

Decision 032/2006 Miss Fiona McLay and Aberdeenshire Council

Request for copy of job weighting by grading panel and job evaluation parameters

**Applicant: Miss Fiona McLay
Authority: Aberdeenshire Council
Case No: 200502123
Decision Date: 27 February 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 032/2006 – Miss Fiona McLay and Aberdeenshire Council

Request for panel summary results for job and employment grading parameters – information withheld under section 30(c)(effective conduct of public affairs)

Facts

Miss McLay requested a copy of the weighting details of the grading of her post. Aberdeenshire Council refused this request, citing section 30(c) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Outcome

The Commissioner found that Aberdeenshire Council had not justified the withholding of the requested information under section 30(c) of FOISA and therefore had not dealt with the request in accordance with section 1(1) of FOISA. Aberdeenshire Council was required to provide Miss McLay with a copy of her regrading panel review and the scale parameters indicating the salary grades.

The Commissioner also found that the Council failed to comply with the requirements of Part 1 of FOISA in not responding to Miss McLay's request for information within the period of 20 working days stipulated by section 10(1),

Appeal

Should either Aberdeenshire Council or Miss McLay 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 of receipt of this notice.



Background

1. On 23 February 2005, Miss McLay requested by e-mail from the Personnel and ICT Department of Aberdeenshire Council (the Council) the weighting details of the grading of her post (as Burial Clerk).
2. The Council responded firstly (10 March 2005) by referring Miss McLay to the Conditions of Service Handbook and then (having been advised by Miss McLay that the response did not meet her requirements) sought clarification (16 March 2005) of her request. Miss McLay clarified her request by e-mail (17 March 2005), referring to the assessment of the post by the evaluation panel and subsequent evaluation against set criteria.
3. The Council responded in writing (9 May 2005) confirming that it held the requested information, but refused to disclose it on the basis of section 30(c) of the Freedom of Information (Scotland) Act 2002 (i.e. that disclosure would prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs).
4. On 18 May 2005 Miss McLay requested by e-mail a review by Aberdeenshire Council of its refusal to disclose the weighting details.
5. On 2 June 2005 the FOI Review Panel of the Council upheld the Council's decision not to disclose the information on the ground that disclosure would prejudice substantially the effective conduct of public affairs. This review decision was communicated by letter (15 June 2005) to the applicant.
6. On 24 June 2005 Miss McLay applied to me for a decision as to whether the Council had dealt with her information request in accordance with Part 1 of FOISA. She requested review of Aberdeenshire Council's withholding of the weighting details for her job.
7. The case was allocated to an investigating officer.

The Investigation

8. Miss McLay's appeal was validated by establishing that she had made a valid information request to a Scottish public authority and had appealed to me only after asking the public authority to review its response to her request.



9. My investigating officer then contacted the Council for its comments on the application and for further information in relation to this case, in particular the information requested by Miss McLay. The Council responded on 18 July 2005, providing:
- The Panel Results Summary Sheet for the post of Burial Clerk
 - J A Points and Scale Parameters information
 - Appendix G of A. P.T. & C. Conditions of Service Handbook
 - Job description for the post of Burial Clerk
 - Aberdeenshire Council Procedures for Internal Review
 - Minute of the meeting of the Review Panel (on 2 June 2005)
 - Comments on the reasoning behind the Council's application of section 30(c) of FOISA, including the public interest test
 - Copies of e-mails on the consideration by the Council of the applicant's request

Subsequently, it provided a copy of the "Guidance for Evaluation Panels: Supervisory and Managerial Responsibility" (also part of the Conditions of Service Handbook referred to above).

The following information fell within the scope of Miss McLay's request:

- The Panel Results summary for her post (Document 1)
 - The J A Points and Scale Parameters (Document 2)
10. Regrading is the process whereby a local authority reviews the appropriate relative salary grade for a post with reference to certain objective factors, following guidance contained in the relevant national conditions of service. In Aberdeenshire Council's case, an evaluation panel generally comprises three officers. Prior to a panel being convened, each of the three panellists is provided with the agreed job description and analysis form for the post to be evaluated. The job description and analysis form (which provides for analysis of performance requirements against each of nine relevant factors) are prepared by a Management Services Officer in conjunction with the jobholder. The analysis form is seen by the job holder and their line manager, both of whom can comment on it before it is submitted to the evaluation panel. Each panellist assesses the information in these documents against the factor-level descriptors contained within the job evaluation scheme used by the Council. For each factor, the panellist will identify what they consider to be the most relevant factor-level and enter onto their score sheet along with a brief explanation as to their reasoning.



11. When the panel is convened the panellists will identify the levels they have allocated to each of the nine factors and this information will be entered onto the panel results summary sheet (Document 1). Where there are differences in the levels identified, the panellists will discuss how they arrived at their initial assessment and reach consensus on the appropriate level. If necessary, the panellists may require further information to be provided by the officer who prepared the documentation or for clarification to be sought from the jobholder or their line manager.

Submissions from the Council

12. The Council contended that disclosure of the information would jeopardise the integrity of the job grading process and prevent accurate and fair grading of posts. It contended that employees would be able to enhance responsibilities and attain an inflated score in the job evaluation process and consequently the Council's pay structure and overall salary bill would be distorted. The Council stated that the potential consequent increased cost could not be quantified, but that detriment to the public would undoubtedly follow by way of either a reduction in services offered or an increase in Council tax.
13. The Council was asked to explain how an employee could inflate their salary. It stated that currently employees have access to the points scoring matrix and factor-level descriptors (both contained within Appendix G of the national conditions of service for APT&C employees and incorporated by the Council within its local procedure). If employees had access to the panel results summary sheet for their job they would be able to ascertain the levels and points allocated to each of the nine factors. The summary sheet would identify the total number of points allocated to the job and what this converted to in respect of a salary grade. By using the points and scale parameters table, the applicant could determine the additional points required for their job to attract a higher salary grade. With this information, an employee could attempt to enhance the duties and responsibilities specified within their job description to a level that would attract the additional points needed. The factor-level descriptors would provide a general guide as to what enhancements would be required in order for the job to be assessed at a higher level and thus attract additional points. The Council's job evaluation process is dependent on input from the employee in terms of the drafting of a job description, the content of which is agreed with the employee and their line manager. The agreed job description is then used as the basis of the evaluation.
14. The Council stated that information of the kind requested had never been given to employees in the past because an employee could not appeal against regrading using the information in the panel results summary and therefore the information was not relevant for those purposes.



Submissions for the applicant

15. Miss McLay submitted that her job description had been formally agreed with her manager and access to either Document 1 or 2 would not allow her to alter it. She also stated that her job was acknowledged to be unique and would not be one that would allow comparison with other Council posts.

Further enquiries

16. The investigating officer contacted a sample of Scottish councils to assess whether there was a common view on regrading (and in particular disclosure of information of the kind requested). The majority of councils contacted indicated that they did not divulge points in relation to regrading, but some said that they would divulge points on appeal (and others indicated that they may do so in the future). Most councils, however, did not use the job evaluation scheme used by the Council in this case and commented that it was for each council to decide on the content of their own job evaluation scheme.

The Commissioner's Analysis and Findings

Application of section 30(c)

17. Section 30(c) of the Act exempts from disclosure information which would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. In this instance the effective conduct of public affairs has been identified by Aberdeenshire Council as relating to the employment structure for assessing and rewarding staff in public employ. This is a qualified exemption and therefore consideration has to be given to the application of the public interest test.
18. The Council stated that an employee could not appeal against regrading using the information in the panel results summary and therefore Miss McLay could not use the information in the way in which she wanted. However, an applicant does not need to justify their request for information, but instead only ask that the information be supplied. The fact that the applicant could not use the information for the purpose which they intended (i.e. in an appeal against job evaluation) is not a valid reason to withhold the information.



19. The most important document in this process, it appears, is the job description. If this accurately reflects what an employee does there is no opportunity artificially or accidentally to inflate or diminish an employee's scale. The job description will specify the responsibilities of the post holder. It requires to be agreed with the employee's line manager. It is in the interests of the Council that this is accurate, irrespective of the information the employee has access to. It should not matter whether the employee has access to the scale parameters or the scoring sheet. Good practice would expect awareness of what the employee does and managers should not be susceptible to attempts to inflate the figures. In any event, it would seem that even without the summary sheet or the scale parameters, an employee who wishes to inflate their salary will have, with even a basic working knowledge of the job and the employment situation more generally, an awareness of what they would need to add. If the Council has concerns regarding grading inflation then it seems to me that it is well placed as the employer to ensure that its systems are not susceptible to such manipulation. The main factor to ensure an accurate salary is an accurate agreed job description from which the panellists will work.
20. In essence, access to the scale parameters and the panel summary will tell an employee in quantitative terms how their post falls within their salary grade. A consequence will be that they will know how many points they are assessed as being from the minimum and maximum for their grade. At present, an employee does not know if their job is assessed as being at the lower or higher end of their grade.
21. In my view it is important for public authorities to treat each request for information on a case by case basis. Release of information in one case should not be taken to imply that such communications will be "routinely" released in future. The circumstances of each case must be taken into consideration and the public interest in each case assessed on its own merits. The Council cannot maintain that it has good reason not to disclose information in this instance simply because it would encourage other employees to ask for similar information, or that it would encourage other employees to appeal against their grading. Even if this were the case, some employees might be dissuaded from appealing if they found they were assessed to be at the lower end of a salary grade.



22. Authorities seeking to rely on the exemption in section 30(c) will need to show that disclosure will substantially prejudice the interests contained in the exemption. There is no definition of "substantial prejudice" in the Act, but my view is that in order to claim this exemption, the damage caused by disclosing information would have to be real or very likely, not hypothetical. The harm caused must be significant, not marginal, and it would have to occur in the near future not in some distant time. Authorities should therefore consider disclosing the information asked for unless it would cause real, actual and significant harm. The Council has not shown that there is a real likelihood of damage to public affairs by the disclosure of this information, but has simply argued that employees may attempt to inflate their grade, which poses a potential threat to the integrity of the grading system, and which in turn may have an impact upon the public purse. This is a hypothetical turn of events which relies on a presumption that many of the Council's employees would attempt to inflate their grade. The Council has not – and could not – assess the number of employees that would attempt this, their likelihood of success, or their probability of success. Certainly, it has produced no evidence to suggest that such attempts are prevalent already, in the absence of access to such information.
23. It is my finding that the Council has not shown that there will be a substantial prejudice to the effective conduct of public affairs by releasing these documents to the applicant.
24. Miss McLay did not express dissatisfaction with the way with which her request was dealt with by the Council, but asked me to review the withholding of her requested information. However I should note that although the Council contacted the applicant at all occasions, it did not meet the statutory time limit of 20 working days in dealing with the initial request. Accordingly, the Council failed to comply with the requirements of Part 1 of FOISA in not responding to Miss McLay's request for information within the period of 20 working days stipulated by section 10(1),

Decision

I find that Aberdeenshire Council failed to comply with the requirements of Part 1 of FOISA in not responding to Miss McLay's request for information within the period of 20 working days stipulated by section 10(1),

I find that Aberdeenshire Council has not dealt with the request from Miss McLay in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA),



in that it applied the exemption in section 30(c) of FOISA incorrectly to the information requested and therefore did not deal with the request in accordance with section 1(1) of FOISA.

I require Aberdeenshire Council within 45 days of the date of receipt of this decision notice to release the following information as detailed in paragraph 9 above

- The Panel Results summary for her post
- The J A Points and Scale Parameters

Kevin Dunion
Scottish Information Commissioner
27 February 2006