

Decision Notice

Decision 019/2017: Councillor George Freeman and Argyll and Bute Council

Argyll and Bute Councillors: Council Tax Arrears

Reference No: 201601937

Decision Date: 10 February 2017



Scottish Information
Commissioner

Summary

Argyll and Bute Council was asked for the names of any of its Councillors who were in arrears with Council Tax payments on specific dates, with the amount of the arrears in each case. It disclosed the amounts in response to the request, but did not disclose the name of the Councillor in arrears until after the case was appealed to the Commissioner.

The Commissioner found that the Council had failed to comply with Part 1 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(e)(ii) (Effect of exemptions); 38(1)(b), (2)(a)(i) and (5) (definition of "the data protection principles", "data subject" and "personal data") (Personal information)

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 1 September 2017, Councillor Freeman made a request for information to Argyll and Bute Council (the Council). The information requested was:

“... details of any Argyll & Bute elected councillor who was in arrears with Council Tax payments on the dates listed below please? The details should include the names of any individual councillors who were in arrears with Council Tax payments and the amount of the arrears for each individual councillor on the dates listed below.” The dates were 14 February 2013, 13 February 2014, 12 February 2015 and 11 February 2016.
2. The Council responded on 23 September 2016, disclosing the amounts of arrears but refusing to provide any names. It cited the exemption in section 38(1)(b) of FOISA (Personal information), on the basis that disclosure would amount to unfair processing under the Data Protection Act 1998.
3. On 6 October 2016, Councillor Freeman wrote to the Council, disagreeing with the Council's decision to withhold the information and requesting a review of that decision.
4. The Council notified Councillor Freeman of the outcome of its review on 6 October 2016, upholding its original decision without modification.
5. On 22 October 2016, Councillor Freeman wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Councillor Freeman explained why he believed the information could be disclosed.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Councillor Freeman 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 29 November 2017, the Council was notified in writing that Councillor Freeman had made a valid application. The Council was asked to send the Commissioner the information withheld from Councillor Freeman. 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 its application of section 38(1)(b) of FOISA.
9. During the investigation, the Council confirmed that it no longer wished to rely on section 38(1)(b) of FOISA in relation to the withheld information. The Council emailed Councillor Freeman on 6 February 2017, disclosing the name of the Councillor who was in arrears.
10. Councillor Freeman confirmed to the investigating officer that he had received the information he requested, but stated that he still required a decision from the Commissioner.

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 Councillor Freeman and the Council. She is satisfied that no matter of relevance has been overlooked.

The information disclosed during the investigation

12. The Commissioner notes that the Council reconsidered its position during the investigation and disclosed the name of the Councillor who was in arrears. Originally, it had refused to do so, applying the exemption in section 38(1)(b) of FOISA (Personal information). When disclosing the information, the Council confirmed that it no longer wished to rely on this exemption.
13. In withholding the information under section 38(1)(b) of FOISA, the Commissioner finds that the Council failed to comply fully with Part 1 (and in particular section 1(1)) of FOISA in responding to Councillor Freeman's request. Given the information has now been disclosed, the Commissioner does not require any action to be taken by the Council in relation to this breach.

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 Councillor Freeman. By withholding information under section 38(1)(b) of FOISA, the Council failed to comply with section 1(1) of FOISA.

Given that all information falling within the scope of his request has now been provided to Councillor Freeman, the Commissioner does not require the Council to take any action regarding this failure in response to Councillor Freeman's application.

Appeal

Should either Councillor Freeman 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.

Rosemary Agnew
Scottish Information Commissioner

10 February 2017

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 –

...

- (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.

...

38 Personal information

- (1) Information is exempt information if it constitutes-

...

- (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

...

(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;

...

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