



Scottish Information
Commissioner

Decision 022/2005 - Mr T and Glasgow City Council

Refusal to release information relating to Chirnsyde Community Initiative

Applicant: Mr T
Authority: Glasgow City Council
Case No: 200501510
Decision Date: 19 August 2005

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 022/2005 - Mr T and Glasgow City Council

Information relating to Chirnsyde Community Initiative - information held for the purposes of an investigation – section 34(1) – whether release would prejudice substantially the prevention or detection of crime, the apprehension or prosecution of offenders, or the administration of justice – section 35(1) – whether disclosure would constitute an actionable breach of confidence – section 36(2) – whether release would breach any of the data protection principles – section 38(1)(b) – failure to conduct a review under section 21

Facts

Mr T requested a range of information relating to Chirnsyde Community Initiative from Glasgow City Council (the Council). The Council refused the request in full, citing a number of exemptions listed within the Freedom of Information (Scotland) Act 2002 (FOISA). When Mr T requested a review of this decision, the Council failed to conduct a review within the 20 working days allowed by the FOISA. Following an application to the Commissioner, the Council conducted a belated review and amended its original decision in relation to Mr T's request. As a result, most of the information sought by Mr T was provided by the Council. Mr T sought a decision from the Commissioner on whether the Council had breached the provisions of FOISA in its handling of his request and its decision to withhold the outstanding information.

Outcome

The Commissioner found that the Council had failed to comply with the provisions of Part 1 of the Act by failing to conduct an internal review within the timescales required by section 21 of FOISA.

The Commissioner found that although the Council had provided most of the information sought in the course of this investigation, it had insufficient grounds for withholding the remaining information under the exemptions cited. As a result, he found that the Council had failed to comply with section 1(1) of FOISA.

The Commissioner requires the Council to provide Mr T with the information specified below in this decision.



Appeal

Should either the Council or Mr T wish to appeal against the Commissioner's 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. Mr T wrote to the Chief Executive of the Council on 10 February 2005 requesting a range of information relating to Chirnsyde Community Initiative (the Initiative). The Initiative is a community-based organisation that is funded by but is independent of the Council. The Initiative is not a public authority as defined by FOISA and so there is no direct right to access the information it holds.
2. Mr T's request was made in the wider context of his concerns about the Initiative and, in particular, its co-ordinator. He and others have previously raised with the Council allegations against this individual, which had been passed onto Strathclyde Police.
3. Mr T sought the following information:
 - (1) The name of the police officer who stated that Strathclyde Police had no concern about the co-ordinator or his involvement with the Initiative
 - (2) The rank of this police officer
 - (3) The division of this police officer
 - (4) The date on which this information was received by the Council
 - (5) The name of the individual at the Council to whom this information was disclosed
 - (6) When the co-ordinator and/or the Initiative subscribed to Disclosure Scotland checks
 - (7) The level of disclosure check to which the co-ordinator was subject
 - (8) The Constitution of the Initiative
 - (9) The minutes of the Initiative's last AGM
 - (10) Minutes of all other Management Committee meetings held in the last two years



- (11) A list of the Initiative's management committee membership
4. The Council issued a refusal notice to Mr T on 14 March 2005, in which it refused to disclose any of the information requested. The Council cited the following reasons for its refusal:
 - a) **In relation to requests 1-5:** the Council refused to confirm whether or not it held this information under the terms of section 18 of FOISA. It noted that where discussions between the Council and Strathclyde Police were held on issues of mutual concern, related information would normally be exempt under sections 34(1) (information held for the purposes of an investigation that may lead to a report to the procurator fiscal) or 35(1) (where release would be likely to prejudice substantially the prevention or detection of crime, the apprehension and prosecution of offenders, or the administration of justice). The Council felt that it was not in the public interest to confirm whether or not such information was held in this case.
 - b) **In relation to requests 6 and 7:** The Council noted that the Initiative subscribed to Disclosure Scotland checking through the Central Registered Body for Scotland on 4 March 2004. It stated that it did not hold information on the dates of checks on individual members of staff or the level of these checked. It noted that if this information was held, it would be exempt from release under section 38(1)(b) (which exempts from release third party personal data where the release would breach any of the data protection principles).
 - c) **In relation to requests 8-11:** The Council stated that this information was exempt from release under section 25(1) of the FOISA because it is "reasonably accessible" by making a request directly to the Initiative.
 5. Mr T wrote to the Council again on 15 March 2005, seeking a review of the Council's decision. This request was acknowledged 29 March 2005, but no further substantive response to the request for review was issued.
 6. Mr T made an application for decision by me on 16 April 2005. This was received on 19 April and an Investigating Officer was assigned to the case.

Investigation

7. Mr T's appeal was validated by establishing that he had made a valid information request to a Scottish public authority, and had appealed to me only after requesting the authority to review its response to his requests.



8. A letter was sent to the Council on 19 May 2005, informing it that an appeal had been received and that an investigation into the matter had begun. The Council was invited to comment on the case in terms of section 49(3) of FOISA.
9. This letter noted that requests 8-11 made by Mr T mirrored almost exactly those made by another requestor (Mr M), whose application for decision by me was already under investigation by the same investigating officer. (This case has now been concluded and the decision, Mr M and Glasgow City Council 010/2005, is available on my website at: <http://www.itspublicknowledge.info/appealsdecisions/decisions/decision010.htm>). Given this overlap, the Investigating Officer proposed to not duplicate the investigation in relation to these questions but to assume that the findings of the investigation into Mr M's case would extend also to Mr T's.
10. In relation to Mr T's requests 1-7 (which did not duplicate requests made by Mr M or any other applicant), the following information was sought from the Council:
 - a) Details and copies of any recorded information held by the Council that relates to each of the requests 1-7
 - b) Detailed explanation of the application of the exemptions cited as they relate to any information withheld, including details of the consideration of the public interest where relevant
 - c) Detailed explanation of the reasons for the judgement that it was not in the public interest to reveal whether the Council held information relating to Mr T's requests 1-5
 - d) Copies of any correspondence relating to the handling of Mr T's request for information
 - e) Copies of the Council's procedures for responding to requests for information under FOISA
 - f) Reasons for the Council's failure to conduct a review within the 20 working days set out in FOISA, and details of any amendment of the Council's initial decision as a result of a subsequent review.
11. The Council was asked to respond to these requests by 10 June 2005. No response was received by this date and a reminder was issued on 22 June, requesting a response by 6 July. As no response was received following this reminder, a formal Information Notice was issued under section 50 of FOISA on 12 July 2005. This required the Council to provide the information required to conduct this investigation by 27 July 2005. I received the Council's response to this Information Notice on 25 July 2005.



The failure to conduct a review

12. The Council acknowledged its failure to conduct a review within the time period set out in section 21 of FOISA. It attributed this failure in part to Mr T having submitted a number of related and sometimes overlapping requests under FOISA, which resulted in confusion as to who was dealing with which requests. A failure of administrative systems was acknowledged as a second factor.
13. The Council informs me that it has now revised the administrative processes relating to internal reviews, and that it has been required to increase its resource provision in order to address the increasing volume of reviews.

Review outcome

14. The Council conducted a belated review into Mr T's request following the intervention of my office, and wrote to him on 20 July detailing the outcome. This was as follows:

- a) **In relation to requests 1-5 (concerning contacts between the Council and Strathclyde Police in relation to the Initiative)**

The Council confirmed that it does hold relevant information (correspondence and notes of telephone conversations between council officers and police officers concerning the Initiative) but cited the following exemptions (considered in detail below) for withholding the details requested:

Section 34(1) – the information is held for the purposes of an investigation

Section 35(1) – release of the information would prejudice substantially the prevention or detection of crime, the apprehension or prosecution of offenders, the administration of justice

Section 36(2) – release of the information would entail an actionable breach of confidence.

Section 38(1)(b) – some of the information is personal data, release of which would breach the first data protection principle.

Following consideration of the public interest (required in relation to information withheld under the first three exemptions cited above), the Council concluded that the public interest in withholding the information outweighs that the public interest in releasing the information.



- b) **In relation to requests 6 and 7 (relating to disclosure checks of Initiative staff and the Co-ordinator in particular):** The Council re-affirmed its previous response that the Council does not hold information about the dates at which individuals were checked. It revised its decision in relation to information about the level of check to which the co-ordinator was subject (7), stating that although this information is personal data under the Data Protection Act 1998, it could confirm that the co-ordinator had been checked at enhanced level.
- c) **In relation to requests 8-11:** The Council provided a copy of the Initiative's constitution, AGM minutes for the previous 2 years and a number of minutes from Management team meetings over the last two years. This was the same information that had been provided to Mr M in the parallel case.
15. Following this review, I am satisfied that the Council has provided all information it holds in relation to Mr T's requests numbered 6 – 11.
16. In relation to Disclosure checks (6 and 7), I have been provided with copies of the information the Council holds. As the Council stated to Mr T, this does not contain details of dates at which individuals were checked. The Council's initial response to Mr T detailed all relevant information held in relation to request 6 by stating the date at which the Initiative registered with the Central Registered Body for Scotland for the purposes of Disclosure checking. The further details provided in relation to the checks carried out with respect to the co-ordinator fully answered request 7.
17. In relation to requests 8-11, the Council provided the same documents to Mr T as were provided to Mr M during the course of my investigation into his parallel requests. The investigation into Mr M's case established that the Council had provided all the relevant information it held, even though this may not include a full set of minutes of the Initiative for the 2 year period covered by the requests. That investigation established that the Initiative is not obliged to provide all minutes of its meetings to the Council, and that it has not provided them all over the last two years. I am therefore satisfied in this case too that the Council has now addressed requests 8-11 in full.

Seeking the applicant's view

18. The investigating officer telephoned Mr T on 4 August 2005 to confirm that he had received the letter from the Council providing its response to his review request and the documents now released. Mr T confirmed that he had received these.



19. He was asked whether this response meant that he was now satisfied with the Council's handling of his request, and whether he would like this investigation to continue. Mr T confirmed that he was still dissatisfied with the Council's response, and that he would like the investigation to proceed, and for me to issue a decision in his case.

Information withheld in relation to requests 1-5

20. The outstanding information sought by Mr T relates to the identities of Police and Council officers who imparted and received information, and the dates of their communications. Following its review, the Council informed Mr T that it holds information relevant to his requests 1 – 5, but that it considers this information exempt from release. It did state, however, that there had been communications between more than one police officer, and more than one Council officer in relation to complaints made about the Initiative's co-ordinator.
21. Mr T cannot be expected to know the exact content of the exchanges between the Council and Strathclyde Police. I therefore interpret his request for information about the identities of those making and receiving the statement that "Strathclyde Police had no concern about [the co-ordinator of the Initiative] or his involvement in Chirnsyde" as relating to any communications in which Strathclyde Police passed the Council information and advice about the outcome of its investigations into allegations made against the Initiative and its co-ordinator.
22. Therefore, the information which would satisfy Mr T's requests 1-5 is as follows:
- (1) The names of the police officers who have communicated information to the Council about the outcomes of its investigations into allegations relating to the co-ordinator of the Initiative
 - (2) The rank(s) of these officers
 - (3) The Division(s) within Strathclyde Police that these officers come from
 - (4) The dates of these communications
 - (5) The names of the Council staff to whom such communications were made.

This request is for information held at the date of Mr T's request, i.e. 10 February 2005.



The Commissioner's analysis and findings

23. In its submission to my Office, the Council stated that the information requested in 1-5 was exempt from release under the terms of four different exemptions listed in part 2 of FOISA.

Section 34(1) – Investigations.

24. The Council states that the information is held for the purposes of an investigation which the police have a statutory duty to conduct to ascertain whether someone should be prosecuted for an offence, and as such is exempt under the exemption in section 34(1) of FOISA.
25. Section 34(1) of FOISA states the following:
- “Information is exempt information if it has at any time been held by a Scottish public authority for the purposes of-
- (a) an investigation which the authority has a duty to conduct to ascertain whether a person -
 - (i) should be prosecuted for an offence; or
 - (ii) prosecuted for an offence is guilty of it;
 - (b) an investigation, conducted by the authority, which in the circumstances may lead to a decision by the authority to make a report to the procurator fiscal to enable it to be determined whether criminal proceedings should be instituted; or
 - (c) criminal proceedings instituted in consequence of a report made by the authority to the procurator fiscal.”
26. The communications in question relate to information about the outcomes of investigations conducted by the police into complaints of criminality. Information contained within these communications that relates to the police investigations would therefore be likely to fall under the scope of either 34(1) (a) or (b).
27. However, Mr T has not sought access to the contents of these communications but to the identities of the individuals who exchanged them and confirmation of when they were made. These communications were not exchanged as a part of Strathclyde Police's investigations, but in order to inform the Council of their progress and outcomes.
28. Therefore, I do not accept that the particular information requested by Mr T in his requests 1-5 had ever been held by Strathclyde Police *for the purposes* of its investigations into allegations relating to the Initiative.



Conclusion on the exemption in section 34(1)

29. As the particular information requested by Mr T has not been held by Strathclyde Police (the investigating body), for the purposes of its investigations, I do not accept that there are grounds for withholding it under this exemption.

Section 35(1) – law enforcement

30. This section of FOISA exempts information from release where doing so would, or would be likely to, prejudice substantially a range of law enforcement functions. The Council states that disclosure of matters of mutual concern between the Council and Police would, or would be likely to, prejudice substantially the prevention or detection of crime (section 35(1)(a)), the apprehension or prosecution of offenders (section 35(1)(b)) and the administration of justice (section 35(1)(c)).
31. I agree with the Council that it is important that the Council and Strathclyde Police should be willing and able to exchange information about matters of mutual concern as has happened in relation to the Initiative. However, as the Council has already publicly acknowledged that it has sought information from the Police on this matter, and described the advice received (as indicated in paragraph 38 below), this kind of relationship is clearly not one that requires absolute secrecy.
32. Once again, I accept that there may have been valid reasons for withholding the content of the communications exchanged between the two organisations, had this been what was requested. Given the information already in the public domain, however, I do not accept that releasing details of the individuals imparting and receiving advice could lead to substantial prejudice to law enforcement functions. No evidence has been provided to me that suggests that release would prevent individual officers or Strathclyde Police as a whole from conducting their functions, or that release would lead to a breakdown of the relationship that currently allows the Police and the Council to share information on matters of mutual concern.

Conclusion on the exemption in section 35(1)

33. I do not accept that the release of this information would be likely to prejudice substantially the law enforcement activities of Strathclyde Police, or any other organisation.

Section 36(2) – Confidentiality

34. The Council notes that information was provided by the Police with the express statement that information was being provided in strictest confidence and therefore contends that release would entail an actionable breach of confidence.



35. One written communication from the Police to the Council contains an explicit statement that clearly indicates that information is being provided in confidence. As the information would clearly not be available through sources other than the Police force, this suggests that a duty of confidentiality does indeed exist in relation to at least some information conveyed to the Council.
36. However, this statement of confidentiality is made in relation to specific pieces of information being imparted. There is no overall statement that suggests that the communication in its entirety, or the identity of the sender and recipient should also be considered confidential.
37. Furthermore two internal communications within the Council communicate relevant information received from the Police but make no reference to the information or the exchange being confidential.
38. The Council subsequently has made public statements that summarise the outcome of these communications. For example, a recent report to the Council's Cultural and Leisure Services Committee on the Initiative, said:

“The advice received from the Police has been absolutely consistent for a number of years and forms the basis for the current Council approach to this issue. Their advice is that:

- There is currently no evidence of any criminal activity or wrongdoing at Chirnsyde Community Initiative or on the part of any member of staff.

All allegations made to the Police or passed onto them by other agencies are investigated thoroughly and yet, to date, no allegations have been found to have any substance. This includes the most recent allegations...”

(Paragraph 9.2: the full report (which was considered by the Committee on 22 June 2005) is available on the Council's website:

http://www.glasgowcitycouncil.co.uk/committee_minutes/public/Documents/Live/Cultural%20and%20Leisure%20Services%20Committee/20053/1100_22_06_2005_1645_Report_ITEM%203.pdf.)

Conclusion on the exemption in section 36(2)

39. While there was an occasion when some of the information conveyed to the Council was clearly identified as being confidential in nature, I do not accept that this exemption applies to the particular information sought by Mr T.



The public interest test

40. The three exemptions considered above all require the consideration of the public interest before a decision is made to withhold information. The Council provided detailed reasoning for its decision that the public interest did not favour release in this case. As I do not accept that these exemptions apply in this case, it has not been necessary for me to consider the public interest as it relates to this information.

Section 38(1)(b) Personal Information

41. The Council submitted that information about the identities of the individual members of staff who imparted and received information should be considered personal data under the terms of the Data Protection Act 1998 (DPA), and that release of identifying information would breach the first and the second data protection principles. These require that personal data be fairly and lawfully processed, and that data is not used for purposes other than those for which it was collected. If this information is indeed personal data and its release would breach one of these principles, then an absolute exemption from release would apply.
42. The Council noted that it does not normally seek to conceal the identities of its staff members when responding to requests under FOISA.
43. In this case, however, the Council argues that release of the identity of the individuals in question would have an impact on their privacy. It points out that “lurid and unfounded” allegations have been made in a Glasgow publication about police officers, elected representatives and council officials in relation to their role regarding, or connections with, the Initiative. The Council concludes that in this case the individual identities in question should therefore be considered personal data, and that their release would breach the requirements of DPA.
44. In most instances, the identities of individual staff members conducting work on behalf of public authorities will not constitute personal data under the terms of the DPA interpreted in line with the decision in *Durant v the Financial Services Authority* [2003] EWCA Civ 1746. In this decision, the Court of Appeal held that if information is to be viewed as personal data, the information has to be biographical in a significant sense, i.e. go beyond the recording of the individual’s involvement in a matter or event that has no personal connotations. The individual also has to be the focus of the information, rather than some other person with whom that individual may have been involved. The Court of Appeal summarised these two aspects as information affecting a person’s privacy whether in his personal or family life, business or professional capacity. The Council argues that the release of the identities of these individuals will affect their privacy. If I accept that the release of information will affect these individuals’ privacy, then I must treat the information identifying the individuals as personal data.



45. In this case, I do not accept the Council's contention that release of identities will affect the individuals' private lives in this way. I am aware that complaints about the Initiative and its co-ordinator have in the past led to stories being published in both the national and local press. Some of this coverage has made allegations relating to individuals associated with both Strathclyde Police and the Council. It is possible that the information released as a result of this decision will lead to further media interest in the issues surrounding the Initiative, and the naming of those involved. However, I do not regard the possibility of media interest as constituting sufficient reason for withholding the information requested (information which is no more than the identification of officials between whom an acknowledged exchange took place) and am not satisfied, on the basis of the information I have before me, that individuals' private lives would be affected.

Conclusion on the exemption in section 38(1)(b)

46. As I do not consider the information under consideration to be personal data, the information is not exempt under section 38(1)(b) of FOISA. In reaching this conclusion, I have had regard to the Information Commissioner's guidance on section 40 of the Freedom of Information Act 2000, the UK equivalent of the exemption in question here. This states that while names of officials should normally be provided on request, if there is some reason to think that disclosure of even that information would put someone at risk – for instance confirming the work address of a member of staff who has been physically threatened – then it may be right not to give out that information. I do not consider the threat of naming in the press to constitute a risk to the individuals concerned here of the type implied by this guidance.

Overall conclusion

47. This investigation has identified two failures by the Council in its response to Mr T's request for information. Firstly, it failed to conduct a review of its decision to withhold information within the 20 working day timescale set out in section 21 of FOISA.
48. Following the commencement of this investigation, the Council conducted a full review that resulted in the amendment of its original decision and the provision of most of the information sought by Mr T. I am satisfied that, following this review, the Council has provided all of the relevant information it holds in relation to requests 6-11.



49. Secondly, I have concluded that the reasons given by the Council were insufficient to justify withholding the remaining information sought in Mr T's requests 1-5. In withholding this information, the Council has acted in breach of section 1(1) of FOISA. In response to these requests, the Council should now provide the details of the name, rank and division of any police officer who has advised the Council on the outcomes of its investigations into allegations about the Initiative and its co-ordinator. It should also provide the names of the Council staff to whom this advice was communicated on each occasion, and the date of each communication. This relates to information held at 10 February 2005, and specifically to the information held in Documents 13, 14 and 15 from the Schedule of Documents supplied to me by Glasgow City Council.

Decision

I find that the Council has breached Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by not dealing with numbers 1-5 within Mr T's request for information in accordance with section 1(1) of the FOISA, as detailed above.

I also find that the Council breached Part 1 of FOISA by failing to comply with the requirements of section 21 of FOISA in conducting a review outwith the time limit set out in section 21(1).

I require the Council to release the information detailed above in paragraph 49 above.

I am obliged to give the Council at least 42 days in which to supply Mr T with the information as set out above. In this case, I require the Council to take these steps within two months of the date of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
19 August 2005