

Decision Notice 107/2021

Assessment of applications to the Glasgow Communities Fund

Applicant: The Applicant

Public authority: Glasgow City Council

Case Ref: 202001319



Scottish Information
Commissioner

Summary

The Council was asked for the assessments and scoring of all applications to the Glasgow Communities Fund.

The Council withheld the information under section 33(1)(b) of FOISA, as it considered disclosure would prejudice substantially the commercial interests of the Fund applicants.

The Commissioner investigated and found that the Council had complied with FOISA in responding to the request. This was because the information was correctly withheld under section 33(1)(b) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 33(1)(b) (Commercial interests and the economy)

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. The Glasgow Communities Fund (the Fund) is a new communities fund that is informed by the Glasgow City Council Strategic Plan, Glasgow Community Planning Partnership's Community Plan and the principles behind the Community Empowerment (Scotland) Act 2015. The Fund aims to tackle poverty and inequality.
2. On 4 September 2020, the Applicant made a request for information to Glasgow City Council (the Council). He asked for the assessments and weightings information carried out by officers to all applications for the 2020-2023 Fund being considered for city wide and sector funds, specifically details of what "score" was given to each application under each assessment category and the total score for each application.
3. The Council responded on 2 October 2020 and notified the Applicant that all of the information was being withheld under section 33(1)(b) of FOISA, as it considered that disclosure of the scoring would, or would be likely to, prejudice substantially the commercial interests of the Fund applicants. The Council explained that it had not yet had the opportunity to provide feedback to individual applicants on the outcome of their applications for funding.
4. On 5 October 2020, the Applicant wrote to the Council requesting a review of its decision, arguing that the Fund applicants would have had an expectation that the information may be disclosed under FOISA. In addition, the Applicant reiterated that he was only seeking information on how the Council had assessed the Fund applications, including their scores and any comments. He did not consider that this would prejudice the commercial interests of any organisation.
5. The Council notified the Applicant of the outcome of its review on 30 October 2020. The Council upheld its reliance on section 33(1)(b) of FOISA, arguing that disclosure of the assessments, weightings, breakdown of scores and comments on the applications to the Fund would cause substantial prejudice to the organisations concerned, particularly in cases where organisations were unsuccessful.

6. On 3 November 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review because he considered that all applicants to the Fund knew that any information they submitted could be subject to publication under FOISA, and that it was in the public interest for the information to be disclosed, as it concerned the distribution of £60 million of public money.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
8. On 27 November 2020, the Council was notified in writing that the Applicant had made a valid application. The Council was asked to send the Commissioner the information withheld from the Applicant. The Council provided the information and the case was allocated to an investigating officer.
9. 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 to answer specific questions. These related to its reasons for withholding the information under section 33(1)(b) of FOISA.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered the withheld information and all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

Withheld information

11. On 4 December 2020, the Council contacted the Applicant and provided him with the total score allocated to each organisation that had applied to the Fund, including those recommended for funding and those that were not recommended for funding. However, the Applicant was not satisfied with this disclosure, arguing that it failed to provide the full detail required for public scrutiny as to what elements the Council assessed each application as scoring against the published criteria.
12. As the global scores for each organisation have since been disclosed, this decision notice will only consider the assessors' comments and the breakdown of the scoring against each individual assessment criterion.

Section 33(1)(b) of FOISA - Commercial interests and the economy

13. The Council submitted that the information sought by the Applicant was exempt from disclosure in terms of section 33(1)(b) of FOISA. This provides that information is exempt information if its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of any person (including a Scottish public authority). This is a qualified exemption and is therefore subject to the public interest test in section 2(1)(b) of FOISA.
14. There are certain elements which an authority needs to demonstrate are present when relying on this exemption. In particular, it needs to indicate:

- (i) whose commercial interests would (or would be likely to) be prejudiced substantially by disclosure;
 - (ii) the nature of those commercial interests, and
 - (iii) how those interests would (or would be likely to) be prejudiced substantially by disclosure.
15. The prejudice must be substantial, in other words of real and demonstrable significance. Where the authority considers that the commercial interests of a third party would (or would be likely to be) harmed, it must make this clear. Generally, while the final decision on disclosure will always be for the authority, it will assist matters if the third party has been consulted on the elements referred to above.

Submissions from the Applicant

16. The Applicant did not agree that the exemption contained in section 33(1)(b) of FOISA applied to the withheld information. He argued that all of the organisations who applied to the Fund, were made aware at the time of application that any information they submit could be subject to FOI legislation. The Applicant stressed that he was not seeking information that the organisations submitted themselves, but rather he had requested information as to how Council officers scored each application against the published criteria.

Submissions from the Council

17. The Council stated that there were 503 applicants to the Fund whose interests are of concern to it. The applicants included Companies Limited by Guarantee, Scottish Charitable Incorporated Organisations (SCIO), Community Interest Companies (CIC), Social Enterprises, Housing Associations, Colleges and unincorporated organisations.
18. The Council explained that applicants to the Fund are primarily community and third sector organisations delivering services that tackle poverty and inequality on a local level within Glasgow. The funding can be used to support projects and can cover such costs as employee costs including staff salaries and training; activity and programme costs; running costs including premises, utilities and equipment; event fees; professional fees including audit costs and full cost recovery.
19. The Council noted that the withheld information consists of the assessments and scoring of the applications against the Fund criteria. Given the nature of the information, the Council submitted that it concerns these organisation's commercial interests.
20. The Council argued that releasing details of the specific scores against each of the criteria into the public domain would potentially impede the success of the Fund applicants when applying for other grants or impact on existing funding arrangements, to the financial detriment of the organisations concerned. This is an impact which could be felt immediately in relation to existing funding streams. In addition, it could affect current applications and any future applications for different funding streams.
21. The Council explained that the structure of the Fund's assessment process is designed to offer the opportunity to all eligible organisations to make an application which is then assessed using the following criteria:
- Organisation/Governance – this included an assessment of how frequently the governing body meets and the types of issues it considers.

- Project Development – this included an assessment of identified gaps and evidence of need, involvement of communities in design and development and ongoing plans for involvement.
- Project Delivery – this included an assessment of the project aims including who will benefit, that the project plans are credible, any evidence of joint or partnership working.
- Project Outcomes and Impact – this included an assessment of the intended outcomes, how these will be measured and the difference the project will make.
- Organisation and Project Finance – this included an assessment of the organisation's financial position and whether the project costs appear reasonable/realistic.
- Sustainability – this includes an assessment of plans for how the project and services can be sustained in the longer term.

22. The organisations are assessed, and each criterion is given a score from 0-5, 0 being “unacceptable” and 5 being “excellent”. A maximum score of 5 against each criterion would result in a weighting of 100. If an organisation received a score of below 40, it was not recommended for funding. The Council explained that this model of assessment was developed specifically for the Fund. It is a significant change from the previous assessment model and largely mirrors the procurement process in terms of its scoring methodology. The Council noted that committee reports for procurement exercises would only detail the ranking and overall scores for the bidders, not the breakdown. The Council submitted that it would not publish detailed scoring for procurement exercises within its public Committee papers due to the commercial impact that this would likely have on the relevant bidders.
23. The Council explained that the overall three-year budget for the Fund is £57,677,291. As noted above, the Council received over 500 applications to the Fund which amounted to £135,485,240 being requested by the organisations, resulting in an over subscription of £77,807,928.
24. The Council argued that this oversubscription is indicative of the competitive nature of the application process and award of funding. In order to secure funding to deliver projects and services, organisations are required to compete against each other for both the Council's funding but also with regard to funding provided by other external organisations. The organisations involved in the Council's grant application process rely on funding in order to deliver their projects and services and are required to bid in competitive processes to be awarded the funding required. Without funding, these services could not be delivered.
25. The grant awards were based on the assessing officers' recommendations and the weighted assessment score within the available budget.
26. The Council contended that disclosure of this type of information could realistically cause reputational damage to the organisations concerned. For instance, critique around the governance structures and arrangements of an organisation could significantly undermine the public and other funders' confidence in the organisation's ability to deliver their services. This could lead to those organisations being viewed negatively by potential funders regardless of the content of their applications. In addition, the Council argued that there is a real risk that service user participation may decline as a result of the damage to the reputation of the organisations and it may also affect the organisation in attracting and/or retaining management committee members, staff and volunteers.

27. The Council submitted that such reputational damage and the fall out from this would be likely to substantially prejudice the commercial interests of the organisations when applying for future or additional funding streams.
28. The Council provided the Commissioner with excerpts from the assessments which contained comments from the assessors which, it argued, were sensitive and disclosure of which would, or would be likely to, cause the commercial harm identified above.

Third party comments

29. The Council submitted that it had contacted a small number of the Fund applicants to gauge their views on disclosure of the information. Of the organisations contacted, five of the applicants agreed that the information should be withheld, three did not respond, two advised that they would support the release of the information, and one organisation advised that they were unable to make a decision (but expressed concern).
30. The Council noted that, on 4 December 2020, it had taken the decision to release the global scores awarded to each applicant, as by that point it had provided feedback to the organisations and no longer considered the information to be commercially sensitive. However, following the publication of this information on its website, the Council received a number of representations from organisations expressing concern, that publication of the global scores could substantially prejudice their commercial interests with regard to other grant funding. The Council provided the Commissioner with examples of these comments.
31. The Council argued that, while these comments do not relate to the withheld information directly, given the concerns around the high-level global scores being disclosed into the public domain, it is likely that the organisations would be as concerned (if not more) over more detailed scoring information along with officer comments being released.

Commissioner's findings on section 33(1)(b)

32. Having considered the Council's submissions, the Commissioner is satisfied that the interests identified by the Council are commercial interests for the purposes of this exemption. As outlined above, the information sought included the Council's assessments of each organisation's financial position and whether the project costs appear reasonable or realistic, as well as an assessment of each project's development and delivery.
33. While the Fund applicants might be non-profit or voluntary organisations, they are still competing against other organisations for funding in order to deliver their services. It is clear that the amount of funds available was significantly less than the number of applications received, and this underscores the competitiveness of the funding process. In addition, the Commissioner accepts that the organisations who made applications to the Fund are also likely to be engaged in bidding for additional funds or grants from other funding streams, and that this is also a commercial process, as they will, again, be competing against other organisations who want the money to deliver the same, or similar, services.
34. The Commissioner accepts that disclosure of this information, particularly where applicants to the Fund were unsuccessful, would result in the Council's candid comments and scoring of each criterion being publicly released. Such disclosure would be likely to cause reputational harm to those bidders who failed to secure funding, and this negative coverage could hamper the organisations' ability to obtain funding from other sources (or indeed may result in existing funding not being renewed or being withdrawn).
35. In all the circumstances, the Commissioner is satisfied that disclosure of the information requested by the Applicant would, or would be likely to, prejudice substantially the

commercial interests of the Fund applicants by allowing competing organisations and potential funders insight into the Councils assessments of the applicants' ability to deliver its services, and this would be likely to result in some organisations being unsuccessful in future bids for funding.

36. Accordingly, in this case, the Commissioner is satisfied that the exemption in section 33(1)(b) of FOISA is engaged in relation to all of the information that is being withheld by the Council.

Public interest test

37. As the Commissioner has found that the exemption in section 33(1)(b) was correctly applied to the withheld information, he is now required to consider the public interest test required by section 2(1)(b) of FOISA. This requires consideration of whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.

Applicant's comments on the public interest

38. In his submissions to the Commissioner, the Applicant commented that the Fund is for a three-year period and it is a significant amount of taxpayers' money, at approximately £60 million pounds. As such, the decision-making process as to how this money was allocated for three years is significant and of clear public interest. The scoring process was directly used to provide recommendations to elected members on what organisations should and should not be provided funding. The Applicant questioned how the public or elected councillors can fairly analyse the recommendations without being able to see the specific scoring awarded to each Fund applicant.
39. The Applicant noted that the Fund was significantly over-subscribed, and argued that to ensure confidence in the assessment process against such an in-demand fund, full transparency is required as to how each organisation was assessed against the assessment criteria.
40. The Applicant acknowledged that the Council has subsequently released the total scores awarded to each application, but he argued that this fails to provide the full detail required for public scrutiny as to what elements the Council assessed each application as scoring against the published criteria. He noted that there were a number of organisations of a very similar type which were not recommended for funding. The Applicant argued that it is reasonable, and in the public interest, to ask how every organisation was assessed against each category to allow the public to see if groups not recommended (or recommended) for funding were successful (or unsuccessful) in particular categories.
41. The Applicant contended that releasing the scoring within each category is not substantially different to what the Council has already done and he queried how it can be in the public interest to release the total scores, but not the scores within each category. The Applicant argued that the performance within specific categories would allow the public to better examine and understand which organisations officers rated in what categories. Furthermore, the Applicant contended that the release of scores within categories is no different to the release of total scores in terms of commercial confidentiality and protecting organisations' reputations.

Council's comments on the public interest

42. The Council acknowledged that there was a significant public interest in openness and transparency, and that there is a particular public interest involving the spending of public money and in understanding the process by which grants are awarded. However, the Council

argued that, this public interest has been met by disclosure of the information contained within its committee reports.

43. The Council contended that the public interest lies in ensuring that the process by which the grants are awarded is open to scrutiny. It explained that the Assessment and Scoring Framework is outlined within the committee report of 3 September 2020 along with an analysis of the assessment and scoring. Additionally, the award of the grant funding is subject to the approval of the City Administration Committee.
44. The Council submitted that it had also provided the overall scores to the Applicant and published this information on its website. The Council noted that there was a significant backlash from the organisations when it took the decision to publish the information (outlined above). Given the concerns raised by the Fund applicants, regarding the harm to their commercial interests, the Council decided to remove the information from its website (although it recognises that the global scores are still in the public domain as they were released under FOI).
45. The Council disagreed with the Applicant's view that there is no difference between the global scores and the breakdown of the scores for each assessment category. It agreed that the individual scores provide more information on the assessment of each specific application. However, it argued that release of the assessment of the criteria, i.e. the governance of the organisation, the project development, the project delivery, project outcomes and impact, project finance and sustainability, would be likely to substantially prejudice the commercial interests of the organisations for the reasons explained above.
46. The Council contended that, there is a greater public interest in these organisations which provide vital services tackling inequality and poverty, being able to secure grant funding without the risk of their reputation being damaged due to the release of information without any context.
47. The Council referred to the Applicant's comments that it was made clear in the assessment guidance that information provided by Fund applicants could be released under FOISA. As a public authority, the Council argued that any information provided to it could be released under FOISA. The Council recognised the importance of complying with its obligations under FOISA and stated that it is committed to promoting a culture of openness, transparency and accountability across its organisation. The Council noted that, while is of the view that the presumption should always be in favour of disclosing information, there are many valid reasons why information should not be provided under FOISA. The Council submitted that the public interest in withholding the information in this case is, on balance, greater than the public interest in disclosure.

Commissioner's views on the public interest

48. The Commissioner has considered all of the arguments and facts in this case. The Commissioner acknowledges the general public interest in transparency and accountability, particularly in relation to the distribution of significant amounts of public money.
49. The public (including elected councillors) are entitled to know the basis on which some organisations were recommended to receive money from the Fund while other organisations were unsuccessful. The Fund comprises a considerable amount of public money, which was distributed to specific organisations with the aim of tackling poverty and inequality; two areas of significant public interest.

50. However, the Commissioner also acknowledges that there is public interest in ensuring that there is fair competition in the commercial environment in which the Fund applicants operate. If the Council disclosed information that reflected negatively on how a specific applicant is governed or how it aims to deliver its services, that would, or would be likely to, substantially prejudice the commercial interests of the affected organisation, and this would not be in the public interest.
51. The Commissioner notes that almost all of the organisations who applied to the Fund were non-profit or voluntary organisations, where the aim is to deliver essential services whilst ensuring that they have enough funding to cover day to day costs, including staffing. These organisations rely on funding (often from several funding streams or grants) to deliver their services, and they are unlikely to be successful in bidding for money from other funding streams if the Council were to reveal if the organisations had scored poorly across the Fund criteria.
52. In this case, reputational harm could have a significant impact on the Fund applicants' commercial interests. The Commissioner notes that the organisations who applied to the Fund, were seeking to deliver services which are vital in addressing inequalities and poverty-related issues. The Commissioner considers that the disclosure of information, which would reduce any of these organisations' ability to deliver such services, would not be in the public interest.
53. Further, the Commissioner considers that disclosure of the global scores allocated to each Fund applicant, combined with the information published in the Council's committee papers on the criteria being used to assess each applicant, has, to a significant degree, addressed the public interest arguments outlined above.
54. Having balanced the public interest for and against disclosure, the Commissioner has concluded that, in all the circumstances of this case, the public interest in maintaining the exemption in section 33(1)(b) outweighs that in disclosure of the information under consideration.
55. As the Commissioner has concluded that the Council was entitled to withhold this information on the basis that section 33(1)(b) applies, he is not required to go on to consider the Council's application of section 30(c).

Decision

The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the 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

5 July 2021

Appendix 1: 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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

- (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.

...

33 Commercial interests and the economy

- (1) Information is exempt information if-

...

- (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

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