

Decision Notice



Decision 130/2013 Councillor Peter Grant and Fife Council

Budget proposals

Reference No: 201300647
Decision Date: 4 July 2013

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Scottish Information Commissioner

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Summary

On 27 November 2013, Councillor Grant asked Fife Council (the Council) for budget proposals issued to political groups on the Council in February 2012. The Council withheld the information on the basis that release would prejudice substantially the effective conduct of public affairs. Following an investigation, during which the majority of the information was released to Councillor Grant, the Commissioner found that the Council was not justified in withholding the majority of the information requested. Given that the majority of the information had been disclosed, and that Councillor Grant was satisfied with the Council withholding the remainder of the information, the Commissioner did not require the Council to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(b)(i),(b)(ii) and (c) (Prejudice to effective conduct of public affairs)

Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code)

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

Background

1. Councillor Grant is an elected member of Fife Council. As a Councillor, he was in possession of the Council's budget proposals, the content of which had been provided to him under a strict requirement of confidentiality. With a view to discussing that content more widely, on 27 November 2012, Councillor Grant wrote to the Council requesting the following information:
... the Blue Book budget proposals that were issued to political groups in advance of the budget meeting of February 2012 and the supplement issued recently.



2. The Council responded on 19 December 2012. It informed Councillor Grant that it was withholding all of the information as exempt from disclosure under section 30(b)(i), (b)(ii) and (c) of FOISA, on the basis that disclosure would, or would be likely to prejudice substantially, the effective conduct of public affairs. It explained its consideration of the public interest test.
3. On 20 December 2012, Councillor Grant wrote to the Council requesting a review of its decision. He did not believe the exemptions claimed would cover all of the information he had requested, and also explained why he considered disclosure of the information to be in the public interest.
4. The Council notified Councillor Grant of the outcome of its review on 23 January 2013. It maintained that the information was exempt in terms of section 30(b)(i) and 30(c) of FOISA. The Council further informed Councillor Grant that the Blue Book contained a considerable amount of information and, in the limited time available, it had not been possible to consider every page in detail. The Council asked Councillor Grant to specify what parts he did not consider to be exempt from disclosure, which it would then give further consideration.
5. On 5 March 2013, Councillor Grant 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 Councillor Grant made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 19 March 2013, the Council was notified in writing that an application had been received from Councillor Grant and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. In subsequent correspondence, the Council confirmed that it had now released the majority of the information requested by Councillor Grant. It withheld a small amount under sections 30(b) and 38(1)(b) of FOISA.



10. Councillor Grant confirmed receipt of the released information and stated that he had no objection to the Council withholding the information it still maintained was exempt. The information redacted from the information released during the investigation will not, therefore, be considered further.
11. However, Councillor Grant wished a decision in relation to the Council's handling of his request and its initial decision to withhold all of the information requested.
12. The Council provided further submissions on its handling of Councillor Grant's request, confirming that it no longer wished to rely on the exemptions cited earlier in relation to the information since disclosed.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered all of the information initially withheld and the submissions made to her by Councillor Grant and by the Council. She is satisfied that no matter of relevance has been overlooked.

Section 1(1) – General entitlement

14. 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 certain provisions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or provide it for a fee. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
15. In this case, in its response to Councillor Grant's requirement for review, the Council informed him that all of the information requested was exempt from disclosure in terms of section 30(b)(i) and (c) of FOISA, on the basis that disclosure would be prejudicial to the effective conduct of public affairs.
16. The Commissioner notes with some concern that, within the review outcome, the Council stated that not all of the information had been properly considered and asked Councillor Grant to submit which parts he considered should be exempt from disclosure. Particularly at the review stage, any information that falls within the scope of a request should be fully considered by the authority. It is obvious that this did not happen in this case. Whilst noting that Councillor Grant had access to the information requested, it was for the Council to decide what information fell to be properly withheld in terms of FOISA.
17. During the investigation, the Council further reviewed the information and concluded that the majority could be released. It no longer sought to rely on the exemptions cited earlier in relation to this information.



18. In the absence of any submissions to the contrary, the Commissioner finds that the Council was not entitled to withhold this information under the exemptions in section 30(b)(i) and (c) of FOISA.

Additional matters

19. In his application to the Commissioner, Councillor Grant expressed concern at certain aspects of the Council's handling of his request for information. In particular, he was unhappy that his review request was dealt with by a Council officer who had been involved in the initial decision. He questioned whether this was best practice under the Section 60 Code¹.
20. The Council submitted that, although the reviewing officer provided legal advice at the request stage, advice was also obtained from other officials during the review process. Although the reviewing officer signed the review response letter, it was on the basis that he had received impartial advice from these colleagues.
21. The Commissioner has considered the guidance on reviews contained within Paragraph 5.4 of Part 2 of the Section 60 Code. This states that any review of an authority's original decision in regard to a request for information should, where practicable, be handled by staff who were not involved in the original decision. The Commissioner considers this to be good practice, with a view to ensuring (as the Section 60 Code expects) that the review process is carried out impartially and fairly, enabling different decisions to be taken where appropriate.
22. The Commissioner acknowledges that the Section 60 Code sets out good practice rather than requirements of law. She also notes the use of the words "where practicable" in relation to the involvement of a person not involved in the original decision. On the other hand, she does consider that an authority the size of the Council should have procedures in place, and resources available, to ensure that this element of good practice is followed. She has already commented on her concern at other aspects of the way in which the request for review was handled by the Council (see paragraph 16 above), and considers these shortcomings to have been exacerbated by the failure to follow good practice as discussed here.

DECISION

The Commissioner finds that Fife Council (the Council) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Councillor Grant, by incorrectly withholding information in terms of section 30(b)(i) and (c) of FOISA. Given that this information was disclosed during the investigation, the Commissioner does not require the Council to take any action in respect of that failure.

¹ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



Appeal

Should either Councillor Grant or Fife 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.

Margaret Keyse
Head of Enforcement
4 July 2013



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 –

...

- (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-

...

- (b) would, or would be likely to, inhibit substantially-
- (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.