

Decision Notice

Decision 264/2016: Mrs Jean Robb and Argyll and Bute Council

Examination data

Reference No: 201601915

Decision Date: 12 December 2016



Scottish Information
Commissioner

Summary

The Council was asked for information relating to examination passes at Hermitage Academy between 2010 and 2016.

The Council initially withheld the data for the year 2015-2016, arguing disclosure would substantially prejudice the effective conduct of public affairs. During the Commissioner's investigation, it disclosed the information. The Commissioner found that it should have done this in response to the request.

Relevant statutory provisions

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

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 30 August 2016, Mrs Robb made a request for information to Argyll and Bute Council (the Council). The information sought statistical information regarding National 5, Standard and S5 Higher Examination awards and grades for Hermitage Academy since 2010. Mrs Robb provided the Council with tables, which she asked the Council to complete.
2. The Council responded on 16 September 2016. It provided Mrs Robb with an Excel spreadsheet showing percentage figures only. It explained that this was the format the information was held in and that (in its view) providing it in any other format would involve the creation of new information. It stated that it was not providing any further information, in order to avoid the identification of individuals.
3. On 18 September 2016, Mrs Robb wrote to the Council, requesting a review of its decision on the basis that she had not been provided with the information she asked for. She also commented that full disclosure of the information would not lead to the identification of any individual.
4. The Council notified Mrs Robb of the outcome of its review on 18 October 2016. The Council provided Mrs Neilson with the information it held for the years 2010 to 2015, by completing the tables she had provided. In relation to the data for the year 2015-2016, the Council explained that this was being withheld in terms of section 30(c) of FOISA, as it regarded it as inappropriate to allow public scrutiny of issues before they had been formally considered by Councillors (which would not happen until a meeting on 8 December 2016).
5. On 19 October 2016, Mrs Robb wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mrs Robb stated she was dissatisfied with the outcome of the Council's review because she disagreed with the application of section 30(c), submitting that the information had been available to the Council and Councillors for some time. She argued that the Council's governance arrangements should not delay disclosure of the information requested.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mrs Robb made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 7 November 2016, the Council was notified in writing that Mrs Robb had made a valid application. The Council was asked to send the Commissioner the information withheld from Mrs Robb. The Council provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, focusing on the application of section 30(c) of FOISA.
9. The Council responded on 1 December 2016. It confirmed to the Commissioner that it no longer wished to rely on section 30(c) of FOISA as a basis for refusing to disclose the information. It provided confirmation that it had disclosed the withheld information to Mrs Robb.
10. Mrs Robb acknowledged receipt of the information, but said she wanted the Commissioner to issue a decision on the matter.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mrs Robb and the Council. She is satisfied that no matter of relevance has been overlooked.

Section 30(c) – Prejudice to effective conduct of public affairs

12. Section 30(c) of FOISA is set out in full in Appendix 1. The Commissioner's briefing on section 30¹ provides further guidance on the tests to be met in applying this exemption.
13. In the absence of submissions from the Council as to why the exemption applied, and given that the Council has disclosed the information to Mrs Robb, the Commissioner must conclude that the information in question was not exempt from disclosure under section 30(c) of FOISA. Given that the Commissioner does not accept the application of section 30(c), she is not required to consider the public interest test in section 2(1)(b) of FOISA.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section30/Section30.aspx>

Decision

The Commissioner finds that Argyll and Bute 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 Mrs Robb. The information in question was not exempt from disclosure under section 30(c) of FOISA. In refusing to disclose it, the Council breached section 1(1) of FOISA.

The Council has disclosed the information to Mrs Robb, so the Commissioner does not require the Council to take any action in response to this breach.

Appeal

Should either Mrs Robb or Argyll and Bute Council 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

12 December 2016

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-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

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