

Decision Notice

Decision 186/2015: Mr X and East Dunbartonshire Council

Report on a deceased person's personal care

Reference No: 201501072

Decision Date: 3 December 2015



Scottish Information
Commissioner

Summary

On 23 October 2015, Mr X asked East Dunbartonshire Council (the Council) for a report on the assessment of his deceased mother's free personal care. The Council refused to disclose the information, relying on exemptions under FOISA.

The Commissioner investigated and found that the Council was entitled to withhold the information from Mr X under section 30(c) of FOISA as disclosure was likely to cause substantial prejudice to the effective conduct of public affairs.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(c) (Confidentiality)

European Convention on Human Rights (ECHR) Article 8

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. Mr X wishes to obtain information in a report produced as a result of a review carried out by the Council's Social Work Services in respect of his mother's care in 2012. He asked for this report on 23 October 2014, after his mother had died.
2. The Council responded on 6 November 2014. The Council informed Mr X that the report was exempt from disclosure under section 36(2) (Confidentiality) of FOISA, and explained why it had come to this view.
3. On 20 November 2014, Mr X wrote to the Council requesting a review of its decision. He explained why he felt his circumstances warranted its disclosure to him in this case.
4. The Council notified Mr X of the outcome of its review on 17 December 2014. It confirmed that it wished to adhere to its decision to withhold the information under section 36(2) of FOISA, and provided further reasoning to support its conclusion.
5. On 7 June 2015, Mr X wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr X disagreed with the application of section 36(2) of FOISA in the circumstances of this case.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr X made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 22 June 2015, the Council was notified in writing that Mr X had made a valid application. The case was allocated to an investigating officer.

8. 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 answer specific questions, with reference to any provisions of FOISA it considered applicable to the information requested.
9. The Council provided submissions, which were the subject of further discussion during the investigation. It concluded that the information should be withheld under section 30(c) of FOISA, in addition to section 36(2).
10. Mr X was given the opportunity to provide further comments during the investigation, which he did.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr X and the Council. She is satisfied that no matter of relevance has been overlooked.
12. Section 30(c) of FOISA applies where the disclosure of information would "otherwise" prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. The word "otherwise" refers (by exception) to the exemptions in section 30(a) and (b). Section 30(c) is a broad exemption, and the Commissioner expects any public authority citing this exemption to show what specific harm (which must be at the level of substantial prejudice, in other words harm of real and demonstrable significance) would, or would be likely to, be caused to the conduct of public affairs by disclosure of the information.
13. This exemption is subject to the public interest test laid down by section 2(1)(b) of FOISA.
14. The Council argued that disclosure would result in social workers being unable, in future, to comment freely in submitting their views and findings in records of this kind. Highlighting the right to respect for an individual's private and family life in Article 8 of European Convention on Human Rights (the ECHR), the Council went on to submit that social workers would become more circumspect in recording information on their clients, should it be thought that their comments were at risk of disclosure after the client's death, potentially causing anguish and harm to the client's family members and friends.
15. This, the Council continued, would clearly have a detrimental impact on its ability to carry out its social work functions with individuals in need of its support. Vague or imprecise recording of a client's needs, it contended, had the potential to cause very serious difficulties for the individual concerned.
16. The Commissioner has considered the application of section 30(c) in other cases relating to the social work records of deceased persons, for example *Decision 001/2012 Mrs F and Glasgow City Council*¹. As in that case, and in line with the Council's submissions here, the Commissioner recognises that social workers operate in an environment in which everyone they are working with need to be assured that the information they share and which is recorded will be dealt with in confidence. In that context, she accepts the arguments put forward by the Council, and the consequent harm to the quality of social care which can be provided. This would be substantially prejudicial to the effective conduct of public affairs, thus engaging the exemption in section 30(c) of FOISA.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201101229.aspx>

Public interest test

17. As indicated above, the exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. Therefore, information can be withheld under the exemption only if, in all the circumstances of the case, the public interest in withholding it (and maintaining the exemption) outweighs the public interest in disclosure.
18. The Council argued that the protection of this type of information, for the reasons set out above, far outweighed any benefit of disclosing information which was deeply personal to the deceased person and remained sensitive to surviving family and friends.
19. Mr X provided reasons why he believed disclosure to be in the public interest, in connection with issues he was pursuing in relation to his mother's care, with another public authority. It is not clear to the Commissioner why these should be considered questions of public interest, however important they may be to Mr X both personally and in his capacity as his mother's executor. In any event, even if they were matters of public interest, it is not clear why they should require the public disclosure of the report under FOISA (it must be remembered that disclosure under FOISA is disclosure to the world at large and not simply to the person seeking the information).
20. The Commissioner has considered carefully the submissions she has received from both the Council and Mr X. She acknowledges that there are strong reasons why disclosure would not be in the public interest, given the substantial prejudice she has accepted above. She has not, in this case, identified compelling arguments why disclosure would be in the public interest.
21. In all the circumstances of this case, therefore, the Commissioner finds that the public interest in withholding the information and maintaining the exemption in section 30(c) of FOISA outweighs the public interest in disclosure. In reaching this conclusion, she is mindful of the possibility of Mr X's other complaint being pursued without public disclosure of the withheld information.
22. As the Commissioner has concluded that the information in the report is properly withheld under section 30(c) of FOISA, she will not go on to consider the exemption in section 36(2) of FOISA (which was also cited by the Council).

Decision

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

Appeal

Should either Mr X or East Dunbartonshire Council (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

3 December 2015

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

- (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 the public interest in maintaining the exemption.

...

30 Prejudice to effective conduct of public affairs.

Information is exempt information if its disclosure under this Act—

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

European Convention on Human Rights and Fundamental Freedoms

Article 8

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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