



Scottish Information
Commissioner

**Decision 072/2005 Mr Keith J Bell and the City of Edinburgh
Council**

*Request for information relating to the meeting of the Regulatory
Committee*

**Applicant: Keith J Bell
Authority: City of Edinburgh Council
Case No: 200500871
Decision Date: 09 December 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Request for the reports and outcome of the agenda items B4 and B5 of the Regulatory Committee's meeting of 15 December 2004 – information withheld by the City of Edinburgh Council on the basis of section 25(1) and section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 – decision upheld by Commissioner

Facts

On 24 January 2005, Mr Bell requested a copy of the background reports and outcome for the agenda items B4 and B5 of the City of Edinburgh Council's (the Council) Regulatory Committee's meeting on 15 December 2004. In dealing with these items, the Committee was considering complaints made against two holders of a private hire car driver's licence, one of which had been made by Mr Bell.

On 14 February 2005, the Council responded by telling Mr Bell that the outcome of the agenda items was recorded in the minutes of the meeting and these were available on its website. The Council referred Mr Bell to this website. The Council argued that this information was therefore exempt in terms of section 25(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). The Council also advised Mr Bell that it held two reports on agenda items B4 and B5, but that these were exempt in terms of section 38(1)(a) and (b) of FOISA as they contained personal information.

The Council also confirmed that Mr Bell had already received a copy of the report for item B4 prior to the meeting of 15 December 2004 as he had been the complainant.

Outcome

The Commissioner found that the Council had complied with Part 1 of FOISA in withholding this information from Mr Bell on the basis of the exemptions contained in section 25(1) and 38(1)(b) of FOISA.



Appeal

Should either Mr Bell 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 of receipt of this notice.

Background

1. On 24 January 2005, Mr Bell requested a copy of the reports and outcome for items B4 and B5 of the agenda of the Council's Regulatory Committee's meeting of 15 December 2004.
2. On 14 February 2005, the Council responded by advising Mr Bell that the outcome of items B4 and B5 were recorded in the minutes of the meeting and Mr Bell could access them on the Council's website at www.edinburgh.gov.uk/cpol. (This link leads direct to a searchable area of the Council's website called, "Council papers on-line.")
3. The Council also confirmed that it holds the two reports which Mr Bell had requested, but that they were exempt information in terms of section 38(1)(b) of FOISA as they contain personal information.
4. Mr Bell was dissatisfied with this response and asked the Council to review its decision on 14 February 2005.
5. The Council carried out a review and, on 8 March 2005, notified Mr Bell that it had upheld its initial decision. It maintained that the outcome of items B4 and B5 of the Regulatory Committee's meeting were available on the Council's website and that, as this information could reasonably be obtained other than by making a section 1 request, it was exempt information in terms of section 25(1) of FOISA.
6. The Council advised Mr Bell that the report relating to item B4 is exempt under section 38(1)(a) of FOISA as it constitutes personal data of which Mr Bell is the data subject. The Regulatory Committee meeting of 15 December 2004 took place as a result of a complaint by Mr Bell. As a result, Mr Bell had been provided with a copy of this report prior to the meeting.
7. The Council also advised Mr Bell that the report relating to item B5 is exempt information under section 38(1)(b) of FOISA as it contains personal information, the release of which would breach the Data Protection Act 1998.



8. Mr Bell was dissatisfied with the outcome of the review and, on 8 March 2005, applied to me for a decision. His case was subsequently allocated to an Investigating Officer.

The Investigation

9. Mr Bell's appeal was validated by establishing that he had made a request to a Scottish public authority, i.e. the Council, and had appealed to me only after asking the authority to review its response to his request for information.
10. For the purposes of this investigation, the Investigating Officer invited comments from the Council in terms of section 49(3)(a) of FOISA and requested copies of the information which had been withheld from Mr Bell.
11. On 31 March 2005, the Council responded in full.

The Commissioner's findings and analysis

The outcome of the agenda items B4 and B5 of the Regulatory Committee meeting

12. The Council has relied on section 25(1) of FOISA to withhold the outcome of the items B4 and B5 of the agenda of the meeting of the Regulatory Committee on the grounds that these were included in the minutes of the meeting which are available on the Council's website.
13. Section 25(1) provides that information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. However, this section should be read in conjunction with section 25(3) which specifies that for the purposes of section 25(1), information is not reasonably obtainable unless it is made available in accordance with the authority's publication scheme and any payment required is determined in accordance with the scheme.



14. In its review decision, the Council relied on section 25(1) on the grounds that the outcome of items B4 and B5 are available on its website, but omitted any reference to the availability of this information in its publication scheme. For the purposes of this investigation, the Investigating Officer accessed the Council's website and confirmed that the minutes of the meeting are indeed available on the website and are linked electronically to the Council's publication scheme.
15. Furthermore, the Investigating Officer ascertained from the Council that this information was posted on the Council's website on 11 January 2005 at 0926 hours. This information was therefore available via the website on 24 January 2005, when Mr Bell requested the information.
16. The Council has confirmed that paragraph 13 of the minutes relates to item B4 on the agenda and paragraph 14 relates to item B5. In each case, the minute heading matches the agenda item heading. It is therefore possible to identify the outcome relevant to items B4 and B5.
17. I am therefore satisfied that when Mr Bell made his information request, the minutes of the meeting were available on the electronic version of the Council's publication scheme.
18. During the investigation, Mr Bell confirmed that he had Internet access and that he had indeed accessed the minutes of this meeting on the Council's website.
19. Nevertheless, he is not satisfied with this information. Mr Bell is of the view that the minutes are meaningless without knowing what was being discussed.
20. However, Mr Bell requested information relating to the outcome of the agenda items. I understand "outcome" to mean final decision. It is clear from the minutes what the outcome of each of the complaints was and the minutes are sufficiently detailed to make it clear what was being discussed. I am satisfied that the minutes are reasonably accessible to Mr Bell and therefore find that the outcome of the agenda items is exempt in terms of section 25(1) of FOISA.



The report of item B4 of the agenda

21. As part of his information request, Mr Bell asked the Council to provide him with a copy of the background report to item B4. The Council had already provided him with a copy of this report prior to the committee meeting in December 2004. The reason Mr Bell made a freedom of information request for this report was to find out if the Council could, following the introduction of FOISA, refuse to provide information (such as this background report) which had been considered exempt under the Local Government (Access to Information Act 1985 (the 1985 Act).
22. Although the publication of local authority committee agendas, reports etc. is covered by the 1985 Act, a local authority which receives a request for information contained in an agenda or report must consider the request in line with the exemptions contained in FOISA. Just because an agenda or report is deemed to be “exempt” for the purposes of the 1985 Act, it does not mean that the agenda or report is automatically “exempt” for the purposes of FOISA. However, given the categories under which information is considered to be exempt from publication under the 1985 Act (such as contract negotiations and prosecution of a criminal offence), it is possible that local authorities will be able to rely on an exemption in FOISA to withhold the information.
23. In this case, although the Council initially relied on the exemption in section 38(1)(b) of FOISA to refuse to supply Mr Bell with a copy of this report, it later decided to withhold the report on the basis of section 38(1)(a) of FOISA. Section 38(1)(a) exempts from release personal data if the person making the request for the information is the subject of the data.
24. In its submissions during the investigation, the Council acknowledged that section 38(1)(a) may not be applicable to the report of item B4. This report contains details of a complaint made by Mr Bell against another individual, but Mr Bell himself was not the focus of the report. However, section 38(1)(b) certainly applies to this report as it contains personal data which relates to a third party.
25. Mr Bell received the report of item B4 and the appendices prior to the meeting of 15 December 2004. Notwithstanding the Council's submissions, I am satisfied that Mr Bell has received this information. As such, I am satisfied that the report is otherwise reasonably accessible to Mr Bell and is exempt under section 25(1) of FOISA. However, I view the report in B4 in the same way as the report in B5, which is considered below.

The report of item B5 of the agenda

26. As mentioned above, the Council considered that the report of item B5 and its two appendices contained sensitive personal information and was therefore exempt information in terms of section 38(1)(b) of FOISA.



27. Section 38(1)(b) (read in conjunction with section 38(2)(a)(i)), exempts third party personal information from release if its release would breach any of the data protection principles. This exemption is absolute and is not subject to the public interest test. The Council has argued that release of this information would breach the first data protection principle. The first data protection principle requires that personal data should be processed fairly and lawfully.
28. Here, I need to consider whether the Council has applied the exemption in section 38(1)(b) correctly. The questions that I must address are whether the information requested constitutes “personal data” and, if so, would its disclosure breach the first data protection principle.
29. The DPA defines personal data in section 1(1) 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, 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.”
30. The report of item B5 and its appendices consist of the name, home address, and other biographical information about a private hire car operator and driver. Having considered the definition of personal data as specified in section 1 of the DPA and also that in the case of *Durant v Financial Services Authority* [2003] EWCA Civ 1746 Court of Appeal (Civil Division), I am satisfied that the report and its appendices contain sensitive third party personal data from which a specific individual is easily identifiable.
31. I now need to consider whether disclosure of this information would breach the first data protection principle. The first data protection principle requires that personal data should be processed fairly and lawfully and shall not be processed unless one of the conditions of Schedule 2, and in the case of sensitive personal data, at least one of the conditions of Schedule 3 of the DPA, are met.



32. I have considered the conditions in both Schedules 2 and 3. I am satisfied that the Council can satisfy the sixth condition for processing listed in Schedule 2 of the DPA because there is a legitimate interest in making the public aware of the decisions made by local authorities in relation to the licensing of private hire cars. However, having looked at the conditions contained in Schedule 3, I am satisfied that none are met. As a result, I find that the release of this report would breach the first data protection principle. However, for the sake of completeness, I will further consider whether the processing would be fair (the Council has not argued that it would be unlawful to process the information and in the circumstances I do not propose to examine this further).
33. Having considered the contents of the report of item B5 and its appendices, I am satisfied that the information requested is sensitive, the majority of which relates to the private life of an individual and therefore merits protection.
34. On his part, Mr Bell has submitted that a public register already exists which displays personal information of all licensees. He has argued that by applying for a taxi licence an individual forgoes any right to anonymity.
35. The Council has confirmed to my Office that in terms of the Civic Government (Scotland) Act 1982 it is required to keep a public register of taxi driver applications. Both the name and home address would be available for inspection on the register in terms of the Council's publication scheme. The application form used in the process specifies that the address given should be the home address. However, the home address may also be the business address of an applicant, particularly in the case of a private taxi or hire car licence holder.
36. I have taken into consideration Mr Bell's arguments and accept that the name and the address of the individual identified in the report of the agenda item B5 is already in the public domain. However, I also take the view that the other sensitive biographical data about the individual included in this report and its appendices have not been public knowledge and it is the combination of this data which makes this information particularly sensitive.
37. On the basis of the foregoing arguments, I take the view that disclosure of such sensitive personal data will not be fair and would amount to breach of the first data protection principle. As such, I find that report and appendices for agenda item B5 are exempt from disclosure under section 38(1)(b) of FOISA.



Decision

I find that the City of Edinburgh Council complied in full with Part 1 of the Freedom of Information (Scotland) Act 2002 in the manner in which it responded to the information request dated 24 January 2005 from Mr Bell.

Kevin Dunion
Scottish Information Commissioner
9 December 2005