

Decision Notice 079/2022

Reports on decision not to open Drumchapel and Netherton Community Centres

Applicant: The Applicant

Public authority: Culture and Sport Glasgow

Case Ref: 202100994



Scottish Information
Commissioner

Summary

Glasgow Life was asked for reports on the decision not to open Drumchapel and Netherton Community Centres. Glasgow Life disclosed some information, and withheld other information on the basis that it was exempt from disclosure. Glasgow Life subsequently disclosed the remaining information. The Applicant believed Glasgow Life held further information. The Commissioner investigated. He was satisfied that Glasgow Life had identified all relevant information falling within the scope of the request, but found that it should have disclosed the information in full at an earlier date.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(c) (Prejudice to effective conduct of public affairs); 47(1) and (2) (Application for decision by Commissioner)

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 24 May 2021, the Applicant made a request for information to Culture and Sport Glasgow (Glasgow Life). He asked for all reports relating to the decision not to open Drumchapel and Netherton Community Centres.
2. Glasgow Life responded on 22 June 2021. It confirmed it held information falling within the scope of the Applicant's request, but refused to disclose this on the basis that it was exempt from disclosure under section 25(1) (Information otherwise accessible), section 30(c) (Prejudice to effective conduct of public affairs) and section 38(1)(b) (Personal information) of FOISA, with explanation as to why it considered these exemptions applied. It provided the Applicant with a [link](#)¹ to its website where information on both community centres was available.
3. In its response, Glasgow Life explained that all Glasgow Life venues had to close in 2020 as a result of the Coronavirus and associated legislation. As part of Glasgow City Council's (the Council's) 2021/22 budget, the decision was made to reopen over 90 venues managed by Glasgow Life as restrictions allowed, however this did not include Drumchapel and Netherton Community Centres. Additional funding would be required to enable Glasgow Life to open more venues.
4. Glasgow Life explained that it managed community centres on behalf of the Council, and the Council was responsible for any decision made to permanently close any community centres. While the Council had not taken any decision as to when some community centres may reopen, it had made no decision regarding the permanent closure of venues.
5. On 24 June 2021, the Applicant wrote to Glasgow Life requesting a review of its decision on a number of grounds:

¹ <https://www.glasgowlife.org.uk/media/7320/20210422-venues-not-yet-scheduled-for-reopening-final-refer-to-this.pdf>

- (i) The general statement about no decision having been made to reopen certain centres or close them permanently, missed the point of his request. He argued that the absence of a decision to reopen created a decision to keep them closed. He asked Glasgow Life for sight of the reports that recommended which centres should open and which should remain closed as he believed this should have been clear when considering his request.
 - (ii) The information available via the link provided in Glasgow Life's response did not answer his request and he had not asked for that information.
 - (iii) He disagreed with the exemptions applied, arguing that:
 - Glasgow Life had not considered redacting certain personal data (as opposed to a blanket refusal). While he had no objection to redacting the names of junior staff or individuals not connected to Glasgow Life, he saw no reason to withhold the names of senior Glasgow Life staff or Board members, as these were already in the public domain.
 - He was seeking to establish whether "public affairs" were being conducted properly in relation to the use of public funds and the closure of publicly-owned buildings with serious consequences for the delivery of public services. In his view, it was in the public interest to know what criteria had been applied in deciding to reopen some, but not other, facilities, in order to ascertain that an objective and consistent approach had been adopted in taking such decisions.
 - The information available via the link provided was not specific to these two venues, rather it was a general high level city-wide report which did not address his request. He did not accept that any of the information he had requested was publicly available.
6. Glasgow Life notified the Applicant of the outcome of its review on 22 July 2021, modifying its original decision and disclosing some information, originally withheld, which it no longer considered to be exempt from disclosure. Glasgow Life apologised for not initially releasing this information. For the remaining information:
 - (i) Glasgow Life maintained reliance on section 30(c) of FOISA, explaining that one of the reports was an internal planning document prepared for the purpose of discussion and debate as to future options for venues. This document was subject to multiple and regular changes and disclosure, at that time, would significantly prejudice Glasgow Life's ability to plan for services without inhibition.
 - (ii) Glasgow Life explained that the personal data withheld comprised the names of staff and third party individuals or organisations who had lodged an interest in the two venues through the People Make Glasgow Communities Scheme. It noted the Applicant did not consider this information relevant to his request and confirmed it was not maintaining the exemption in section 38(1)(b).
 - (iii) For the publicly available information, Glasgow Life confirmed that, as this did not contain information recommending which centres should open and which should remain closed, it was not maintaining the exemption in section 25(1).
7. Under the duty to advise and assist (in section 15(1) of FOISA), Glasgow Life explained that, in March 2020, it was instructed to close all community centres due to the pandemic. During 2020, either at the request of or in agreement with the Council, it reopened those community

centres hosting third sector childcare organisations or adult day care provision, plus one which was reopened as part of the city's emergency plans for food distribution. It confirmed there was no approval or budget to reopen the remaining community centres.

8. Glasgow Life further confirmed that the decision on reopening of community centres was made by the Council as part of its budget decision, and no community centre had reopened through a decision taken solely by Glasgow Life. Further funding would be required to reopen those currently closed, including Drumchapel and Netherton Community Centres.
9. On 10 August 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of Glasgow Life's review because:
 - (i) The information disclosed did not cover all the information he had requested, namely "all reports relating to the decision not to open Drumchapel and Netherton Community Centres".
 - (ii) He was unclear as to how, when and why third sector childcare organisations, adult care provision and emergency plans for food distribution were identified as the only priorities for the decisions to reopen certain venues. He believed Glasgow Life held further reports which had not been made available, and which contained more detail of the rationale for determining these priorities. In his view, these reports were directly relevant to his request as they had caused the ongoing closure of the two venues in question which also housed essential services.
 - (iii) He disagreed that the exemption in section 30(c) of FOISA applied. In order to allow any meaningful public consultation on these closures, he believed the information should be made public in order to facilitate transparency and accountability of decisions taken. Further, Glasgow Life's reference to "one of the reports" implied there were more, but no details of other reports had been provided or any justification for withholding them.
 - (iv) While he agreed he was not seeking the personal details of third parties or junior Glasgow Life staff, his suggestion regarding redaction had been ignored, and no reports had been disclosed as a result of Glasgow Life withdrawing the exemption in section 38(1)(b).
 - (v) The information disclosed at review contained only a passing reference to the two community centres, and he remained unclear how the decision on the criteria about which centres to open or keep closed was arrived at, by whom and when. He believed there were other reports which had not been made available which were relevant to his request.

Investigation

10. The application was accepted as valid. The Commissioner confirmed that the Applicant had made a request for information to a Scottish public authority and had asked the authority to review its response to that request before applying to him for a decision.
11. On 15 September 2021, Glasgow Life was notified in writing that the Applicant had made a valid application. Glasgow Life was asked to send the Commissioner the information withheld from the Applicant.

12. On 29 September 2021, Glasgow Life provided the Commissioner with the withheld information. In doing so, Glasgow Life stated it had changed its position and had decided to disclose the previously withheld information to the Applicant. It did so that same day, and extended an offer to meet with the Applicant to discuss the content and context of the information disclosed.
13. In light of Glasgow Life's decision to fully disclose the information, the Applicant was asked whether this satisfied his request. In response, the Applicant confirmed that he remained dissatisfied as only part of a report entitled "Asset Options Paper" dated October 2020 [referred to in this Decision Notice as "Asset Options Stage 3 Report"] had been disclosed.
14. In doing so, the Applicant provided the Commissioner with a copy of an email exchange with Glasgow Life, following its disclosure of the withheld information, in which:
 - (i) he argued that the information disclosed was incomplete: it did not state who sent the Report or whom it went to, it contained no details of recommendations applied in deciding which centres were to be opened or kept closed, or who made or approved these recommendations. He asked Glasgow Life to provide the full unabridged Report or to explain why this was not possible, along with an answer to the other points raised; and
 - (ii) Glasgow Life (in response) confirmed to the Applicant that the extract now provided, along with the information disclosed in its review outcome, comprised all the information held which fell within the scope of the request. It confirmed it held no further relevant information and that it was no longer maintaining reliance on any exemptions to withhold information.
15. The case was subsequently allocated to an investigating officer. In light of Glasgow Life's change of position (i.e. withdrawing reliance on the exemptions claimed and fully disclosing the remaining information previously withheld), the investigating officer asked the Applicant to clarify his reasons of dissatisfaction. In response, the Applicant confirmed that he now remained dissatisfied as:
 - (i) he believed Glasgow Life held further information. Glasgow Life's review outcome referred to "one of the reports" which he believed to be the Asset Options Stage 3 Report, of which he had only been provided with an extract. The only other report he had received was a high level city-wide report which did not focus on the two community centres. Given this, he believed there were other reports in scope which had not been provided; and
 - (ii) he had no way of know whether the information requested (which he now described as the detailed criteria applied in the decisions taken and the reasons for the decision on reopening or closure of the two community centres) was contained in the sections of the Asset Options Stage 3 Report that had not been provided, or in other in-scope documents that had been withheld.
16. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Glasgow Life was invited to comment on this application and to answer specific questions, with particular reference to the searches carried out to identify and locate any further information falling within the scope of the request.
17. Glasgow Life provided submissions to the Commissioner during the investigation. These are considered below.

18. During the investigation, on 5 April 2022, Glasgow Life provided the Applicant with some further information in the Asset Options Stage 3 Report (October 2020) which it considered fell outwith the scope of the Applicant's request but which provided additional background information. Glasgow Life stated this further information was provided to the Applicant by way of advice and assistance.
19. Following receipt of this further information, the Applicant confirmed he remained dissatisfied with Glasgow Life's ongoing failure to provide essential information and asked the Commissioner to issue a decision.

Commissioner's analysis and findings

20. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and Glasgow Life. He is satisfied that no matter of relevance has been overlooked.

Glasgow Life's change of position

21. As set out above, at the start of the Commissioner's investigation, Glasgow Life changed its position in relation to information in the Asset Options Stage 3 Report which it had withheld, at review stage, under the exemption in section 30(c) of FOISA.
22. Glasgow Life disclosed this information to the Applicant on 29 September 2021.
23. In light of this change of position, and in the absence of any submissions persuading him otherwise, the Commissioner has no option but to find that Glasgow Life was not entitled to withhold this information under the exemption in section 30(c) of FOISA.

Whether Glasgow Life held any further information

24. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable here.
25. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold.
26. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
27. The Commissioner has taken account of the arguments in both the Applicant's requirement for review, his application and his subsequent correspondence, in which he provides reasons as to why he considers Glasgow Life should hold further information falling within the scope of his request (as set out previously).

Glasgow Life's submissions

28. In its submissions to the Commissioner, Glasgow Life explained that it managed 24 community facilities on behalf of the Council via a service level agreement to deliver a wide range of services and manage venues, events and programming. Venues were owned by the Council and Glasgow Life staff had authority to make operational and strategic decisions via a formal scheme of delegated authority.
29. Glasgow Life confirmed it held two reports which fell within the scope of the Applicant's request, namely a Report by Director of City Marketing and External Relations to Board Meeting (31 March 2021) and Asset Options Stage 3 Report (October 2020). It explained that these reports were produced to enable the staff, with delegated authority, to consider the range of issues around use, building condition and planned expenditure. Glasgow Life confirmed that it held no further information falling within scope and all relevant information (i.e. the extracts of these reports which fell within scope) had been made available to the Applicant.
30. Addressing the Applicant's contention that further information was held, due to the reference to "one of the reports" in its review outcome, Glasgow Life confirmed that this was a reference to the Asset Options Stage 3 Report, and was the same internal planning document also referred to in the review outcome.
31. In relation to the Applicant's concerns regarding the remainder of the Asset Options Stage 3 Report which had not been disclosed to him, Glasgow Life explained that this Report related to Glasgow Life's recovery planning as COVID-19 lockdown restrictions were relaxed. It presented a variety of options for venues not within immediate recovery planning proposals. The information in that Report which fell within scope of the request (i.e. the decision not to open Drumchapel and Netherton Community Centres) was extracted and disclosed to the Applicant. The remainder referred to the Glasgow Life estate across sports and leisure venues, libraries, museums and arts and cultural venues, and listed options for these that were not relevant to the request.
32. Glasgow Life explained that the Asset Options Stage 3 Report was an internal planning document prepared for the purpose of discussion and debate as to future options for venues, and no decisions had been taken when this Report was prepared. As the Report referred to options proposed by officers, Glasgow Life believed that, if such options were to be disclosed, this would likely cause significant concern and unnecessary challenge from the general public and stakeholders.
33. Addressing any information regarding other priorities which, the Applicant believed, were directly related to his request, Glasgow Life noted the terms of the original request which, it argued, did not seek information on "the reasons how, when and why third sector childcare organisations, adult care provision and the city's emergency plans for food distribution were identified as the only priorities for deciding which community centres should be reopened" or "details of the rationale for these priorities being determined". It maintained that all relevant information, falling within the scope of the request, namely all reports relating to the decision not to open Drumchapel and Netherton Community Centres, had been disclosed.

Searches for relevant information

34. In its initial submissions to the Commissioner, Glasgow Life gave an overview of the email and electronic file searches it had undertaken at the time of responding to the request to identify any information falling within scope, including the search terms used and the individuals involved (who, it explained, were involved in venue planning). At that time,

Glasgow Life had received multiple requests for information about the reopening of venues and these officers, who were regularly involved in relevant searches for information, were therefore confident as to the reports held falling within the scope of the Applicant's request.

35. Glasgow Life confirmed that no further searches had been carried out at review stage, as the review focussed on consideration of the exemptions applied to the Asset Options Stage 3 Report.
36. During the investigation, Glasgow Life provided further explanation and supporting evidence of the searches it had undertaken to identify the information falling within the scope of the request, in support of its position that no further information was held.
37. For the date parameters applied to the searches carried out, Glasgow Life explained that, in March 2020, all Glasgow Life managed community venues closed to the public, with one community centre remaining open to support the city's emergency food distribution plan. In August 2020, the Council instructed Glasgow Life to reopen community centres with third party tenants providing childcare or adult day care. However, all other community centres managed by Glasgow Life remained closed due to budget pressures faced by both organisations as a result of the pandemic. Four community centres (including Drumchapel) were identified by the NHS as suitable testing or vaccination centres, but there was otherwise no public access.
38. As part of its 2021/22 budget process, the Council asked Glasgow Life to consider factors for re-opening nearly 100 venues managed by Glasgow Life. The budget process commenced in December 2020 with the Council making its budget decision in March 2021. Although funding was agreed to reopen additional libraries, sports and cultural venues managed by Glasgow Life (planned to take place during March-May 2021), no budget was aligned to Glasgow Life reopening any community centres.
39. As the decision-making process falling within the scope of the request took place between 1 December 2020-27 May 2021, and no information within the scope of the request existed outwith this timescale, Glasgow Life used these dates as the search parameters.
40. Glasgow Life explained any information falling within the scope of the request was held exclusively on its ICT network and email system. Searches of these had been carried out using the search terms "Drumchapel" and "Netherton" covering the date range 1 December 2020-27 May 2021 in respect of the following individuals:
 - Chief Executive (responsible for all strategic and operational issues within Glasgow Life)
 - Deputy Chief Executive (responsible for deputising for Chief Executive on all strategic and operational issues)
 - Director of Cultural Services (responsible for strategic and operational management of cultural programmes and venues, including public libraries and community venues, including Drumchapel and Netherton)
 - Head of Libraries Communities (responsible for strategic and operational management of public libraries and community venues, including Drumchapel and Netherton)
 - Head of Infrastructure (responsible for strategic and operational maintenance of venues managed by Glasgow Life, including Drumchapel and Netherton)

- Community Engagement Manager (responsible for strategic and operational programmes supporting community involvement in community venues managed by Glasgow Life, including Drumchapel and Netherton)
 - Director of Sport and Events (responsible for strategic and operational sport venues, and programmes and events)
 - Director of Finance (responsible for strategic and operational finance and compliance systems)
41. Glasgow Life confirmed that no other staff were involved in decision-making within the scope of the request and that no information falling within scope existed outwith the timescale applied.
 42. Glasgow Life explained that, as records of the searches carried out at the time of the original response were not systematically recorded for all staff involved, these searches were replicated, where necessary, during the investigation and supporting evidence provided.
 43. Glasgow Life explained that, with one exception (described below), searches were carried out of the email accounts (inbox and sent items) and relevant areas of the ICT network of the above listed individuals. Glasgow Life confirmed that the results of these searches were checked for relevance, however none of the information therein fell within the scope of the request, other than that already disclosed to the Applicant.
 44. For the searches carried out in respect of the Director of Cultural Venues, Glasgow Life confirmed it held no records of these, as this individual had since retired. In line with Glasgow Life's ICT policy, her email account had been closed and her ICT network area archived. Glasgow Life explained that recovery of any of this information would require specialist ICT support. However, it explained that any information falling within the scope of the request would also have been circulated to the other individuals listed above.
 45. In conclusion, Glasgow Life confirmed that it held no further information falling within the scope of the Applicant's request, and that all relevant information had been disclosed.
 46. Noting that the Asset Options Stage 3 Report made reference to two earlier reports, the Investigating Officer asked Glasgow Life whether it considered these (or any parts thereof) fell within the scope of the request. In response, Glasgow Life submitted that these were working draft versions which were revised, culminating in the Asset Options Stage 3 Report (dated 5 October 2020), which was the final report held at the date of the request. Glasgow Life was asked to provide the Commissioner with copies of both draft reports and did so on 30 March 2022.
 47. As referenced above, although it did not consider that the remaining information in the Asset Options Stage 3 Report fell within the scope of the request, Glasgow Life confirmed it was willing to disclose to the Applicant some further extracts from that Report by way of advice and assistance.
 48. Glasgow Life did so on 5 April 2022, confirming to the Applicant that, while this additional information was not considered to fall within the scope of his request, it did provide some background information which, it hoped, would assist him. It explained that the remaining parts of the Report not provided related to Glasgow Life's financial position and the furlough of staff. Glasgow Life confirmed to the Applicant that all relevant information had been disclosed, no relevant information had been withheld, and that this additional information was being provided by way of advice and assistance.

49. Having received this information, the Applicant confirmed to the Commissioner that he remained dissatisfied with what he considered to be Glasgow Life's ongoing failure to provide the essential information in this matter, and that he wished the Commissioner to issue a decision in this case.

The Commissioner's views

50. Having considered all relevant submissions and the terms of the request, the Commissioner considers it is important to bear in mind the information actually sought in the request, which was "reports relating to the decision not to open Drumchapel and Netherpton Community Centres". In the Commissioner's view, the request clearly describes the information being asked for.

51. The Commissioner notes the arguments put forward by the Applicant at various stages of the process that:

- the absence of a decision to reopen centres created a decision to keep them closed, and he was asking for sight of the reports which recommended which venues should open and which should remain closed;
- he remained unclear as to the reasons how, when and why third sector childcare organisations, adult care provision and the city's emergency plans for food distribution were identified as the only priorities for deciding which community centres should be re-opened using the funding available. In this regard, he believed further reports had been submitted which contained more details of the rationale for these priorities being determined which, he argued, were directly relevant to his request as they caused the ongoing closure of the two centres; and
- he remained unclear as to what recommendations were made on the criteria to be applied in deciding which centres to open and which to keep closed, or how the decision on this was taken, by whom and when, which, he believed, was in the public interest. This, he argued, could not be determined from the information disclosed, but was relevant to his request.

52. In the Commissioner's view, it is clear that a number of varying factors will have had to have been taken into account in determining which venues to reopen and when it was appropriate to do so, particularly in light of an ever-evolving situation such as was present at the material times, as a result of ongoing changes to restrictions in place throughout the COVID-19 pandemic.

53. While these could, by association, be taken to be factors considered in any decisions that might have required to have been taken not to reopen the two community centres set out in the Applicant's request, the Commissioner notes that much of what the Applicant is referring to here appears to be additional information not asked for in his original request. Even accepting such information as being relevant to the Applicant's request more generally, its relevance would be a matter of judgement unless specifically recorded as a factor in any decision not to reopen the two venues in question. In light of this, unless specifically recorded in this way, the Commissioner cannot accept that any of the wider issues raised by the Applicant could be considered as falling within the scope of his request.

54. Irrespective of whether or not Glasgow Life might hold other information relating to the wider matters set out in the Applicant's further correspondence, the Commissioner would emphasise that, as this does not fall within the scope of the original request – which is the only information he is obliged to consider in this case – he has no locus to comment on this

further (unless, as described above, it is specifically recorded as a factor in any decisions not to reopen these two particular venues).

55. In terms of the searches carried out to identify any information falling within the scope of the request, the Commissioner is satisfied that, by the end of his investigation, the searches described by Glasgow Life would have been capable of identifying any further information relevant to the request as made by the Applicant on 24 May 2021.
56. The Commissioner has fully considered all of the information identified by Glasgow Life, as referenced above. He is satisfied that the remaining information in the Asset Options Stage 3 Report does not fall within the scope of the Applicant's request, and therefore Glasgow Life was under no obligation to disclose that information in response to the Applicant's request.
57. The Commissioner has also fully examined the information contained in the two earlier versions of the reports provided to him by Glasgow Life during the investigation.
58. Having done so, he is satisfied that none of the information in either of these two earlier draft versions contains any information relating specifically to any decisions taken not to reopen Drumchapel or Netherton Community Centres, which was the information asked for by the Applicant in his request. The first version makes no specific reference whatsoever to either of these community centres, and the second version only includes them in a list of Glasgow Life venues not covered in current or previous papers (in an Appendix to that second draft).
59. The Commissioner is therefore satisfied, on the balance of probabilities, that Glasgow Life does not (and did not, on receipt of the request) hold any further information relating specifically to reports on decisions not to reopen Drumchapel and Netherton Community Centres.
60. However, by failing to disclose some of the information identified as falling within scope until the start of his investigation, the Commissioner finds that Glasgow Life failed to comply with section 1(1) of FOISA.
61. The Commissioner acknowledges, and welcomes, Glasgow Life's decision to provide the Applicant with further background information, by way of advice and assistance, which he accepts did not fall within the scope of the request.

Decision

The Commissioner finds that, in respect of the matters specified in the application (as set out in paragraph 15 above), Culture and Sport Glasgow (Glasgow Life) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that Glasgow Life had identified all relevant information falling within the scope of the Applicant's request, and in doing so, complied with Part 1.

However, the Commissioner also finds that Glasgow Life was not entitled to withhold some of this information, at review stage, under section 30(c) (Prejudice to effective conduct affairs) of FOISA and in doing so, breached Part 1 of FOISA.

By failing to disclose this information to the Applicant until the start of his investigation, the Commissioner finds that Glasgow Life failed to comply with section 1(1) of FOISA.

Given that Glasgow Life has already disclosed all relevant information falling within the scope of the request, the Commissioner does not require Glasgow Life to take any action in respect of this failure in response to the Applicant's application.

Appeal

Should either the Applicant or Culture and Sport Glasgow 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

20 July 2022

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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 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.

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -

- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...

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