

# Decision Notice



Decision 072/2011 Ms Margaret Ponsonby and the Chief Constable of  
Grampian Police

Job evaluation

Reference No: 201001815  
Decision Date: 6 April 2011

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Ms Margaret Ponsonby requested information pertaining to the job evaluation process from the Chief Constable of Grampian Police (Grampian Police). Grampian Police disclosed some information and withheld the remainder under section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Ms Ponsonby remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Grampian Police had dealt with Ms Ponsonby's request for information in accordance with Part 1 of FOISA, by withholding the requested information under section 38(1)(b) of FOISA. He did not require Grampian Police to take any action.

## Relevant statutory provisions and other sources

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

Data Protection Act 1998 (the DPA) sections 1(1) (definition of "personal data") (Basic interpretative provisions); Part 1 of Schedule 1 (The data protection principles – the first data protection principle) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data – condition 6)

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

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1. On 28 January 2010, Ms Ponsonby emailed the Chief Constable of Grampian Police (Grampian Police) requesting the following:
  - a. the score number for each of the 13 factors and the overall score for her own Job Evaluation (JE)
  - b. the same information as in a. above in respect of all roles which have been evaluated
  - c. a copy of the ranked hierarchy of roles showing the relative position of each role



Ms Ponsonby explained that in response to part c of her request she wished to receive a version of a graph which Grampian Police had previously made available to staff. The version already available showed the distribution of posts (represented by coloured dots) according to their JE score and salary. She indicated that she wanted this to be provided to her in a format where each post number was indicated on the graph with the score shown and the new grade boxes overlaid.

2. Grampian Police responded on 25 February 2010, provided Ms Ponsonby with information about her own post's evaluation (in response to part a of her request) in pursuit of her subject access rights under the DPA.
3. Grampian Police withheld the remaining information sought by parts b and c of Ms Ponsonby's request on the grounds that it was personal data of third parties, disclosure of which would breach the first data protection principle, and so was exempt from disclosure under section 38(1)(b) of FOISA.
4. On 5 March 2010, Ms Ponsonby emailed Grampian Police to request a review of their decision to withhold the information sought by parts b and c of her request. Ms Ponsonby stated that she considered that it was important to disclose the information to demonstrate that the JE process was fair and without bias, and that this consideration outweighed the privacy rights of others.
5. Grampian Police notified Ms Ponsonby of the outcome of their review on 27 March 2010. They upheld their original decision without amendment.
6. Ms Ponsonby wrote to the Commissioner in a letter that was received on 20 September 2010, stating that she was dissatisfied with the outcome of Grampian Police's review in relation to parts b and c of her request and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Ms Ponsonby 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

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8. On 8 October 2010, Grampian Police were notified in writing that an application had been received from Ms Ponsonby and they were asked to provide the Commissioner with copies of the withheld information. Grampian Police responded with the information requested and the case was then allocated to an investigating officer.



9. The investigating officer subsequently contacted Grampian Police on 14 October 2010, giving them with an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Grampian Police were asked to provide background information on the JE scheme and to justify their reliance on section 38(1)(b) of FOISA to withhold the information. Grampian Police responded with their comments and the requested information.
10. The investigating officer and Grampian Police entered into further dialogue regarding the information that was accessible to staff (including Ms Ponsonby) employed by Grampian Police.
11. Ms Ponsonby's submissions were sought and received on her legitimate interest in the withheld information.

## Commissioner's analysis and findings

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12. 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 Ms Ponsonby and Grampian Police and is satisfied that no matter of relevance has been overlooked.

### The withheld information

13. The information under consideration in this case are the evaluation scores for each post in Grampian Police force (the total score, and scores for each of the 13 factors that were evaluated), and information to supplement that already provided within a graph distributed to Grampian Police staff, to reveal which point on that graph represents which post.
14. The graph to which Ms Ponsonby referred was provided to the Commissioner by Grampian Police. The graph plots the evaluation score and salary for the posts evaluated, which are represented by individual coloured dots. The presence of a dot reveals the JE score given to that post and the salary point of the jobholder at the time of the evaluation. Boxes overlaid on the graph indicate the boundaries of the new pay grades (i.e. the evaluation scores to which each grade is applied, and the associated salary band). The position of each dot with respect to these boxes, and its colouring, indicates whether the first salary point following implementation of the new grades would be lower, the same or higher than the jobholder's existing salary point.
15. Grampian Police indicated in their submissions that they could not automatically generate an annotated version of the graph as requested by Ms Ponsonby in part c of her request as the system used did not have this capability. They explained that the only information missing from the graph was the post number and this would have to be manually added.



16. However, the Commissioner is satisfied that Grampian Police holds the information that would reveal which post is represented by each of the dot on the graph. The information requested by Ms Ponsonby (whether it is represented in the form of a graph or another way, such as by providing a table) would effectively indicate for each evaluated post its score and the relevant salary point. It is this information that the Commissioner will consider in what follows.

### **Section 38(1)(b) – Personal information**

17. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), exempts information if it is personal data and if its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles laid down in Schedule 1 to the DPA. This particular exemption is an absolute exemption, so is not subject to the public interest test laid down by section 2(1)(b) of FOISA.
18. In order for a public authority to rely on this exemption, it must show firstly that the information which has been requested is personal data for the purposes of the DPA and secondly that disclosure of the information would contravene at least one of the data protection principles laid down in the DPA.
19. Grampian Police considered that the withheld information was the personal data of individual employees within Grampian Police as defined in the DPA. Grampian Police stated that disclosure of this information would contravene the first data protection principle in the DPA, and that the information was therefore exempt from disclosure under section 38(1)(b) of FOISA.

#### *Is the information under consideration personal data?*

20. Personal data is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified from those data, or 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 definition is set out in full in Appendix 1).
21. Within *Decision 032/2009 Mr Paul Bradley and West Lothian Council* the Commissioner has noted that the JE process is clearly intended to evaluate posts rather than the individuals who hold these posts; he is aware that the evaluation process is informed by evidence supplied in interviews with post-holders, and that it reflects the experience and activities of actual post-holders. In the circumstances, the Commissioner considers that the JE score, although relating to the post concerned, can also be seen to relate to the holder(s) of that post, by providing details of the nature of the work their role involves.
22. Furthermore, given the information that Grampian Police has already made generally available to its staff, the information under consideration in this decision would also allow the salary of the interviewed post holders to be determined via reference to the graph described above. Grampian Police have explained that the data in the graph in each case represents a post, but will represent an individual where there is a single post-holder, or just one post-holder at a particular pay level.



23. In the circumstances, the Commissioner is satisfied that the withheld information relates to the employees whose posts have been evaluated, and that these individuals can be identified from the information withheld, along with other information in the possession of Grampian Police.
24. The Commissioner has therefore concluded that all of the information withheld from Ms Ponsonby is personal data. However, FOISA does not exempt information from release simply because it is the personal data of a third party. Personal data is exempt from release under section 38(1)(b) of FOISA (read in conjunction with section 38(2)(a)(i) or (b)) only if the disclosure of the information to a member of the public otherwise than under FOISA would contravene any of the data protection principles contained in the DPA.
25. The Commissioner must now go on to consider whether disclosure would breach any of the data protection principles contained in Schedule 1 to the DPA. As noted above, Grampian Police argued that disclosure would breach the first data protection principle.

*Would disclosure breach the first data protection principle?*

26. The first data protection principle requires that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met. The processing under consideration in this case is disclosure into the public domain in response to Ms Ponsonby's information request.
27. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA and is satisfied that the personal data in this case does not fall into any of the relevant categories. It is therefore not necessary to consider the conditions in Schedule 3 in this case.
28. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. For example, if there is a specific condition in Schedule 2 which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
29. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, he must then consider whether the disclosure of this personal data would be fair and lawful.

*Can any of the conditions in Schedule 2 to the DPA be met?*

30. Condition 1 of Schedule 2 permits data to be processed (in effect disclosed) if consent was granted by the data subject. Grampian Police informed the Commissioner that they had concluded that it was not feasible to consult with all of the relevant post holders to seek their consent to disclosure of the withheld information within the timescale for response allowed by FOISA.



31. In the absence of consent to disclosure, Condition 1 cannot be met in this case, and consequently the only condition which would permit disclosure to Ms Ponsonby is Condition 6.
32. Condition 6 allows personal data to be processed if the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject(s) (the individuals to whom the data relate).
33. There are a number of tests which must be considered before condition 6(1) can apply:
  - Does Ms Ponsonby have a legitimate interest in having this personal data?
  - If so, is the disclosure necessary to achieve those legitimate aims? (In other words, is disclosure proportionate as a means and fairly balanced as to ends or could these legitimate aims be achieved by means which interfere less with the privacy of the data subjects?)
  - Even if disclosure is necessary for the legitimate purposes of the applicant, would disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects? This will involve a balancing exercise between the legitimate interests of Ms Ponsonby and those of the data subjects. Only if the legitimate interests of Ms Ponsonby outweigh those of the data subjects can the personal data be disclosed.

*Does Ms Ponsonby have a legitimate interest?*

34. Ms Ponsonby stated that her legitimate interest in the withheld information was to ensure that staff can have confidence in Grampian Police's job evaluation process. She indicated that she wanted to assess whether the process was conducted fairly; to determine whether other roles had been given inflated responsibilities and to inform an appeal in relation to her own post.
35. She indicated that in order to make such an assessment, it was necessary to assess the scores given in relation to the job evaluation overviews already made available by Grampian Police to its staff.
36. The Commissioner is satisfied that Ms Ponsonby has a legitimate interest in seeking the information under consideration for the purposes of more fully understanding Grampian Police's job evaluation process and its outcome.

*Is disclosure of the personal data necessary for Ms Ponsonby's legitimate interests?*

37. The Commissioner must now consider whether disclosure is necessary for those legitimate interests, and in doing so he must consider whether these interests might reasonably be met by any alternative means.



38. Grampian Police accepted that Ms Ponsonby has a legitimate interest in the withheld information, but considered that disclosure of the withheld information would not fulfil this interest. It explained that answers to questions which were used to score job factors have been made available, and indicated that this would provide a more accurate reflection whether job factors have been assessed fairly than the factor score itself, as a number of answers can generate the same score. In addition, Grampian Police advised that factor score or the overall scores of other posts is not a valid ground of appeal.
39. The Commissioner has noted these points when considering whether disclosure of the withheld information is necessary for the purposes of Ms Ponsonby's legitimate interests. However, the Commissioner considers that access to the withheld information would further Ms Ponsonby's legitimate interests, by allowing her to consider the scoring awarded in relation to each factor alongside the other information available about the evaluation of each post, in order to assess whether she considered the scoring awarded and the overall evaluation was fair and accurate.
40. While an appeal might not be made in relation to the scoring of a particular post, such an analysis could still assist a person in understanding the evaluation process more fully, establishing whether they considered the process to be fairly undertaken, and assessing whether they wished to challenge the evaluation of their own post in the light of this assessment. The Commissioner therefore disagrees with Grampian Police, and concludes that disclosure of the withheld information would assist Ms Ponsonby in pursuing her legitimate interests, and further, that she cannot fully pursue these without access to the withheld information.
41. The Commissioner cannot identify any other viable means of meeting Ms Ponsonby's legitimate interests which would interfere less with the privacy of the data subjects than by obtaining the information withheld. Therefore, he is satisfied that disclosure of the information is necessary for the purposes of the legitimate interest identified by Ms Ponsonby.

*Would disclosure cause unwarranted prejudice to the legitimate interests of the data subjects?*

42. The Commissioner must now consider whether disclosure of the withheld information, which is personal data, would cause unwarranted prejudice to the rights, freedoms and legitimate interests of the data subjects. As noted above, this involves a balancing exercise between the legitimate interests of Ms Ponsonby and those of the data subjects. Only if the legitimate interests of Ms Ponsonby outweigh those of the data subjects can the information be disclosed without breaching the first data protection principle.
43. Grampian Police's comments highlighted that they publish salary scales, but highlighted that the withheld information would reveal the actual salary point of individual job holders. It maintained that such information is private, since the actual salary point achieved by any individual will depend on their length of service and experience accrued prior to recruitment to that post. They maintained that these features are individual to a post-holder rather than specific to a post, while disclosure of the information would allow the actual take home pay of individuals to be assessed with some accuracy.



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and the Chief Constable of Grampian Police



44. Grampian Police also made reference to the guidance<sup>1</sup> issued by the Information Commissioner, who has responsibility for oversight of the DPA, entitled “Public Sector Salaries: how and when to disclose” (the ICO guidance), highlighting in particular that this states that “only in exceptional circumstances is disclosure of exact pay likely to be justified” and “it will nearly always be unfair to disclose the exact salaries of junior employees”. Grampian Police concluded that the scale of intrusion caused by disclosure would be unwarranted in this case.
45. Ms Ponsonby maintained that the legitimate interest in seeing that the job evaluation scheme has been fairly applied outweighs any risk of individual employees by their current or proposed salary information being disclosed. She commented that, in any event, there is enough information available about salaries associated with posts to allow these to be deduced.
46. The Commissioner's guidance on the exemptions in section 38 identifies a number of factors which should be taken into account in carrying out this balancing exercise. These include:
- whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances);
  - the potential harm or distress that may be caused by the disclosure;
  - whether the individual has objected to the disclosure;
  - the reasonable expectations of the individual as to whether the information would be disclosed.
47. In considering this matter, the Commissioner has also had regard to the ICO guidance. This guidance indicates that those who are paid from the public purse should expect some information about their salaries to be made public. However, the guidance also acknowledges that salary information relates to personal financial circumstances and deserves some protection.
48. The guidance indicates that there will always be some legitimate interest in knowing how public money is spent, how public sector salaries compare with those in other areas and how money is distributed between different levels of staff. However, it makes clear that this legitimate interest can often be met via routine disclosure of salary bands, and without individuals' salary information being disclosed.
49. The Commissioner recognises that the information that Grampian Police has already made available to its staff means that disclosure of either of the types of information requested by Ms Ponsonby (i.e. either the job evaluation scores associated with each post, or information revealing which post is represented by which dot on its graph) would allow the actual salary of one or more individuals holding that post to be easily established from the graph described in paragraph 14 above. Furthermore, the positioning and colour of the dot used to represent each post indicates also whether the post-holder can be expected to see a salary increase, decrease, or no change as a result of the changes prompted by the job evaluation process.

<sup>1</sup> [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/salary\\_disclosure.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/salary_disclosure.pdf)

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50. The Commissioner acknowledges the point made by Ms Ponsonby that, with knowledge of Grampian Police's pay scales and the length of service of particular staff, it may be possible to deduce with some accuracy the salary point at which they are employed. However, such educated guesswork would be just that. Disclosure of information in response to Ms Ponsonby's information request would confirm and make publicly available the salary details concerned, and also provide some indication of whether and the extent to which, and in which direction the post-holders' salaries are likely to change in the near future.
51. Therefore, having taken account of the submissions of both parties along with relevant decisions and guidance, overall the Commissioner accepts the arguments made by Grampian Police as to intrusion into the privacy of the individual post-holders. He considers that disclosure of the withheld information would reveal salary details of a type that most individuals would expect to remain private. The staff concerned are not employed at a level of seniority within Grampian Police where disclosure of actual salary would be expected or appropriate. While the Commissioner recognises that Ms Ponsonby has a substantial legitimate interest in understanding the job evaluation process conducted by Grampian Police, he does not consider that this legitimate interest is sufficient to outweigh the significant intrusion into the lives and financial affairs of the individuals concerned.
52. Therefore, on balance the Commissioner concludes that disclosure of the information requested would in this case be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the employee. He must therefore conclude that condition 6 is not met.
53. Accordingly, having accepted that disclosure of the information requested would lead to unwarranted intrusion into the privacy of the employee, the Commissioner must also conclude that disclosure would be unfair. As condition 6 is not met, he would also regard disclosure as unlawful. In all the circumstances, therefore, the Commissioner's conclusion is that the first data protection principle would be breached by disclosure and therefore that the information requested by Ms Ponsonby was properly withheld under section 38(1)(b) of FOISA.

## DECISION

The Commissioner finds that the Chief Constable of Grampian Police complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms Margaret Ponsonby by withholding the requested information under section 38(1)(b).



## Appeal

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Should either Ms Ponsonby or Grampian Police 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**  
**6 April 2011**



## Appendix

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### 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 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 –

...

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

...

- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

##### 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;

...



## 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;

...

### Schedule 1 – The data protection principles

#### Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...

#### Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.