

# Decision Notice



Decision 060/2010 Mr P and South Lanarkshire Council

Names of partners or relevant staff involved in matters concerning Mr P

Reference No: 200901705  
Decision Date: 30 April 2010

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews KY16 9DS

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## Summary

Mr P requested from South Lanarkshire Council (the Council) the names of partners or relevant staff involved in certain matters concerning him, including relevant dates, times and relevant events. The Council provided details of the Council departments, and an external body that was involved in these matters, but did not supply names or details of events and timings. Following a review, Mr P remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had been entitled to withhold the information from Mr P because it was his own personal data and, as such, was exempt from disclosure under section 38(1)(a) of FOISA.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(2)(e)(i) (Effect of exemptions); 38(1)(a) and (5) (Personal information) (definitions of “data subject” and “personal data”)

Data Protection Act 1998 (DPA) section 1(1) (Basic interpretative provisions) (definition of personal data)

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

## Background

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1. On 18 June 2009, Mr P wrote to the Council making a number of requests for information held by the Council’s problem solving unit in relation to matters in which he was involved.
2. This decision is concerned with only one of the requests made in that letter, which sought the names of partners or relevant staff involved in the matters to which Mr P’s request relates, including relevant dates, times and events.



3. The Council responded on 12 August 2009. It provided details of departments within the Council, and another organisation which had been involved in the relevant matter, and stated that Mr P had already been provided with information which confirmed the relevant dates, times and events.
4. On 15 August 2009, Mr P wrote to the Council requesting a review of its decision. Mr P considered that the Council had not provided the information he requested.
5. On 21 September 2009, the Council notified Mr P of the outcome of its review. The Council concluded that the information requested by Mr P was exempt from disclosure in terms of section 38(1)(a) of FOISA, because it was his own personal data.
6. On 29 September 2009, Mr P wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr P had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## **Investigation**

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8. On 3 November 2009, the Council was notified in writing that an application had been received from Mr P and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
9. Following correspondence with Mr P to clarify the scope of the investigation, the investigating officer contacted the Council on 22 January 2010, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
10. In response, the Council confirmed that it was withholding the information requested under sections 38(1)(a) and (b) of FOISA.

## **Commissioner's analysis and findings**

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11. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr P and the Council and is satisfied that no matter of relevance has been overlooked.



### Personal data – section 38(1)(a) of FOISA

12. Section 38(1)(a) of FOISA contains an absolute exemption in relation to personal data of which the applicant is the data subject. The fact that it is absolute means that it is not subject to the public interest test set out in section 2(1) of FOISA.
13. This exemption exists under FOISA because individuals have a separate right to make a request for their own personal data (commonly known as a subject access request) under section 7 of the DPA. The DPA will therefore usually determine whether a person has a right to their own personal data. Therefore, section 38(1)(a) of FOISA does not deny individuals a right to access to information about themselves, but ensures that the right is exercised under the DPA and not under FOISA.
14. Personal data is defined in section 1(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 (the full definition is set out in the Appendix).
15. Mr P's request clearly concerns matters in which he was directly involved, and seeks details of the individuals involved in dealing with those matters and the related events and timings. The Commissioner is satisfied that the information requested by Mr P relates to him as an individual and that he can be identified from this data along with other information in the possession of the Council.
16. The Commissioner has therefore concluded that the information requested is Mr P's personal data. He therefore finds that the Council was correct in its application of section 38(1)(a) of FOISA to this information.
17. As noted above, the exemption in section 38(1)(a) is an absolute one and the Commissioner is therefore not required to go on to consider whether the public interest lies in the information being released or withheld. As section 38(1)(a) applies to the requested information, it is not necessary for the Commissioner to consider whether the exemption in section 38(1)(b) also applies.

### DECISION

The Commissioner finds that South Lanarkshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr P.



## Appeal

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Should either Mr P 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 after the date of intimation of this decision notice.

**Margaret Keyse**  
**Head of Enforcement**  
**30 April 2010**



## Appendix

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### 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

##### 2 Effect of exemptions

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

- (e) in subsection (1) of section 38 –

- (i) paragraphs (a), (c) and (d); and

...

##### 38 Personal information

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

- (a) personal data of which the applicant is the data subject;

...

- (5) In this section-

...

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;



## Data Protection Act 1998

### 1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

“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,

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;

...