

Decision Notice



Decision 019/2011 Mr Allan Clark and Glasgow City Council

Names and addresses of Glasgow's Community Councillors

Reference No: 201000647

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Summary

Mr Allan Clark (Mr Clark) requested from Glasgow City Council (the Council) an electronic copy of all of Glasgow's community councillors' names and addresses. The Council responded by claiming that the information was exempt from disclosure in terms of section 25(1) on the grounds that it was reasonably accessible to Mr Clark. It indicated that the information was available for inspection in hard copy at its Community Council's Resource Centre. Following a review, Mr Clark remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Council supplied a list of the names of all community councillors to Mr Clark in electronic form. It maintained that disclosure of the addresses in electronic form would breach the community councillors' rights under the Data Protection Act 1998 (the DPA). The addresses in this form were argued to be exempt from disclosure in terms of section 38(1)(b) of FOISA.

The Commissioner concluded that the Council incorrectly applied the exemptions in section 25(1) and section 38(1)(b) to the information requested by Mr Clark. He required the Council to provide the address of each community councillor to Mr Clark in electronic form.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) and (e)(ii) (Effect of exemptions); 11(1) and (2) (Means of providing information); 25(1) and (3) (Information otherwise accessible) and 38(1)(b), 2(a)(i), 2(b) and (5) (definitions of "data protection principles", "data subject" and "personal data") (Personal Information)

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

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Court of Session decision: *Glasgow City Council v Scottish Information Commissioner* [2009] CSIH 73 www.scotcourts.gov.uk/opinions/2009CSIH73.html



Background

1. On 17 February 2010, Mr Clark wrote to the Council requesting an electronic copy of all Glasgow's community councillors' names and addresses.
2. The Council responded on 22 February 2010, indicating that the information requested was exempt from disclosure in terms of section 25(1) of FOISA, on the grounds that it was otherwise accessible to Mr Clark under its publication scheme, and without having to make a formal request under section 1 of FOISA. The Council advised Mr Clark that the information was available for inspection in hard copy format at the Community Councils' Resource Centre (the Resource Centre) within specified hours.
3. On 23 February 2010, Mr Clark wrote to the Council requesting a review of its decision. He expressed dissatisfaction with the Council's application of the exemption in section 25(1), because his request had sought the information in electronic format. He indicated that the access offered was not reasonable because it covered more than 900 documents, and he considered that to access this amount of information by inspection was neither practical nor accessible. He considered the cost of photocopying the hard copies available for inspection was needless when he had requested information in a more environmentally friendly form.
4. The Council notified Mr Clark of the outcome of its review on 1 March 2010. It indicated that it understood that Mr Clark had visited the Resource Centre to obtain some of the information in hard copy form, and that further visits were being arranged to enable him to access and obtain the remainder. It indicated that it was satisfied that the information sought by Mr Clark was less voluminous than he stated and that he was readily able to access all of it by attendance at the Resource Centre.
5. On 26 March 2010, Mr Clark wrote to the Commissioner, stating that he 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.
6. The application was validated by establishing that Mr Clark 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. The case was then allocated to an investigating officer.



Investigation

7. On 7 May 2010, the Council was notified in writing that an application had been received from Mr Clark and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the Council was asked to provide further information about the manner in which the information requested by Mr Clark was publicly available, and the content of the Council's publication scheme.
8. The Council's response to this letter did not provide the submissions requested. Instead, in an effort to achieve an informal settlement of this case, the Council proposed to provide an electronic copy of the names of all community councillors in Glasgow, together with correspondence addresses for the Office Bearers (the Chairperson, and, where applicable, the Community Council Secretary) for the relevant Community Council to which each community councillor belonged.
9. The Council subsequently disclosed this information, in electronic form to Mr Clark. Its letter to Mr Clark indicated that, in accordance with the Council's obligations under the terms of the DPA, it was not possible to disclose the address for each community councillor in this format.
10. Mr Clark confirmed to the investigating officer that he had received this information. However, he remained dissatisfied with the Council's decision not to provide the addresses of community councillors in electronic form. He asked the Commissioner to continue his investigation and consider whether the addresses should be provided in full, in electronic form.
11. Following these exchanges, the Council was again invited to provide detailed submissions on the case and to respond to questions from the investigating officer. The Council's submissions maintained and explained its position that the information requested by Mr Clark was reasonably accessible to him via inspection of hard copies at the Resource Centre, and so exempt in terms of section 25(1) of FOISA.
12. With respect to its decision to disclose the names of community councillors, but not their addresses, in electronic form, the Council indicated that it considered the addresses, when presented in electronic form, to be exempt from disclosure in terms of section 38(1)(b) of FOISA. In the circumstances, the Council maintained that, although Mr Clark was entitled (in terms of section 11 of FOISA) to request the information in the format of his choosing, it was not reasonably practicable to provide the Councillor's addresses other than for inspection in hard copy.
13. In response to a request for his comments, Mr Clark expanded on his reasons for disputing the Council's claim that the information was reasonably accessible via inspection in the Resource Centre.
14. The submissions received from both Mr Clark and the Council are summarised (where relevant) below.



Commissioner's analysis and findings

15. 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 Mr Clark and the Council and is satisfied that no matter of relevance has been overlooked.

Section 25(1)

16. The Commissioner has first considered whether the information requested by Mr Clark is reasonably accessible to him and so exempt in terms of section 25(1) of FOISA.
17. Under section 25(1) of FOISA, information which an applicant can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA. Accordingly, where information is otherwise available to the applicant, there is no need for a public authority to provide an alternative right of access to it through FOISA.
18. The Commissioner is aware that Mr Clark has requested an electronic copy of the names and addresses of Community Councillors in Glasgow. In general, section 11 FOISA gives applicants the right to ask for information to be provided by one of three means
- a. a copy of the information;
 - b. a summary or digest of the information; **or**
 - c. the opportunity to inspect a record containing the information.

Where a request is made for information to be provided by one of the above means, the public authority must give effect to that preference so far as is reasonably practicable.

19. However, this right does not apply in case where the information is found to be exempt in terms of section 25(1). This was confirmed by the Court of Session when it considered the relationship between the exemption in section 25 and the right provided by section 11 of FOISA in the case *Glasgow City Council v Scottish Information Commissioner* [2009] CSIH 73. The Court confirmed that, where information is accepted to be reasonably accessible to an applicant in one form or format, there is no obligation on a public authority to provide information in a different form or format to meet the requestor's preference.
20. Accordingly, the Commissioner's consideration of whether section 25(1) of FOISA is applicable must focus on whether the information requested by Mr Clark is reasonably accessible to him in any form. If it is found to be reasonably accessible to him via inspection in hard copy at the Resource Centre, then it will be exempt from disclosure, and there will be no separate obligation for the Council to provide the information in another format as requested by Mr Clark.



Is the information made available under the Council's publication scheme?

21. Section 25(3) provides that any information made available under a publication scheme which has been approved by the Commissioner is presumed to be reasonably obtainable and therefore exempt from disclosure under section 25(1) of FOISA.
22. The Commissioner first of all considered the Council's claim that the information requested by Mr Clark is made available under the Council's publication scheme.
23. Section 23 of FOISA requires each public authority to adopt and maintain a publication scheme approved by the Scottish Information Commissioner. The scheme must specify the classes of information which a public authority publishes, the manner in which information in each class is published, and whether the information available free or on payment.
24. One complicating factor in this case is that the Council's publication scheme¹ was approved by the Commissioner for a four year period in 2004. This approval was subsequently extended, but expired in December 2009; prior to the date of Mr Clark's information request. Since no further publication scheme has yet been approved by the Commissioner, the Council had no approved publication scheme in place at the time of its handling of Mr Clark's information request.
25. Nonetheless, the Commissioner is aware that the publication scheme approved in 2004 is still available on the Council's website, and that the Council appears to still be making information available in line with its terms. For this reason, he has proceeded for the purposes of this case to simply consider this publication scheme as if the Commissioner's approval remained in force at the time of its handling of Mr Clark's information request and his subsequent request for review.
26. When asked by the Commissioner to indicate where its publication scheme provided for access to the information requested by Mr Clark, the Council directed the Commissioner to Class D9: Your Community, which is described as follows:

D9 : Your Community

Information relating to a variety of community based activities including community councils, the community forums, youth services, facilities available for community use, and details of public CCTV systems. Information is also available on social inclusion matters, community safety, community justice and health improvement.

FORMAT:	Leaflets, brochures, documents, CD Roms.
CHARGE:	Free
HOW TO GET IT:	Available at www.glasgow.gov.uk
	Community Co-ordinator 0141 287 0936
	Community Services 0141 287 8688
	Community Councils 0141 287 4723
	Social Inclusion 0141 287 7294

¹ Available online here: www.glasgow.gov.uk/NR/rdonlyres/F921C716-AD0D-4FE9-A0EE-90A9E1000591/0/GlasgowCityCouncilPublicationSchemeRevision11.pdf



27. Having reviewed this class, the Commissioner has first of all noted that its description is broad. While it refers to information about community councils, it gives no indication of the types of information this will encompass. It is certainly not explicit that the names and addresses of (or other information about) community councillors fall within the scope of this class.
28. However, if it is accepted that the information requested by Mr Clark falls within the broad reference to information about community councils, the Commissioner notes also that nothing in this class description indicates that information will be available only for inspection at the Resource Centre. Rather, it suggests that this information is available online or by contacting the named staff.
29. This class description must also be read in conjunction with the publication scheme's introductory sections which set out in general terms how to access information. The section headed "*Accessing information under the publication scheme/list*" indicates that most information in the publication scheme is available on the Council's website, and where it is not, it will be sent by email where practicable. It indicates that most information is also available in paper copy, but also highlights (on page 13) that some information will only be available via personal visits:

Personal visits - For some classes of information, you will need to make an appointment to view the information. Please contact the person whose name is given in the publication scheme.
30. In a number of classes of information, the need to make a personal visit to access such information is made explicit. Under the heading Class B5: Planning and Development, for example, the following statement is included under the details of how to access information:

Some database information and statutory registers can only be obtained by visiting Development and Regeneration Services at 229 George Street, Glasgow.
31. The description of Class B7: Permits and Licensing includes the following statement:

Information on Civic Government licensing decisions and Statutory Registers can only be inspected at 235 George Street, Glasgow. There is no charge for inspection, but a charge may be made if photocopies are required.
32. It appears to the Commissioner that the type of access offered by the Council in response to Mr Clark's request for the names addresses of community councillors is similar to that specified in relation to licensing decisions in the paragraph above. However, there is nothing in the description of Class D5 which suggests that any of the information therein will be made available solely via a personal visit to inspect (and copy) the information.
33. The Commissioner is unable to accept, therefore, that access to this particular information in such a limited manner forms part of the Council's publication scheme as approved by the Commissioner.



34. The Commissioner therefore is unable to accept that the information requested by Mr Clark is reasonably accessible to Mr Clark by virtue of being made available under the Council's publication scheme. Section 25(1) therefore cannot apply by virtue of section 25(3) in this case.

Can Mr Clark reasonably obtain the information nonetheless?

35. Information does not have to be made available under a public authority's publication scheme in order to be exempt in terms of section 25(1). Information will still be exempt under section 25(1) in other circumstances where information can reasonably be obtained by the applicant via other means. However, where information is not made available in line with the public authority's publication scheme, the onus is on the authority to demonstrate that the information is reasonably obtainable by the applicant otherwise than by making a request under FOISA.
36. The Council has provided the Commissioner with samples of the information that is available for inspection at the Resource Centre. These include two types of information:
- a. Nomination forms for each Community Councillor. These include the relevant Community Councillor's name and address (as well as their signature and the names and addresses of two nominees). There are approximately 934 individual forms.
 - b. Validation forms for each Community Council. These list the names and only the first line of the address of each member elected within a Community Council. There are approximately 80 of these forms.
37. The Council indicated that these papers were accurate as at the date of the last community council elections in October 2008. The Council submitted that it had advised Mr Clark on several occasions that this information could be accessed by visiting the Resource Centre, and noted that Mr Clark had visited the centre in order to view the information. The Council considered that it was reasonable for Mr Clark to access the information this way, in particular since he himself was a community councillor at the time when his request and subsequent request for review were being handled.
38. Mr Clark, however, has submitted that the access by inspection offered by the Council does not make the information reasonably obtainable by him. He has highlighted that copying each of the 934 nomination forms would be time consuming and would cost in excess of £90. He has pointed out that the Council maintains an electronic database that would enable the information to be provided to him more efficiently and in a more environmentally friendly manner.
39. The Council was asked by the investigating officer whether the information available for inspection was the same as that contained in its database. In response, the Council explained that the Resource Centre also maintains a database which contains, amongst other information, the names and addresses of each community councillor. It was from this database that the electronic list of community councillors' names (and addresses of office holders) that was provided to Mr Clark was extracted.



40. The Council explained that the names and addresses within the database will generally be the same as those contained in the nomination forms, except in cases where revisions have been made to the database. This might be in cases where the Resource Centre is advised of resignations, changes in office bearers or vacancies being filled between elections (which take place every second year, in October).
41. Having considered all of these points, the Commissioner is unable to accept that the information requested by Mr Clark was reasonably accessible to him.
42. In reaching this conclusion, he has noted first of all that Mr Clark's request sought the names and addresses of all community councillors in Glasgow. In the absence of further clarification, the only reasonable interpretation of his request is that he wished to know the current details of the community councillors in post at the time of his request. The Commissioner considers that the information available for inspection cannot be considered to be an accurate source of that information.
43. Had Mr Clark's information request been made very soon after community council elections, it might have been the case that the nomination forms, read in conjunction with the validation forms, do indeed provide the address of each current community councillor. However, Mr Clark's request was made almost 16 months after the community council elections in October 2008. In that period, it is only reasonable to expect that at least some of the 934 community councillors elected would step down, and new community councillors might replace them. The Council has acknowledged that such changes do take place.
44. In the circumstances, the Commissioner considers that the only source of the information requested by Mr Clark at the time when he made it was the Council's database.
45. The Commissioner would add that, even if the information available for inspection did provide the information sought by Mr Clark, he would not consider that information to be reasonably obtainable by Mr Clark. While he is aware that Mr Clark has visited the Resource Centre (and presumably could do so again), he considers that the manner in which the Council has offered to make available this information would be unreasonably burdensome to Mr Clark.
46. He notes that Ms Clark would be required to visit Resource Centre during particular hours and spend a considerable amount of time gathering the information he wishes to access. He notes that only the 934 nomination forms include the full addresses of the community councillors, and so it would be necessary for Mr Clark to review and copy these individually if he wished to retain the information for future reference.
47. In general, the Commissioner considers the provision of information for inspection only to be a very limited form of disclosure, and onerous for the person seeking to access it. The Commissioner considers that the provision of information for access by inspection only should be restricted only to cases where there is clear justification for such limited access. This might be because of the size of information, or the fragility of historical documents. There might also be statutory obligations regarding the provision of information in this form.



48. The Commissioner can see no practical reason why the documents offered for inspection at the resource centre could not (subject to the consideration of exemptions and other relevant provisions of FOISA) be copied and issued to a requestor in hard copy, or scanned and sent as an electronic document.
49. The Commissioner has therefore concluded that the information requested by Mr Clark could not be reasonably obtained by Mr Clark, other than by making a request in terms of FOISA, and so this information was not exempt from disclosure in terms of section 25(1) of FOISA.
50. As noted above, during the investigation the Council provided a list of the names of all community councillors, drawn from its database, to Mr Clark in electronic form. It has not sought to apply any other exemption to this information during the investigation. With respect to the names of the community councillors, therefore, the Commissioner concludes that the Council failed to comply with Part 1 (and in particular section 1(1)) of FOISA by withholding this information when responding to Mr Clark's information request.

Section 38(1)(b) – community councillors' addresses

51. The Commissioner has next considered whether the Council was entitled to refuse to provide a copy of the addresses of community councillors to Mr Clark in electronic form on the basis that (in this form) they are exempt from disclosure in terms of section 38(1)(b) of FOISA.
52. The Council has continued to refuse to disclose the addresses of community councillors to Mr Clark in electronic form, and it submitted during the investigation that to do so would breach its obligations under DPA. It later confirmed that it considered the addresses, in this form, to be exempt in terms of section 38(1)(b).
53. Therefore, having taken the view (which is not shared by the Commissioner) that the information available for inspection in the Resource Centre and the information within its database could equally fulfil Mr Clark's information request, the Council has drawn a distinction between the two forms in which the information is held, and concluded that one is exempt while the other could be provided to Mr Clark.
54. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) (or, where appropriate, 38(2)(b)), exempts information from disclosure if it is "personal data" as defined by section 1(1) of the DPA, and its disclosure would contravene one or more of the data protection principles set out in Schedule 1 to the DPA. This exemption is absolute in that it is not subject to the public interest test laid down by section 2(1)(b) of FOISA.
55. The Council has argued that the addresses of the community councillors is personal data, and their disclosure *in electronic form* would breach the first data protection principle.



Is the information personal data?

56. 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).
57. The Commissioner is satisfied that the addresses of community councillors are clearly personal data, being data which relate to those individuals, who can be identified from that information and other information held by the Council.
58. The Commissioner must now go on to consider whether disclosure of these addresses to Mr Clark in electronic form as he has requested would breach any of the data protection principles contained in Schedule 1 to the DPA. As noted above, the Council has argued that disclosure would breach the first data protection principle.

Would disclosure breach the first data protection principle?

59. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met.
60. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA, and he is satisfied that the personal data in this case does not fall into this category. It is therefore not necessary to consider the conditions in Schedule 3 of the DPA in this case.
61. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. For example, if there is a specific condition in the schedules which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
62. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, he must then consider whether the disclosure of this personal data would be fair and lawful.



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

63. When considering the conditions in Schedule 2 of the DPA, the Commissioner has noted Lord Hope's comment in the case of the Common Services Agency v Scottish Information Commissioner² (the Collie judgement) that the conditions require careful treatment in the context of a request for information under FOISA, given that they were not designed to facilitate the release of information but rather to protect personal data from being processed in a way that might prejudice the rights, freedoms or legitimate interests of the data subject.
64. The Commissioner considers condition 6 to be the only condition in Schedule 2 which might permit disclosure in this case. Condition 6 permits personal data to be processed if the processing (which in this case would be by disclosure in electronic form in response to Mr Clark's information request) is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights, freedoms or legitimate interests of the data subjects (the individuals to whom the withheld information relates). It is clear from the wording of this condition that each case will turn on its own facts and circumstances.
65. There are, therefore, a number of different tests which must be considered before condition 6 can be met. These are:
- a. Does Mr Clark have a legitimate interest in obtaining the withheld personal data (i.e. the addresses)?
 - b. If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the individual in question?
 - c. Even if the processing is necessary for Mr Clark's legitimate purpose, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the individual? As noted by Lord Hope in the Collie judgement there is no presumption in favour the release of personal data under the general obligation laid down in FOISA. Accordingly, the legitimate interests of Mr Hutcheon must outweigh the rights, freedoms or legitimate interests of the data subject before condition 6(1) will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that Council was correct to refuse to disclose the personal data to Mr Clark.

² <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm>



Does Mr Clark have a legitimate interest?

66. Mr Clark has indicated that he wishes to gather a list of names and addresses of community councillors to allow him to contact them with respect to the setting up of a Community Council Association. He indicated that he wished to contact individual community councillors regarding membership so that they could join even if their community council did not. He suggested that directing mail just via office bearers was inadequate as this might not be passed on.
67. The Commissioner considers that Mr Clark (like any other person) has a legitimate interest in accessing the addresses of community councillors to allow him to raise matters of concern and interest with them. In reaching this conclusion, he notes that community councillors are publicly elected representatives of their communities.

Is disclosure of the information necessary to achieve those legitimate interests?

68. The Commissioner must now consider whether disclosure is necessary for those legitimate interests and in doing so he must consider whether these interests might reasonably be met by any alternative means.
69. The Council has argued that a copy of the community councillors' addresses in electronic form could be easily manipulated, shared with others instantaneously and adapted for the use of privacy intrusive activities such as mail shots. Provision other than in electronic form would, it argued, allow Mr Clark's legitimate interests to be met by means which were less intrusive and less likely to cause any unwarranted prejudice to the individual community councillors' right to privacy.
70. The Commissioner has noted these points. As noted above, since 16 months had passed since the date of the community council elections in October 2008 at the time when Mr Clark's request was lodged, the Commissioner does not accept that the contents of the nomination and validation forms can be said to fulfil Mr Clark's information request, and so this access would not meet his legitimate interests.
71. He considers that Mr Clark's legitimate interests cannot be met without the provision of a copy of the community councillor's addresses, as stored in the database maintained in the Resource Centre, in some form. However, he considers that with a copy of the addresses in any form, he (or any other person) would easily be able to create an electronic version capable of the types of manipulation that the Council describes.
72. The Commissioner notes that had Mr Clark been satisfied with the offer to inspect the information at the Resource Centre, he would have had the opportunity to take copies of the documents, or could have taken notes while visiting. With this information, there would be nothing to prevent him from himself entering it into an electronic file and manipulating and transmitting it in the ways the Council suggests.



73. The Commissioner recognises that provision of the information requested by Mr Clark in certain electronic formats (e.g. a spreadsheet or document setting out the details in tabular form) would make it easier for the addresses to be used for certain purposes (such as group mailing). However, even if the information was supplied in a different electronic form, or in hard copy, there would be nothing to prevent Mr Clark or another person from transferring this information into the format that is most helpful for their purposes.
74. For this reason, the Commissioner considers that the potential for intrusion via the disclosure of the community councillors' addresses appears to the Commissioner to be the same, whether the information is made available only on a personal visit to the resource centre, or by provision of a paper copy, or an electronic copy.
75. Having concluded that alternative methods of disclosure would not provide additional protection to the privacy of the community councillors, the Commissioner is unable to accept that disclosure of the addresses in electronic format is unnecessary because Mr Clark's legitimate interests can be met by less intrusive means. Any intrusion that would follow from disclosure in this form would be allowed by any of the means of providing of this information discussed above.
76. The Commissioner therefore concludes that disclosure of the addresses, regardless of the format in which they are provided, is necessary for Mr Clark's legitimate interests.

Would disclosure cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects?

77. As the Commissioner is satisfied that disclosure of the addresses would be necessary to fulfil Mr Clark's legitimate interests, the Commissioner is now required to consider whether that disclosure would nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects (i.e. the community councillors). As noted above, this involves a balancing exercise between the legitimate interests of Mr Clark and the community councillors. Only if the legitimate interests of Mr Clark outweigh those of the community councillors can the information be disclosed without breaching the first data protection principle.
78. In the Commissioner's briefing on section 38 of FOISA³, he notes a number of factors which should be taken into account in carrying out this balancing exercise. These include:
 - a) whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances);
 - b) the potential harm or distress that might be caused by disclosure;
 - c) whether the individual has objected to the disclosure;
 - d) the reasonable expectations of the individuals as to whether the information would be disclosed.

³ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&SID=133>



79. The information requested by Mr Clark relates to individuals who have been elected as community councillors. As such, it relates to some extent to their public life. However, the addresses clearly relate to the community councillors' home lives by revealing their residence.
80. The Commissioner considers that the potential for harm or distress being caused by disclosure of this information is limited, since the Council's practice at the time of Mr Clark's request (and since) has been to make available inspection documents including the names and addresses of all community councillors after their election. The Commissioner considers that this practice enables interested individuals to identify and use the contact details (accurate to the date of the previous elections) of community councillors with ease.
81. No submission has been made to the Commissioner about such contact being a cause of distress or harm to community councillors. He does not consider that information being made more readily available via provision of a copy to Mr Clark (or any other person) should prompt or increase the chance of distressing or harmful contact being made to community councillors beyond the level which already existed at the time of Mr Clark's information request.
82. The Commissioner understands that consent to disclose the addresses in electronic form has not been sought from, withheld or granted by community councillors concerned. The Council explained that community councillors have not been notified of the purposes for which the Council intends to process their personal data. As such, the data subjects have had no opportunity to either opt-out or consent to disclosure of personal data such as their residence information.
83. The Commissioner is aware that the Council has been reconsidering its practice with respect to the provision of access to the address details of community councillors. However, the Commissioner must consider this case in the circumstances that existed at the time when the Council issued its notice stating the outcome of its review on 1 March 2010.
84. The Council's practice at that point was to make publicly available information that would closely match the name and address details stored in the Resource Centre's database. The match between the two sets of information would be complete at the point immediately after community council elections, and would diminish over the period leading to the following election.
85. The Commissioner considers that the expectations of the community councillors in place at the time of Mr Clark's request could only reasonably be formed in the context of the Council's practice of making nomination forms available for inspection and copying. In this context, the Commissioner considers that they could hold only limited expectations that their address would be withheld in response to a request for information.
86. Having considered all of the above, and having balanced the legitimate interests identified by Mr Clark against the legitimate interests of the community councillors, the Commissioner finds that the legitimate interests served by disclosure to Mr Clark (and the wider public) outweigh any unwarranted prejudice that would be caused to the rights, freedoms or legitimate interests of the data subjects.



87. In reaching this conclusion, the Commissioner has noted that the disclosure to Mr Clark of a copy of this information will simply provide him directly with an up to date version of information that the Council already makes available in an a more limited manner. Having found that disclosure of the particular information requested by Mr Clark in the form of an electronic (or any other form of) copy would not be unwarranted by virtue of prejudice to the rights and freedoms of the data subjects, the Commissioner is satisfied that condition 6 of schedule 2 of the DPA can be met in this case.
88. Having reached this conclusion, the Commissioner has gone on to consider whether (as required by the first data protection principle) disclosure of the information concerning the data subject would be fair and lawful.
89. The Commissioner considers that disclosure would be fair, for the reasons already outlined in relation to condition 6. The Council has not put forward any arguments as to why the disclosure of the information would be unlawful (other than in terms of a breach of the data protection principles) and, in any event, the Commissioner can identify no reason why disclosure should be considered unlawful.
90. Having found disclosure of a copy of the addresses of community councilors to be both fair and lawful, and in accordance with condition 6(1), the Commissioner therefore concludes that disclosure of this information would not breach the first data protection principle.
91. The Commissioner therefore concludes that the exemption in section 38(1)(b) has been wrongly applied by the Council to the addresses.
92. In order to comply with section 11(1), the Commissioner requires the Council to provide the address of community councillor in electronic form. He notes that Mr Clark's request did not specify any particular type of electronic form, and it is for the Council to determine the particular format in which to disclose the information.
93. In reaching its decision on this point, however, the Commissioner would urge the Council to have regard to its duty to provide advice and assistance to Mr Clark in line with section 15(1) of FOISA.



DECISION

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Allan Clark (Mr Clark).

The Commissioner has found that the Council incorrectly applied the exemptions in sections 25(1) and 38(1)(b) to the information requested by Mr Clark. By failing to provide the names and addresses of all community councillors, the Council breached Part 1 and, in particular, section 1(1) of FOISA.

The Commissioner requires the Council to provide an electronic copy of the addresses of each community councillor as set out in the database maintained by the Resource Centre by 18 March 2011.

Appeal

Should either Mr Clark 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.

Kevin Dunion
Scottish Information Commissioner
1 February 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

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

..

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



11 Means of providing information

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.
- (2) The means are-
 - (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
 - (b) such provision to the applicant of a digest or summary of the information; and
 - (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.
- ...
- (3) For the purposes of subsection (1), information which does not fall within paragraph (b) of subsection (2) is not, merely because it is available on request from the Scottish public authority which holds it, reasonably obtainable unless it is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

38 Personal information

- (1) Information is exempt information if it constitutes-
 - (a) ...
 - (b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;
- ...
- (2) The first condition is-



(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles; or

...

(b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...

(5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...

Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...



Schedule 1 – The data protection principles

Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

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

...

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

...