



Scottish Information
Commissioner

Decision 192/2007 Mr Y and University of Glasgow

Papers and correspondence relating to an Audit Committee meeting

Applicant: Mr Y
Authority: University of Glasgow
Case No: 200601460
Decision Date: 19 October 2007

Kevin Dunion
Scottish Information Commissioner

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Decision 192/2007 Mr Y and University of Glasgow

Request for agenda, papers, correspondence and minutes relating to a meeting of the University's Audit Committee – Commissioner partially upheld the University's decision

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2(1) (Effect of exemptions); 30(b) and (c) (Prejudice to the effective conduct of public affairs); 33(1)(b) (Commercial interests and the economy).

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

Facts

Mr Y requested from the University of Glasgow (the University) copies of information relating to a meeting of the University's Audit Committee which took place in May 2006. The University responded to Mr Y's information request, and in its response it released various pieces of information that Mr Y had requested. The University redacted names of individuals from some information in certain of the documents that it released to Mr Y and relied on the exemption in section 38(1)(b) of FOISA for doing so. The University also redacted other information from certain of the documents that it released to Mr Y and relied on the exemptions in sections 30(b), 30(c) and 33(1)(b) of FOISA for doing so.

Following a review, the University released information (subject to the redaction of individual's names) in one of the documents that it had previously withheld from Mr Y, but otherwise upheld its original decision. Mr Y remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the University of Glasgow had partially failed to deal with Mr Y's request for information in accordance with Part 1 of FOISA by withholding certain information under sections 30(b), 30(c) and 33(1)(b). He required the release of this information.



Background

1. On 12 June 2006, Mr Y wrote to the University requesting the following information in respect of the meeting of the University Audit Committee which took place in May 2006:
 - The agenda for the meeting
 - All of the papers relevant to the agenda, including those which were tabled at the meeting
 - All correspondence (including email correspondence) which the University possessed in relation to the meeting (including correspondence between members, between staff in attendance at the meeting and between members and staff in attendance at the meeting)
 - All minutes prepared in respect of the meeting (including draft minutes which had since been superseded).
2. On 10 July 2006, the University wrote to Mr Y in response to his request for information. In this response the University did release some information to Mr Y, however it redacted the names of individuals from certain of this information, and relied on the exemption in section 38(1)(b) of FOISA for doing so. The University also relied on the exemptions in sections 30(b), 30(c) and 33(1)(b) of FOISA for redacting other information from certain of the documents that it released to Mr Y.
3. On 24 July 2006, Mr Y wrote to the University requesting a review of its decision. In particular, Mr Y clearly expressed his dissatisfaction with the response that the University had made to him, and he challenged the University's reliance on the exemptions under sections 30 and 33 of FOISA that it had relied upon in respect of the information withheld from him.
4. On 1 August 2006, the University wrote to notify Mr Y of the outcome of its review. The University advised Mr Y that it had upheld its original decision in relation to redacting some information from certain of the documents that it had released to him, and its reliance on sections 30 and 33 of FOISA for doing so. The University also upheld its original decision to redact names of individuals from certain of the documents which it had released to Mr Y, and for its reliance on section 38 (1)(b) of FOISA for doing so. The University did release to Mr Y a copy of an audit planning report (subject to the redaction of individuals' names), which it had originally withheld.
5. On 8 September 2006, Mr Y wrote to my Office, stating that he was dissatisfied with the outcome of the University's review and applying to me for a decision in terms of section 47(1) of FOISA.



6. The application was validated by establishing that Mr Y had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.

The Investigation

7. On 1 November 2006, the University was notified in writing that an application had been received from Mr Y and was asked to provide my Office with its comments in terms of section 49(3)(a) of FOISA, along with specified items of information required for the purposes of the investigation. The University responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the University on various occasions, asking it to provide comments on the application and to respond to specific questions on the application. A full response was received from the University to these questions.
9. With its submissions to my Office, which provided reasons for its reliance on the exemptions claimed, the University has provided me with copies of the information that it withheld from Mr Y, identifying that information which had been redacted from the documents released to him.
10. I will consider the University's reasoning for relying on the exemptions claimed further in the section on Analysis and Findings below.

The Commissioner's Analysis and Findings

11. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Y and the University and am satisfied that no matter of relevance has been overlooked.
12. In his application to my Office, Mr Y specifically asked that I investigate the University's reliance on the exemptions in sections 30(b) and 30(c) to the information that had been withheld from him regarding the "Voluntary Severance Scheme". Mr Y also asked that I investigate the University's reliance on the exemption in section 33(1)(b) of FOISA in respect of information regarding the University's views on companies tendering for a particular contract.



13. Following further communication with my investigating officer, Mr Y also asked that I investigate the University's reliance on the exemptions in sections 30(b) and 30(c) of FOISA in relation to information redacted from documents that had been released to him. Mr Y advised that he did not, however, require the Commissioner to investigate the University's reliance on the exemption in section 38 of FOISA in relation to certain information which it withheld from him in this case, and therefore I will not consider the application of that exemption further in this decision.

Section 33 - Commercial interests

14. Section 33(1)(b) of FOISA states 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, without prejudice to that generality, a Scottish public authority).
15. The University has relied on the exemption in section 33(1)(b) of FOISA for redacting information from the minutes of two Audit Committee meetings that it released to Mr Y.
16. There are certain elements to section 33(1)(b) of FOISA which an authority needs to demonstrate when relying on this exemption. In particular, it needs to indicate whose commercial interests might be harmed by disclosure, the nature of those commercial interests and how these interests will be substantially prejudiced. Where an authority is arguing that the commercial interests of a third party will be harmed, the authority must make this clear and must indicate the nature of those commercial interests and how these interests would, or would be likely to, be prejudiced substantially.
17. Even where an authority considers that section 33(1)(b) of FOISA applies to information which is the subject of the request, it must still go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.

Minutes of 11 May 2006 Meeting

18. In this case, the redacted information relates to the views of the University Audit Committee on companies who tendered for a particular contract.



19. In its submissions to my Office, the University has indicated that it relied on the exemption in section 33(1)(b) of FOISA as it was concerned that if this information were to be released then there would be potential serious detriment to the commercial interests of the companies who submitted tenders for the contract. The University substantiates this view by adding that the commercial interests of these companies would or would be likely to be prejudiced substantially by their relative weaknesses in the tendering exercise being made public. The University also contends that release of this information could influence the views of other parties who might consider entering into contractual agreements with the firms involved.
20. Having considered the information that has been withheld, together with the full submissions made by the University, I accept that the comments recorded in the information which has been withheld from Mr Y do relate to the views of the University Audit Committee on the tenders submitted by four companies for a contract. I also accept that the companies who tendered for this contract do have commercial interests. The comments recorded within the withheld information are, however, general as to the Committee's overall views on the companies and do not comment on the specifics of the tenders or presentations that have been made by the companies.
21. It is also clear from other information and submissions that have been provided by the University that a decision was taken on which of the companies should be awarded the contract on 11 May 2006, the date of the meeting to which the minute relates. The successful company was notified of the award of this contract slightly later and work started on the contract shortly prior to Mr Y submitting his request for a review.
22. In all the circumstances, therefore, I do not accept that if these comments were released that this would, or would be likely to prejudice substantially the commercial interests of any person. I am of this view as there is no specific information recorded in these comments as to the financial terms which the companies set out in their tenders, or how each would seek to undertake the work required by the contract if the contract were awarded to them. Also the comments recorded here are the subjective comments of the Audit Committee members relating to the tender and presentation given for a specific contract. Given that there are no specific details recorded here as to the brief for the requirements of the contract, and that in any event it is unlikely that the requirements for another contract let by another organisation would be exactly (or even substantially) the same, it is likely that a tender presentation made by any of the companies to another body or organisation would be different, relating to the particular requirements of that other contract.



23. I am therefore not satisfied that release of the information related to the Audit Committees views on companies who tender for a contract would, or would be likely to prejudice substantially the commercial interests of any person. As a result I am not satisfied that this information would come within the scope of the exemption in section 33(1)(b) of FOISA.
24. As I have not accepted that views of the University Audit Committee on companies tendering for a particular contract would be exempt under section 33(1)(b) of FOISA, I am not required to go on to consider the application of the public interest test. Therefore, I require the University to release this information to Mr Y.

Minutes of 24 May 2006 Meeting

25. In this case, the information redacted came under the heading "AUDIT/2005/29. Audit Planning Report".
26. In justifying its reliance on the exemption in section 33(1)(b) of FOISA in relation to this particular information, the University argued that because of the nature of the information that had been withheld, the effect of its release would be to substantially prejudice the commercial interests of the University. The University referred to my own briefing on the section 33 exemption. In doing so, it submitted that it considered that the information related to, or could substantially prejudice, a commercial activity, that the activity was carried out in a competitive environment, and that release of the information would seriously damage business confidence.
27. The University has provided me with further, more detailed, submissions as to what commercial interests it has and why it considers that release of this particular information would substantially prejudice those interests.
28. Having considered the content and manner of expression of the information that has been redacted, together with the full submissions made by the University, I accept that the release of this information at the time the University dealt with Mr Y's request would have had, or would have been likely to have, have the effect of prejudicing substantially the University's ability to compete effectively in a key area of its activities. I am therefore satisfied, on the basis of the information which has been submitted to me by the University that disclosure of the redacted information at that time would have prejudiced, or would have been likely to prejudice, substantially the University's commercial interests.
29. As I am satisfied that the information which has been redacted from the Audit Committee meeting minutes would be exempt under section 33(1)(b) of FOISA, I am now required to go on to consider the application of the public interest test in section 2(1)(b) of FOISA.



Public interest test

30. The University advised that in its view the application of the public interest test confirmed its position that the information which has been redacted from the minutes of the 24 May Audit Committee meeting should not be released.
31. The University has submitted that it operates in a very competitive environment, especially in the area highlighted. The University considered that the public interest in disclosure of the information was slight considering the relevant issues had been identified and reported to the Audit Committee.
32. In its assessment of the application of the public interest test, the University has provided me with comprehensive arguments as to why it is of the view that the public interest in maintaining the exemption in this case outweighs that in disclosure. These arguments include the University's view that there is a public interest in ensuring the continuing success and competitiveness of the University, including the detection, reporting, recording and resolving of inadequacies of its systems and procedures. The University has explained why release of this information while it was taking steps to improve its systems and procedures would be detrimental to the public interest.
33. I accept that there is a public interest in ensuring the on-going efficiency and compliance of the University. I also accept that there is a public interest in allowing the University to take steps to resolve inadequacies in its systems without concern that this information is going to be put into the public domain while these actions are being completed. However, I also recognise that there is a public interest in transparency, particularly where this relates to finance, and particularly where this finance has come from the public purse. On balance, however, I find that the public interest in this case lies in allowing the University to ensure that it is operating efficiently and competitively, and for the University to be able to take such steps as necessary to continue to operate efficiently and competitively and in compliance with relevant standards and targets.
34. On balance, therefore, I find that the public interest in disclosure of the information is outweighed by the public interest in maintaining the exemption in section 33(1)(b) of FOISA.
35. As I am satisfied that the information which has been redacted from the minutes of the Audit Committee meeting on 24 May 2006 is exempt under section 33(1)(b) of FOISA, I am not required to go on to consider the University's reliance on sections 30(b)(i), 30(b)(ii) and 30(c) in respect of this information.



Section 30 – Prejudice to the effective conduct of public affairs

36. The exemptions under section 30(b) of FOISA are qualified exemptions, which means that where the University finds that certain information falls within the scope of the exemption, they are then required to go on to consider the application of the public interest test laid down in section 2(1)(b) of FOISA.
37. In order for the University to be able to rely on the exemptions laid down in section 30(b) of FOISA it would have to show that the disclosure of the information would, or would be likely to, inhibit substantially – (i) the free and frank provision of advice; or (ii) the free and frank exchange of views for the purposes of deliberation.
38. As I have said in previous decisions (e.g 174/2006, Christine Grahame MSP and the Scottish Executive), it is my view that the standard to be met in applying these tests is high. In applying these exemptions, the chief consideration is not whether the information constitutes advice or opinion, but whether release of the information would inhibit substantially (as the case may be) the provision of advice or exchange of views. I take the view that in this context inhibit means to restrain, decrease or suppress the freedom with which advice is given, and opinions or options are expressed.
39. When considering the application of these exemptions, each request should be considered on a case by case basis, taking into account the effects anticipated from the release of the particular information involved. For example, this would involve considering:
- The nature of the information, and whether it does actually contain the provision of advice, or an exchange of views
 - The subject matter of the advice or exchange of views
 - The manner in which the advice or exchange of views are expressed
 - Whether the timing of release would have any bearing (releasing advice or views whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once advice has been taken).
40. The exemption in section 30 (c) of FOISA is also a qualified exemption, which is subject to the application of the public interest test in section 2(1)(b) of FOISA.
41. Section 30 (c) of FOISA exempts information which would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.



42. As I stated in my decision 017/2006 (Mrs X and Angus Council) I expect any public authority citing this exemption to show what specific harm would be caused to the conduct of public affairs by release of this information. The risk of damage being caused by release of this information would have to be real or very likely, not hypothetical. The harm caused must be significant and not marginal.
43. The University has relied on the exemptions in sections 30(b)(i), 30(b)(ii) and 30(c) of FOISA for information that it redacted regarding the “Voluntary Severance Scheme” from a document that it released to Mr Y. The University also relied on the exemptions in sections 30(b)(i), 30(b)(ii) and 30(c) for information that it redacted from an email communication that it released to Mr Y.
44. In its submissions to my Office, the University has provided combined submissions for its reliance on the exemptions in section 30(b)(i), 30(b)(ii) and 30(c) of FOISA. I will consider the University’s reliance on the exemptions in sections 30(b)(i) and 30(b)(ii) of FOISA first.

Sections 30(b)(i) and 30(b)(ii)

Voluntary Severance Scheme

45. The University has advised that the information relating to the “Voluntary Severance Scheme” which it redacted from the information which it released to Mr Y, relates to a progress report about an audit investigation which was still ongoing at the time of the meeting in May 2006.
46. The University advised that an audit report, such as that relating to the “Voluntary Severance Scheme”, required extensive input from a variety of sources, and argued that individuals providing input to the investigation must not be inhibited from giving free and frank views relevant to the investigation. The University also asserted that the input of these individuals must not be influenced by any prior knowledge of the progress of the investigation or other views and information which had already been provided as part of the investigation. It also contended that members of the Audit Committee must be able to give free and frank views on both the operation of the audit and its outcomes.
47. In its submissions, the University provided me with its views as to what harm and prejudice would be caused by the release of this information. It indicated that release of this information could have affected the ongoing audit process in particular ways, which it identified, and undermined future investigations by auditors. As a result of this, the University concluded that the harm test had been met.



48. The University has applied both sections 30(b)(i) and 30(b)(ii) of FOISA to the redacted information. Having considered the information that has been redacted from the Internal Audit Monitoring Report, together with the submissions from the University, I am satisfied that the redacted information relates to advice which was being given in an update on the progress of a particular audit that was being carried out. I am also satisfied that the advice recorded in this report is expressed frankly, and that this relates to the findings of the audit at the time that the report was prepared. It is also apparent from the information that the University has submitted that this audit had not been completed by the time that Mr Y submitted his request for information or his request for a review, and that in fact the final report on this audit was not presented to the Committee until November 2006.
49. Although the University has only provided general submissions as to the harm that it would expect would be caused by the release of this information, I am satisfied on the basis of those submissions that release of such information prior to the conclusion of the audit would, or would be likely to inhibit substantially the free and frank provision of advice, and the free and frank exchange of views for the purposes of deliberation.
50. I am therefore satisfied that the information that has been redacted from the Internal Audit Monitoring Report is exempt information under sections 30(b)(i) and 30(b)(ii) of FOISA. As a result, I am now required to consider the application of the public interest test in section 2(1)(b) of FOISA to this information.
51. As the University has also relied on the exemptions in sections 30(b)(i) and 30(b)(ii) for information that it has redacted from an email that it released to Mr Y, I will consider the application of the exemptions to this information first. I will then go on to consider the application of the public interest test.

Information redacted from email communication

52. The information that has been redacted from the email communication of 19 May 2006 which was released to Mr Y relates to particular audits which were being worked on at the time of the email communication.
53. In its submissions to my Office, the University indicated that it was relying on section 30(b)(i) and 30(b)(ii) of FOISA for redacting this information.



54. In justifying its reliance on the exemptions under sections 30(b)(i) and 30(b)(ii) of FOISA, the University advised that the investigations into the matters which are referred to within the redacted information were still ongoing at the time of Mr Y's request, and his request for a review. The University submitted that an investigation required accurate and concise input from the departments which were subject to it. It asserted that it was important for there to be no prior general knowledge, whether within the department under investigation or within the University in general, as to the areas and procedures to be investigated. It is the view of the University that individuals who are providing input into an investigation must not be inhibited from giving free and frank advice, and also that their input must not be influenced by any prior knowledge of the progress of the investigation, or the areas of concern that are to be investigated, or other views and information already provided to the investigation.
55. The University also contended that members of the Audit Committee must be able to give free and frank views on both the operation of the investigations and the outcomes. The University also re-iterated the submissions in relation to harm that it had made in relation to the information concerning the "Voluntary Severance Scheme", which are detailed at paragraph 46 above.
56. Having considered the information that has been redacted from the email communication that was released to Mr Y, along with the University's submissions, it is my view that release of the information that has been redacted relating to the first investigation mentioned would not be likely to inhibit substantially the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation. I take this view as the information recorded here is providing an update on the work that has been done in a particular area prior to the date of the communication. Although the investigation had not been concluded by the time that Mr Y submitted his request for information, or by the time of his request for a review, the details of the work recorded here are what any reasonable person would expect work of this kind to entail. The substance of the information is routine, and it is my view that release of this information would not inhibit individuals from participating in the investigation, or the committee exchanging views on what had been done. As a result I do not accept that release of this information would inhibit substantially the free and frank provision of advice or the free and frank exchange of views regarding an investigation.



57. I am of the same view in respect of the information that has been redacted concerning the second investigation mentioned. I accept that in this case the information recorded here is specific and detailed as to the nature and breadth of the investigation that was being undertaken. However, I do not accept the submissions from the University that if the information were to have been disclosed prior to the conclusion of the investigation it would have inhibited, or would have been likely to inhibit, substantially the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation. I am of this view, as it is clear from reading the information that has already been released to Mr Y in the redacted copy of the "Internal Audit Monitoring Report" dated 24 May 2006 that similar information to that recorded in the email communication is also recorded there. Furthermore, the information that has already been released to Mr Y clearly indicates that the review of the department in question had been concluded by the date of the Audit Committee meeting.
58. As I am not satisfied that the information redacted from the email dated 19 May 2006 would come within the scope of the exemptions in sections 30(b)(i) and 30(b)(ii) of FOISA, I am not required to consider the application of the public interest test in section 2(1)(b) of FOISA. As the University has also applied the exemption in section 30(c) of FOISA to this information, I shall consider the application of that exemption to the information later.

Public Interest Test

59. In considering the application of the public interest test in section 2(1)(b) of FOISA, the University advised that it had balanced whether the release of the information would be in the public interest, against whether disclosure would substantially prejudice its own interests, as specified in sections 30(b)(i) and 30(b)(ii) of FOISA.
60. The University has submitted that in its view the public interest in the disclosure of the on-going investigations was slight. It indicated that the premature release of the information, for the reasons that it provided in its reliance on the exemptions in sections 30(b)(i) and 30(b)(ii) of FOISA, would have substantially prejudiced the investigations and consequently reduced confidence in the University. The University stated that the public interest lay in ensuring the continuing operation of the University and in its ability to conduct effective audits and investigations into its financial, and other, operations.
61. The University concluded that the public interest in disclosure of the information was outweighed by the public interest in withholding the information.



62. Although there is no definition of the public interest test in section 2(1)(b) of FOISA, it has been held that when considering the application of the public interest test it is not what is of interest to the public that should be taken into account, but rather what is in the interests of the public that should be considered.
63. I accept that Y would have an interest in the disclosure of the information that has been withheld relating to the “Voluntary Severance Scheme”. However, it is not simply the interests of the individual applicant that I am required to take into account when considering the application of the public interest test in section 2(1)(b) of FOISA, I must consider what is in the interests of the public as a whole.
64. In considering the public interest in disclosure of the information relating to the Voluntary Severance Scheme, I accept that where the University is using public money to operate the Scheme, that there is clearly a public interest in ensuring that those public funds are allocated and used appropriately. I also accept that release of the information concerning the audit of the Voluntary Severance Scheme would lead to increased transparency and accountability on the part of the University.
65. However, I also accept the arguments that have been advanced by the University, in that there is a public interest in ensuring the continuing operation of the University and its ability to conduct effective audits and investigations into its financial and other operations. I am also aware of the fact that at the time of Mr Y’s request, and his request for a review the audit in question was still ongoing. I accept that it is clearly in the public interest that such audits are completed and that full information by way of advice and views is provided to the auditors to allow them to carry out their functions thoroughly. As a result, I am satisfied that there is a greater public interest in withholding the information than in disclosure.
66. On balance, therefore, I find that the public interest in disclosure of the information relating to the “Voluntary Severance Scheme” is outweighed by the public interest in maintaining the exemption.
67. As I am satisfied that the information relating to the “Voluntary Severance Scheme” would be exempt under sections 30(b)(i) and 30(b)(ii) of FOISA, I am not required to consider the application of the exemption in section 30(c) to that information.



Section 30(c)

68. As I am not satisfied that the information which has been redacted from the email communication of 19 May would be exempt under sections 30(b)(i) and 30(b)(ii) of FOISA, I am required to consider the University's reliance on the exemption in section 30(c) for this information.

Information relating to first investigation which was redacted from email

69. The submissions that the University provided for its reliance on sections 30(b)(i) and 30(b)(ii) of FOISA are the same as those that it advanced for its reliance on the exemption in section 30(c). These submissions are set out at paragraphs 54 and 55 above.
70. For the same reasons as I have expressed at paragraph 56 above, I am not satisfied that release of the information would prejudice substantially the effective conduct of public affairs. Release of the information which has been redacted would not, in my view, prejudice the University in carrying out an investigation in future. Nor would it prejudice the individuals carrying out the investigation from being able to gather accurate information.
71. As I am not satisfied that this information is exempt under section 30(c) of FOISA, I am not required to go on to consider the application of the public interest test in section 2(1)(b) of FOISA. Consequently, I require the University to release the information that it redacted from the email dated 19 May 2006 relating to the first investigation mentioned.

Information relating to the second investigation which was redacted from email

72. As indicated at paragraph 69 above, the submissions that the University provided for its reliance on sections 30(b)(i) and 30(b)(ii) of FOISA are the same as those that it advanced for its reliance on the exemption in section 30(c), as set out at paragraphs 54 and 55 above.
73. For the same reasons as I have set out at paragraph 57 above, I am not satisfied that release of the information regarding the second investigation referred to in the email would prejudice substantially the effective conduct of public affairs. It is apparent from reading the information that has been disclosed by the University to Mr Y already that the University has recognised that there is a public interest in release of this information, and that release of this information would not prejudice the University from carrying out such an investigation in future. I do not accept that release of this information would prejudice individuals carrying out this or any other investigation from being able to gather accurate information.



74. As I am not satisfied that this information is exempt under section 30(c) of FOISA, I am not required to go on to consider the application of the public interest test in section 2(1)(b) of FOISA. Consequently, I require the University to release the information that it redacted from the email dated 19 May 2006 relating to the second investigation mentioned.

Decision

I find that the University of Glasgow partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Y.

I find that by withholding the information relating to the “Voluntary Severance Scheme” and in relying on the exemptions in sections 30(b)(i) and 30(b)(ii) for FOISA for doing so, the University of Glasgow complied with Part 1.

I find that by withholding the information relating to the finance system in the minutes of the Audit Committee meeting of 24 May 2006 and relying on the exemption in section 33(1)(b) of FOISA for doing so, the University of Glasgow complied with Part 1.

However, I find that in relying on the exemptions in sections 30(b)(i), 30(b)(ii) and 30(c) of FOISA for withholding the information relating to the first and second investigations mentioned in the email communication which was released to Mr Y, the University of Glasgow failed to comply with Part 1 (and in particular with section 1(1)) of FOISA.

I also find that in relying on the exemption in section 33(1)(b) of FOISA for withholding the information relating to the views of the University Audit Committee on four companies who submitted a tender for a particular contract, the University of Glasgow failed to comply with Part 1 (and in particular with section 1(1)) of FOISA.

I therefore require the University of Glasgow to release the information relating to the views of the University Audit Committee on four companies who submitted a tender for a contract, and the information relating to the first and second investigations which has been redacted from the email communication that has been released to Mr Y, within 45 days after the date of intimation of this decision notice.



Appeal

Should either Mr Y or the University of Glasgow 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 after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
19 October 2007



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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- (3) If the authority –
 - (a) requires further information in order to identify and locate the requested information; and
 - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (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.
- (5) The requested information is not, by virtue of subsection (4), to be destroyed before it can be given (unless the circumstances are such that it is not reasonably practicable to prevent such destruction from occurring).
- (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
 - (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-

- (a) ...
- (b) would, or would be likely to, inhibit substantially-
 - (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

33 Commercial interests and the economy

- (1) Information is exempt information if-
 - (a)
 - (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).