

Decision Notice



Decision 202/2011 Ms Geraldine Bell and Glasgow City Council

Information relating to an accident

Reference No: 201101230
Decision Date: 5 October 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

Ms Geraldine Bell requested from Glasgow City Council (the Council) information relating to an accident. The Council advised Ms Bell that it did not hold the requested information. Following a review, in which the Council advised that it did hold some information but it was exempt under section 38(1)(b) of Freedom of Information (Scotland) Act 2002 (FOISA) and the remaining information was not held by the Council, Ms Bell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, in which the Council advised that it was now applying the exemption in section 38(1)(a) to withhold the requested information as opposed to section 38(1)(b), the Commissioner found that the Council had dealt with Ms Bell's request for information in accordance with Part 1 of FOISA. He found the Council was entitled to withhold the information under consideration on the grounds that it was exempt from disclosure under section 38(1)(a) of FOISA and that no information was held in relation to other parts of Ms Bell's request. 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), (4) and (6) (General entitlement); 2(1)(a) and 2(e)(i) (Effect of exemptions); 17(1) (Notice that information is not held) and 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 3 February 2011, solicitors acting on behalf of Ms Bell wrote to the Council requesting the following information in relation to Ms Bell's accident:
 - Relevant extracts from the accident book, accident report, RIDDOR forms, witness statements, risk assessments, CCTV footage or any other relevant evidence.



- Ms Bell's wage slips from March 2010 to date.
 - Copies of risk assessments and any complaints in relation to/about the accident location made in the past 5 years.
2. Subsequent references to correspondence from and to Ms Bell should be read as including correspondence sent from and to her solicitors on her behalf.
 3. The Council responded on 11 March 2011. In response to Ms Bell's request for risk assessments and complaints, it advised that it did not hold this information, but it may be held by the company who employed the janitor of the school where she had her accident.
 4. On 24 March 2011, Ms Bell wrote to the Council requesting a review of its decision. In particular, Ms Bell commented that the janitor at the school was not responsible for risk assessments. She noted this was a responsibility of the local authority and that the documents should be held by the Council or the head teacher. Ms Bell requested that the Council provided a review response in relation to her request for copies of risk assessments and complaints about the accident location made in the past five years.
 5. The Council notified Ms Bell of the outcome of its review on 1 June 2011. The Council advised, in relation to Ms Bell's request for extracts from the accident book, accident report and wages information, that this information was being withheld under section 38(1)(b) of FOISA. However, the Council noted that the information relevant to Ms Bell could be disclosed under the Data Protection Act 1998 (DPA) following receipt of a signed mandate form (which was enclosed). With regard to the request for RIDDOR forms, risk assessments, CCTV and witness statements the Council advised that it did not hold this information and it was not held by anyone else on behalf of the Council.
 6. On 6 July 2011, Ms Bell wrote to the Commissioner, stating that she 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.
 7. The application was validated by establishing that Ms Bell 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

8. On 18 July 2011, the Council was notified in writing that an application had been received from Ms Bell and was asked to provide the Commissioner with any information withheld from her. The Council responded with the information requested and the case was then allocated to an investigating officer.



9. The investigating officer contacted Ms Bell to clarify the scope of the matters to be investigated by the Commissioner. In response, Ms Bell confirmed that she would seek her wage information outwith FOISA and via a subject access request under the DPA, but still required the Commissioner to come to a decision as to whether the extracts of the accident book and report could be disclosed under FOISA. Ms Bell also requested that the decision should include a consideration as to whether the Council held details of complaints about the accident location.
10. 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.
11. The Council responded and confirmed it was applying the exemption in section 38(1)(a) of FOISA as opposed to 38(1)(b) of FOISA to withhold the accident book and report. It explained that the third parties whose information was contained within the accident book and report had consented to disclosure of their information, so the Council now solely considered the withheld information to be Ms Bell's personal information and accessible to her via a subject access request under the DPA. In addition, the Council provided submissions to support its conclusion that it did not hold any information regarding complaints about the accident location.
12. A summary of the Council's submissions was provided to Ms Bell and she was asked by the investigating officer whether she wanted to continue with her application to the Commissioner. Ms Bell confirmed that she still required a decision from the Commissioner.
13. The arguments presented by both parties will be considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

14. 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 Bell and the Council and is satisfied that no matter of relevance has been overlooked.

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

15. 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.



16. This exemption exists under FOISA because individuals have a separate right to 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.
17. 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).
18. Ms Bell's request clearly concerns matters in which she was directly involved, and relates to her specifically. The Commissioner is satisfied that the information withheld from Ms Bell relates to her as an individual and that she can be identified from this data.
19. The Commissioner has therefore concluded that the information withheld by the Council is Ms Bell's personal data. He therefore finds that the Council was correct in its application of section 38(1)(a) of FOISA to this information.
20. 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

21. 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.
22. In order to determine whether the Council dealt with Ms Bell's request correctly, the Commissioner must be satisfied as to whether, at the time it received Ms Bell's request, the Council held any information which would fall within the scope of that request.
23. The Council advised Ms Bell in its review response that complaints regarding the accident location were not held by the Council or by any other party on its behalf. During the investigation, the Council provided further commentary to support its conclusion that this information was not held.
24. The Council advised that it had conducted thorough and detailed searches for information pertaining to any complaints regarding the accident location, but the only information it held was in relation to repairs.



25. The Council explained that, although anyone could report a fault about the building to the Council's central repair centre, it was usually the janitor who reported such faults. These faults were logged in the Council's repair system and then actioned. The Council advised that the only record retained regarding faults were the repair details. The Council provided copies of these repair records.
26. Having considered Ms Bell's request and the submissions provided by the Council, the Commissioner's accepts, on balance of probabilities, that the Council does not hold any information regarding complaints about the accident location. The Commissioner therefore finds that the Council acted in accordance with Part 1 of FOISA by giving Ms Bell notice in terms of section 17 of FOISA that it did not hold this information.

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 Ms Bell.

Appeal

Should either Ms Bell 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
5 October 2011



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.
- ...
- (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.
- ...
- (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
- ...



17 Notice that information is not held

(1) Where-

(a) a Scottish public authority receives a request which would require it either-

(i) to comply with section 1(1); or

(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

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;

...