



Scottish Information  
Commissioner

**Decision 235/2006 Councillor William Buchanan  
and Falkirk Council**

*Request for all expense sheets of a councillor covering the period in  
which that councillor had been in the Administration*

**Applicant: Councillor William Buchanan  
Authority: Falkirk Council  
Case No: 200502821  
Decision Date: 18 December 2006**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## **Decision 235/2006 Councillor Buchanan and Falkirk Council**

**Request for all expense claim sheets of a councillor covering the period in which that councillor had been in the administration of the Council-information provided but with dates of signature and dates and times of journeys withheld under section 38 (Personal data).**

### **Relevant Statutory Provisions and other Sources**

---

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement); 10(1) (Time for compliance), 21 (Review by Scottish public authority), 38(1)(b) (Personal information).

Local Authorities etc (Allowances) (Scotland) Regulations 1995 regulation 28

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

Previous decisions considered:

033/2005 - Paul Hutcheon, The Sunday Herald and the Scottish Parliamentary Corporate Body (David McLetchie MSP's travelling claims since 1999 - taxi journey destinations).

### **Facts**

---

Councillor Buchanan requested from Falkirk Council (the Council) all expense claims forms of another councillor, covering the period during which the other councillor had been in the Administration at the Council.

The Council failed to respond to Councillor Buchanan's request within the 20 working day period allowed. Councillor Buchanan then submitted a request for review.



In its response, the Council supplied Councillor Buchanan with a four year summary breakdown of the councillor's expense claims but initially withheld copies of the actual expense claim forms.

Councillor Buchanan was dissatisfied with the Council's response and applied to the Scottish Information Commissioner for a decision. The Council subsequently supplied Councillor Buchanan with the expense claim forms requested, but with times and dates of journeys along with date of signature redacted.

After investigation, the Commissioner decided that the Council had acted, in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in withholding the times of the journeys, the information being exempt by virtue of section 38(1)(b) read in conjunction with section 38(2)(a)(i) of FOISA.

However, the Commissioner found that the Council had not acted in accordance with section 1(1) of FOISA in withholding the dates of the journeys and the dates of signature.

The Commissioner also found that the Council had failed to act in accordance with Part 1 of FOISA, in failing to respond to Councillor Buchanan's initial request and request for review within the timescales set out in sections 10(1) and 21(1) of FOISA.

## Background

---

1. On 9 June 2005, Councillor Buchanan requested by email, all copies of another councillor's expense claim forms, covering the period that the councillor had been in the Administration of the Council.
2. Although it was acknowledged, the Council failed to provide a substantive response to Councillor Buchanan's request within the 20 working day period allowed.
3. Councillor Buchanan then submitted a request for review, on 1 August 2005, based on the Council's failure to respond.
4. In the Council's response to Councillor Buchanan's request for review, dated 11 August 2005, it supplied a summary breakdown of the councillor's expenses covering the last four years. It advised that this information was more detailed than the information regarding councillors' expenses in the public domain already. The Council did not supply copies of the councillor's actual expense claim forms at this stage, arguing that these were potentially exempt under section 38 of FOISA and that consequently it was consulting the councillor on the question of release.



5. Councillor Buchanan was dissatisfied with the Council's response and applied to the Commissioner for a decision on 4 October 2005.
6. This case was then allocated to an investigating officer and the appeal was validated by establishing that Councillor Buchanan had made a valid information request to a Scottish public authority and had appealed to me only after asking the authority to review its response.
7. Subsequently, following consultation with the councillor in question, the Council supplied Councillor Buchanan with copies of the expense claim forms requested but with dates, journey times and date of signature withheld.
8. Councillor Buchanan contacted this Office on 16 January 2006, stating that he was dissatisfied that the dates, journey times and date of signature had been redacted from the information provided.

## The Investigation

---

9. A letter was sent to the Council on 19 October 2005, giving notice that an appeal had been received and that an investigation into the matter had begun, as required by section 49(3)(a) of FOISA. The Council was invited to comment on matters raised by the applicant and on the application as a whole, including its handling of the request and details of any exemptions it would apply to the information withheld (with reasons).
10. The Council replied on 30 November 2005 enclosing its statements on the case and supporting documentation. In this letter, the Council relied upon section 38 of FOISA to justify withholding information from Councillor Buchanan. Following the release of further information to Councillor Buchanan, the Council was asked to confirm which particular subsection of section 38 was being relied upon.
11. The Council indicated that it was balancing the legitimate interests of the requester and the data subject as per Schedule 2, 6(1) of the Data Protection Act 1998 (DPA). This relates to the application section 38(1)(b) read in conjunction section 38(2)(i) of FOISA.
12. The Council supplied my Office copies of one of the expense claim forms requested, one unedited and one redacted to show what information had been released to Councillor Buchanan.



13. It became clear, in the circumstances of this case, that the sample supplied was too small to allow me to come to a decision. As a result, the investigating officer requested a three month sample of the documents, one full copy of each and one redacted. The Council supplied copies of the expense claims as requested.

## The Commissioner's Analysis and Findings

---

14. I wish to make it clear at this stage that my remit does not extend to considering whether the expense claims made by the councillor were made correctly. This investigation is limited to the question of whether details about the councillor's journeys should have been released to Councillor Buchanan.
15. The investigation into this case focussed on two separate issues:
  - i. Whether the Council's decision to withhold some of the information, requested by Councillor Buchanan, on the basis of section 38(1)(b) read in conjunction with 38(2)(a)(i), was compliant with FOISA.
  - ii. Whether the Council complied with technical requirements set down in FOISA in relation responding to a request and a request for review.

### Application of section 38(1)(b) read in conjunction with section 38(2)(a)(i)

16. The exemption relied on by the Council was that contained in section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i).
17. Section 38(1)(b) exempts third party personal data if the release of the information would breach any of the data protection principles set out in Schedule 1 of the DPA.
18. I must therefore consider whether the information which has been withheld from Councillor Buchanan is personal data. Personal data is defined in section 1 of the DPA 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...”*



19. The (UK) Court of Appeal ruling in *Durant v Financial Services Authority* [2003] EWCA Civ 1746 (the *Durant* ruling) provides further guidance when considering the definition of personal data. In this decision, the Court held that, if information is to be viewed as personal data, that information must be “biographical in a significant sense”. It therefore has to go beyond simply recording an individual’s involvement in a matter or event that has no personal connotations, and should feature the individual as the focus of the information. The Court of Appeal summarised personal data as information which “affects [a person’s] privacy, whether in his personal or family life, business or professional capacity”.
20. The information which has been withheld tells us about a particular councillor’s journeys on Council business over a number of years; read in conjunction with the departure and arrival points of that councillor’s journeys, I am satisfied that the information is the councillor’s personal data.
21. I must now go on to consider whether the release of the information would breach any of the data protection principles.
22. In this instance the Council asserts that release of the information would breach the first data protection principle, which requires that personal data be processed fairly and lawfully. The first principle provides:
  1. *Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*
    - (a) *at least one of the conditions in Schedule 2 is met, and*
    - (b) *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*
23. As mentioned above, the Council considers that the condition in Schedule 2 which is most relevant is condition 6, which allows data to be processed (in this case, by disclosure) if the processing is necessary for purposes of legitimate interests pursued by the data controller or the third party or parties to whom the data would be disclosed (in this case, Councillor Buchanan), except where the processing would be unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject (in this case, the other councillor).
24. I agree with the Council that this particular condition is relevant in this case. I am satisfied that the conditions in Schedule 3 of the DPA are not relevant here, as none of the information in question is sensitive personal data as defined in section of the DPA (for example, information about a person’s physical or mental health).



25. Before a decision is taken to release personal data, the data controller should consider whether the individual concerned has been told that the information about them will be disclosed, or what their reasonable expectations about disclosure might be.
26. The Freedom of Information Act Awareness Guidance No. 1, published by the Information Commissioner, who is responsible for enforcing the DPA, provides:

*“Information which is about the home or family life of an individual...is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.”*

Members' expenses are currently a matter of public record to the extent that details require to be published in terms of regulation 28 of the Local Authorities etc (Allowances)(Scotland) Regulations 1995. In light of the above, I am satisfied that the individual concerned would have expected certain information in relation the payment of their travelling expenses (in particular, information as to the amount and nature of each payment of this kind they receive) to be released into the public domain. Councillor Buchanan, however, is seeking detailed information about the journeys undertaken to justify those payments, information which is contained in a standard claim form stipulated by the 1995 Regulations.

27. To comply with condition 6 of Schedule 2, processing data must be necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data would be disclosed, in this case Councillor Buchanan. In other words, there must be a legitimate interest in disclosure and disclosure must be necessary to secure that legitimate interest.
28. There is a clear public interest in releasing Members' expenses, ensuring accountability and openness. In this instance Councillor Buchanan was seeking to clarify allegations of expense claim irregularities made in relation to this particular councillor.
29. I am satisfied, therefore, that Councillor Buchanan and any member of the public has a legitimate interest in accessing information allowing the verification of claims which relate directly to the expenditure of public funds. I am also satisfied that certain information contained in the claim form will be required to verify claims, including the dates of the journeys in question.



30. However, processing will not be in accordance with condition 6 where it is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject. The two, potentially conflicting interests, will require to be balanced.
31. The Council considered that in this case processing would be unwarranted because it would prejudice the rights and freedoms or legitimate interests of the data subject, by exposing this individual to an unnecessary risk.
32. In its submissions to this Office, the Council provided a letter dated 30 September 2005, in which the councillor in question objected to the information being released and indicated why the prospect of the release of this specific data gave rise to specific concerns.
33. Notwithstanding the concerns raised, the councillor in question recognised that in normal circumstances their public role would demand the release of this information. The Council submitted that, despite these specific concerns, the councillor was agreeable to the information being released provided that the dates and times of journeys and dates of signature were redacted.
34. The Council informed Councillor Buchanan on 2 December 2005 that, due to the express refusal of consent from the councillor in question, and given the nature of the concerns raised by that councillor, it had respected the refusal of consent and withheld the dates and times of journeys along with the dates of signature.
35. In its submissions to this Office, the Council stated that it relied upon my decision 033/2005 to guide and assist the approach adopted. Accordingly, the councillor's expense claims were examined to establish if there was any pattern of behaviour which would allow the councillor's movements to be anticipated and therefore subject that person to risk from anyone who may wish to harm them.
36. As I stressed in my decision in 033/2005 (David McLetchie MSP's travelling claims since 1999-taxi journey destinations), each case has to be treated on its own merits and I will not order release of information in future cases should the release of the information put a person at risk.
37. An important distinction between this case and decision 033/2005 is the nature of the information redacted. In this particular case, information detailing times and dates of journeys was redacted. In decision 033/2005 case the information held by the Scottish Parliamentary Corporate Body did not include the times at which taxi journeys were taken, thus making it very difficult for a third party to ascertain any pattern.





38. The Council asserted that while a number of patterns did emerge that would disclose the councillor's whereabouts, these were in relation to engagements which were already public such as surgeries and meetings of the Administration.
39. Although the Council acknowledged that a number of the engagements attended by the councillor were in the public domain, details as to the place and time of departure, the period of absence and the time of return were also included on each expense claim form. In this instance, a large majority of the journeys made by this specific councillor departed from and returned to the councillor's home address and (given that the councillor's home address was freely available) the Council considered that the this information could subject the councillor in question to risk.
40. Given the councillor's particular concerns balanced with their public position, the Council agreed to supply Councillor Buchanan with copies of the expense forms but with the dates and times of the journeys along with the date of signature redacted.
41. I am satisfied, in this particular instance, given that the majority of these journeys depart from and return to the councillor's home address, that disclosure of the times of departure and return, in conjunction with the patterns that might be expected to emerge (I am satisfied that certain patterns can be discerned from the claims and that it might be reasonable to expect these to be replicated), that the councillor in this case has legitimate concerns as to the potential for risk, to person or property, if these details were released.
42. I am also satisfied, given the concerns raised by this councillor, that they had no expectation that such detailed information relating to movements from and to their home would be released into the public domain.
43. However, I also acknowledge Councillor Buchanan's legitimate interest in ensuring accountability and openness, particularly in relation to the expenditure of public funds. With this in mind I am not satisfied that the Council acted correctly in withholding the date of each journey and the date of signature of each form. I note that the dates of meetings attended will generally be in the public domain and I see no additional risk to the councillor in question should the dates and the date of signature be released.
44. Given the Council's obligations under regulation 28 of the Local Authorities Etc (Allowances) (Scotland) Regulations 1995 and the extent of the information already provided to Councillor Buchanan (details of the meeting attended, where the meeting was held, the location left from, the period of absence, the mode and class of transport and the amount claimed), I would consider the Councillor Buchanan's legitimate interest to be satisfied upon release of dates.



45. However, I find no further legitimate interest for the release of departure and return times to the councillor's home address, given the extent of the information previously provided by the Council.

### **Technical breaches of FOISA**

46. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information.
47. In this instance the Council failed to respond to Councillor Buchanan's initial request within the 20 working day period allowed. The Council stated that this was due to the combination of annual leave and the pressure of business.
48. In addition, section 21(1) of FOISA also requires authorities to respond to the requests for review they receive within 20 working days.
49. In its submissions to this Office the Council states that it interpreted Councillor Buchanan's letter of 1 August 2005 as a reminder as it was submitted to the same person dealing with the original request.
50. As Councillor Buchanan had not received a response to his original request and therefore was not given instruction as to how to submit a request for review, the letter of 1 August 2005 should have been considered as a request for review by the Council.
51. The Council failed to respond to Councillor Buchanan's request for review within the 20 working day period allowed.
52. The Council offered its apologies for the delay caused in this case. The Council submit that the delay had arisen from a well intentioned desire to deal with the request at a senior level because of its nature; this had proved counterproductive due to the pressure of business on senior officials. the Council has made assurances that this will be avoided in the future.



## Decision

---

I find that the terms of section 38(1)(b), read in conjunction with section 38(2)(a)(i), of the Freedom of Information (Scotland) Act 2002 was relied upon correctly by the Council in redacting the departure and return times from the expense claim forms. I find that in redacting the times of journeys from the expense claim forms, the Council dealt with Councillor Buchanan's request in accordance with Part 1 of FOISA.

However, I find that the Council failed to deal with Councillor Buchanan's request in accordance with section 1(1) of FOISA in withholding the dates of the journeys and the date of the signature. I therefore require Falkirk Council to release these details to Councillor Buchanan, within 45 days of receipt of this decision notice.

In addition, I find that the Council breached Part 1 of the Freedom of Information (Scotland) Act 2002 in failing to respond to Councillor Buchanan's initial request or his request for review within the relevant 20 working day periods set out in sections 10(1) and 21(1) of the Freedom of Information (Scotland) Act 2002. I do not require any remedial action to be taken by the Council in respect of this breach.

## Appeal

---

Should either Councillor Buchanan or the Council wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal should be made within 42 days of receipt this notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**18 December 2006**



## 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.

##### **10 Time for compliance**

- (1) ... a Scottish public authority receiving a request for which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after –
- (a) ... the receipt by the authority of the request.

##### **21 Review by Scottish public authority**

- (1) ... a Scottish public authority receiving a requirement for review must ... comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

##### **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 the 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; ...



## **Data Protection Act 1998**

### **1 Basic interpretative provisions**

“personal data” means 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

## **Schedule 1 The Data Protection Principles**

### **Part 1: The Principles**

- 1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

### **Schedule 2 Conditions Relevant for purposes of the First Principle: processing of any personal data**

- 6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interest of the data subject.

## **The Local Authorities Etc. (Allowances) (Scotland) Regulations 1995**

- 28 (1) Every local authority and joint board shall keep a record of the payments made by it in accordance with any scheme made pursuant to these Regulations.
- (2) Every authority or body to whom any of sections 45 to 49A of the 1973 Act applies shall keep a record of the payments made by it by virtue of any of those sections.
- (3) A record kept pursuant to either of the preceding paragraphs shall specify in relation to each payment-



(a) the name of the recipient; and

(b) the amount and nature of the payment.

(4) A record kept in pursuant to either of the paragraphs (1) or (2) \_ shall be published by that authority, joint board or other body in such a manner and at such frequency (and, in any event, not later than 1<sup>st</sup> June in each year in respect of the previous year) as that authority, joint board or other body consider fit, and shall be available, at all reasonable times, for inspection (free of charge)-

(a) where it is kept by a local authority, by any local government elector for the area of that authority;

(b) where it is kept by any other body, by any local government elector for the area of any local authority in whose are the body operates.

(5) A person entitled to inspect a record under paragraph (4) may make a copy of any part of it.