on sections 30(c) (Prejudice to effective conduct of public affairs) and 38(1)(a) and (b) (personal information), the Commissioner found that the Council was entitled to withhold the information from Ms Kimmitt under section 30(c) of FOISA as disclosure was likely to cause substantial prejudice to the effective conduct of public affairs.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(c) (Prejudice to effective conduct of public affairs)

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

1. On 23 February 2016, Ms Kimmitt made a request for information to the Council. She asked for a copy of the Minutes taken at a meeting of the Council's Complaints Review Committee (the CRC), which Ms Kimmitt attended and which discussed a complaint made by her about the care of her late father.
2. The Council responded on 21 March 2016. It refused to disclose the Minutes, stating that it was prohibited from doing so under the Local Government (Scotland) Act 1973, Schedule 7A (Part I). Consequently, the information was exempt under section 26 (Prohibitions on disclosure) of FOISA.
3. On 22 March 2016, Ms Kimmitt wrote to the Council, requesting a review of its decision on the basis that she believed the Council should disclose the Minutes.
4. The Council notified Ms Kimmitt of the outcome of its review on 14 April 2015, upholding its original decision without modification.
5. On 12 May 2016 Ms Kimmitt wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Kimmitt stated she was dissatisfied with the outcome of the Council's review because she believed the Minutes should be disclosed so she could understand the Council's conclusions on the matter.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Ms Kimmitt 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 15 July 2016, the Council was notified in writing that Ms Kimmett had made a valid application. The Council was asked to send the Commissioner the information withheld from Ms Kimmett. The Council provided the information and 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, justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
9. The Council provided submissions, in which confirmed that it no longer wished to rely on section 26(a) of FOISA, and provided arguments as to why it considered the information should be withheld under sections 30(c), 38(1)(a) and 38(1)(b) of FOISA.
10. Ms Kimmett was also asked for her views and provided these to the investigating officer.

Commissioner's analysis and findings

11. 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 Ms Kimmett and the Council. She is satisfied that no matter of relevance has been overlooked.
12. The Commissioner will first consider the Council's application of section 30(c) of FOISA.

Section 30(c) of FOISA

13. Section 30(c) of FOISA applies where the disclosure of information would "otherwise" prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. The word "otherwise" refers (by exception) to the exemptions in section 30(a) and (b). Section 30(c) is a broad exemption, and the Commissioner expects any public authority citing this exemption to show what specific harm (which must be at the level of substantial prejudice, in other words harm of real and demonstrable significance) would, or would be likely to, be caused to the conduct of public affairs by disclosure of the information.
14. This exemption is subject to the public interest test laid down by section 2(1)(b) of FOISA.
15. The Council submitted that disclosure of the information requested would be likely to substantially prejudice the effective conduct of public affairs, by causing significant harm to the administration of the CRC hearing process. The Council considered the effective administration of the Complaints Review process relied on CRC members being to be able to consider all information, facts and advice regarding any complaint heard by the CRC.
16. The Council explained that the CRC hearing process allowed it the opportunity to review complaints to ensure Social Work services were undertaken to a consistently high standard. The process allowed the Council to identify where services had not been provided to these standards and to implement improvements and changes. To allow this, the Council argued, the process had to rely upon the open, frank and transparent views of those attending hearings, to establish where service provision had failed. Without this frank and open discussion, improvements to services were likely to be substantially prejudiced as such failings might not be disclosed to the CRC.
17. It was the Council's view that all relevant facts, opinions and information must be made available to Committee members to ensure a fully informed and fair decision could be

reached. The Committee must be able to measure the information, including information that was potentially confidential or sensitive.

18. The Council considered members of the public and panel members would be inhibited from speaking in a frank, open and transparent manner if the record of such discussions were to be available to the general public. The Council considered this would significantly inhibit those providing information and opinions, impacting upon the quality and accuracy of information available to Committee Members when reaching a decision. The Council anticipated that this would lead to decisions being undertaken without having full disclosure of facts and opinions, and would significantly inhibit the Committee's ability to provide a fair and balanced Complaints Review process in which the public could have confidence.
19. For these reasons, the Council argued, disclosure would compromise the effectiveness of the hearing process and thus be likely to substantially prejudice the effective conduct of future CRC Hearings,
20. The Commissioner notes that the complaint being discussed at the hearing in question concerns the care of a deceased person (Ms Kimmett's late father). She has considered the application of section 30(c) in other decisions concerning social work case notes, discussions and records relating to deceased persons (e.g. 001/2012¹ and 186/2015²). The arguments advanced by, and accepted from, the public authority in those cases were similar to the arguments advanced here. The Commissioner sees no reason in the circumstances of this case to take a different approach.
21. Having considered the Council's submissions, the Commissioner recognises that Committee members, and social work staff who may be called to give evidence to them, operate in an environment in which people need to be assured that the information they share, and which is recorded, will be handled confidentially. In that context, she accepts the Council's arguments that disclosure of the withheld information would undermine confidence in the system in the ways highlighted, and that this would result in the harm claimed to the effectiveness of the CRC hearing system. This would be substantially prejudicial to the effective conduct of public affairs, thus engaging the exemption in section 30(c) of FOISA.

Public interest test

22. The exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. Information can be withheld under the exemption only if, in all the circumstances of the case, the public interest in withholding it (and maintaining the exemption) outweighs the public interest in disclosure.
23. The Council acknowledged there was a substantial public interest in ensuring complaints are handled in a fair and consistent manner, and that public administration of complaints is undertaken to ensure transparency and accountability. The Council acknowledged this helps ensure the Council is fulfilling its statutory responsibility in relation to the administration of complaints.
24. In this case, the Council continued, the specific information being requested was of a highly sensitive nature, in relating to the personal care of a specified member of the public. The Council considered that to allow it to perform its duties under the statutory CRC process, it was in the interests of the public to ensure the information was not disclosed and that the

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201101229.aspx>

² <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2015/201501072.aspx>

confidentiality and sensitive nature of the hearing remained private and not open to public disclosure. The Council considered the public would expect the Council to treat this information in a confidential and sensitive manner and that it would not expect it to disclose such information into the public domain.

25. Ms Kimmett told the Commissioner that she did not object to the Minutes being placed in the public domain. While the Commissioner notes that Ms Kimmett had no objection, the test she must consider is where the balance of the public interest lies. The Commissioner considered Ms Kimmett's views that the Minutes should be disclosed to satisfy her and family members and that Ms Kimmett felt that the minutes were needed to enable her (and the family) to assess the accuracy of the Council's summary report of the CRC hearing, but is not persuaded that these views reflect a wider public interest.
26. While sympathising with Ms Kimmett in her desire to access the minutes of the meeting for her own personal and family interests, the Commissioner must make it clear that disclosure under FOISA is disclosure to the world at large and not simply to the person seeking the information. In other words, the information is no longer private to one, or a small group of people, but is public and accessible by anyone.
27. The Commissioner has considered carefully the submissions she has received from both the Council and Ms Kimmett. She is satisfied that there are strong reasons why disclosure would not be in the public interest, given the substantial prejudice she has accepted above. She has not, in this case, identified sufficiently compelling arguments why disclosure would be in the public interest.
28. In all the circumstances of this case, therefore, the Commissioner finds that the public interest in withholding the information and maintaining the exemption in section 30(c) of FOISA outweighs the public interest in disclosure.
29. As the Commissioner has concluded that the information in the report is properly withheld under section 30(c) of FOISA, she will not go on to consider the exemptions in section 38(1)(a) and (b) of FOISA (which were also cited by the Council).

Decision

The Commissioner finds that South Ayrshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Kimmett. It was entitled to withhold the information she requested under section 30(c) of FOISA.

Appeal

Should either Ms Kimmitt 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.

Rosemary Agnew
Scottish Information Commissioner

16 September 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.

...

- (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 –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

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