

Decision Notice



Decision 063/2011 Mr Paul Giusti and North Lanarkshire Council

Contact details for landlords on the register of private landlords

Reference No: 201000644
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www.itspublicknowledge.info

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Summary

Mr Paul Giusti (Mr Giusti) requested from North Lanarkshire Council (the Council) the contact information for all landlords registered with the Council during a specified 30 month period. The Council responded by withholding the information under section 38(1)(b) of FOISA. Following a review, Mr Giusti remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Council indicated that it also considered the withheld information to be exempt under section 30(c) of FOISA. Following the investigation, the Commissioner found that the Council was entitled to withhold the information in terms of section 30(c) of FOISA on the grounds that its disclosure would be likely to prejudice substantially the effective conduct of public affairs. He concluded that the Council acted in accordance with Part 1 of FOISA by refusing to supply the withheld information to Mr Giusti.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions) and 30(c) (Prejudice to effective conduct of public affairs)

Antisocial Behaviour etc. (Scotland) Act 2004 (ABSA): sections 82(1) (Registers) and 88A (Access to register)

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

1. On 15 June 2009, Mr Giusti wrote to the Council requesting contact information held for all landlords registered with the Council. He limited this request to information held for the preceding two years and six months only. Mr Giusti stated that he required this information for research purposes and that it would not be passed to any third party for marketing purposes.



2. The Council responded on 17 July 2009, informing Mr Giusti that the information was being withheld under the exemption in section 38(1)(b) of FOISA. The Council advised Mr Giusti that information with respect to particular residential properties or particular persons was available through the Scottish Government's Landlord Registration website¹.
3. On 9 October 2009, Mr Giusti wrote to the Council requesting a review of its decision. Mr Giusti drew the Council's attention to the Antisocial Behaviour etc. (Scotland) Act 2004 (ABSA) which states at section 88(A)(1) that a local authority shall provide certain details from the register of landlords, where it receives an application in relation to a particular house or a particular person. He indicated that his understanding was that the Council would be able to provide him with details of registered landlords on specific properties in terms of the ABSA.
4. Mr Giusti argued that the information he required could not be reasonably obtained through the Scottish Government's Landlord Registration website because it would be necessary to individually search every property address within the Council boundaries.
5. The Council notified Mr Giusti of the outcome of its review on 9 November 2009. It upheld its previous decision that the information was exempt in terms of 38(1)(b) of FOISA, on the basis that it was personal data and its disclosure would breach the first and second data protection principles.
6. On 24 March 2010, Mr Giusti 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 Giusti 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

8. On 29 March 2010, the Council was notified in writing that an application had been received from Mr Giusti and the case was then allocated to an investigating officer.
9. The investigating officer subsequently contacted the Council, 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. The Council was also asked to provide information relating to the way in which the data on its landlord register was held and whether/how specific data could be extracted from the register.

¹ www.landlordregistrationscotland.gov.uk



10. The Council initially provided submissions as to the reasons for it concluding that the information requested by Mr Giusti was exempt from disclosure in terms of section 38(1)(b) of FOISA. However, in further communications, the Council stated that it also considered that the exemption in section 30(c) of FOISA was applicable to the information, on the basis that its disclosure would or would be likely to prejudice substantially the effective conduct of public affairs.
11. The investigating officer also wrote to Mr Giusti inviting his submissions on the matters raised by this case. He was invited to provide comments on his legitimate interests in obtaining the withheld information to inform the Commissioner's consideration of the exemption in section 38(1)(b) of FOISA. After the Council indicated that it also considered the exemption in section 30(c) to be applicable to the withheld information, Mr Giusti was notified of this, and invited to offer further comments on this point, and on the public interest test associated with section 30(c).
12. The submissions received from both Mr Giusti and the Council are (where relevant) summarised and considered in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

13. 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 Giusti and the Council and is satisfied that no matter of relevance has been overlooked.

The withheld information

14. The information requested by Mr Giusti is the contact details for each landlord registered with the Council.
15. While Mr Giusti was not specific about the type or format of the contact details he wished to access, he did not dispute the Council's suggestion that the information requested was that made available via the Scottish Government's landlord registration website. Mr Giusti's comments on this aspect of the Council's response focussed on the impracticality of using that website to the contact details.
16. For this reason, the Commissioner understands the information to be of interest to Mr Giusti to be the contact details for each landlord as they would be presented in response to an individual property query via the Scottish Government's landlord registration website.
17. The information provided in response to such a query includes the name and a postal contact address for each landlord. In some cases, this postal address will be that of an agent who acts for the landlord. It is this information that the Commissioner has considered in what follows.



18. The Commissioner first considered whether the exemption in section 30(c) of FOISA was applicable to this information.

Section 30(c) – Prejudice to the effective conduct of public affairs

19. The Council applied the exemption in section 30(c) of FOISA to all the information withheld from Mr Giusti.
20. Section 30(c) exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs". (The word "otherwise" is used here to differentiate this particular exemption from the other types of substantial prejudice - such as substantial inhibition to the free and frank provision of advice or exchange of views – covered in other parts of section 30.) This is a qualified exemption, and as such is subject to the public interest test required by section 2(1)(b) of FOISA.
21. Section 30(c) applies where the harm caused, or likely to be caused, by disclosure is at the level of substantial prejudice. The Commissioner's guidance on this exemption makes it clear that the damage caused by disclosure must be real and significant, as opposed to hypothetical or marginal. Authorities should therefore consider disclosing the information asked for unless it would (or would be likely to) cause real, actual and significant harm.
22. The Council made reference to the amendment to Part 8 of ASBA by the Housing (Scotland) Act 2006 (HSA) and the explanatory notes to HSA. The Council pointed out that those notes expressly state that the landlords register is controlled so as not to support undesirable purposes such as trawling the register.
23. The Council argued that, in the light of this consideration, it was of the view that to disclose the information sought by Mr. Giusti would, or would be likely to, prejudice substantially the effective conduct of public affairs and, accordingly, that the exemption specified in section 30(c) of FOISA was applicable.
24. The Council stated that it held the register merely for the specified statutory purposes, and that those statutory purposes *specifically limit* the ways in which the register can be accessed. The Council submitted that, given the specific purpose behind the amending legislation, it was of the view that disclosure of the information sought would result in its failing to adhere to its responsibilities under ABSA as amended, particularly given that the amendment was specifically introduced to close a loophole which could have allowed information to be released in a carte blanche format.

The Commissioner's findings

25. During the course of the investigation, the Commissioner carried out some sample searches on the Landlord Registration website to ascertain what information could be accessed using the site, and how. He found that, in order to search for the landlord of any given property or to establish whether a landlord is registered in relation to that property, a full address has to be input for that property or selected from those identified from a postcode search.



26. If a landlord is registered in relation to that property, then their name, (where relevant) their agent's name, and their contact details would be provided in response to the search. Where no landlord is registered in relation to the property searched, the search will produce a message confirming that no results had matched the search criteria.
27. In order to check whether a particular person or organisation is a registered landlord, the Commissioner found that the name of that person has to be entered along with a property address. Searching this way provides the registration number of the landlord, but no further details about them.
28. Having tested this system, the Commissioner concluded that, in order to obtain the contact details of every registered landlord in North Lanarkshire using this online search system, a person would have to input each address in that area individually. As far as he can tell, this is the only way to establish (a) which properties have a landlord associated with them and (b) the contact details for these landlords. It is clear that the Landlord Registration website has been designed to ensure that searches are directed towards specific (and presumably known) properties or landlords rather than to enable the gathering of lists of, for example,
 - rental properties (associated with a registered landlord) in a given area
 - details of all landlords in a given area, or
 - multiple properties owned by the same landlord.

Sections 82 and 88A of ABSA

29. The Commissioner notes that ABSA provides the statutory basis for the existence of and access to the landlord register. Section 82(1) requires every local authority to maintain a register of landlords in its area.
30. Section 88A of ABSA makes provision for public access to the register, and it is set out in full within the Appendix to this decision.
31. Section 88A(1) indicates that, on the application of any person in relation to a particular house, a local authority shall provide the applicant with:
 - the name of the owner,
 - the name of any person who acts for the owner in relation to a lease or occupancy agreement to which the house is subject;
 - the address to which correspondence with the owner or his agent should be directed; and
 - details (where relevant) of certain types of decision taken by the local authority
32. On the application of any person in relation to a particular person, the local authority shall confirm whether that person is registered in its register.



33. Section 88A(2) and (3) go on to state that a local authority *may*, on the application of any person, provide that person with other such information from its register as it thinks appropriate, subject to such conditions as the local authority thinks appropriate.
34. Section 88A(4) indicates that, notwithstanding the terms of section 88A(1), an authority may withhold information where it considers that providing the information would be likely to jeopardise the safety or welfare of any person or the security of any premises.
35. The Commissioner notes that Section 88A of ABSA was inserted via an amendment within section 176(7) of the Housing (Scotland) Act 2006 (HSA). Understanding of the rationale for the insertion of this provision (along with the associated repeal of an earlier unqualified requirement that the landlord register be made available for public inspection) can be gained from the explanatory notes to HSA, which state:

“Public access to information contained in a local authority’s register of private landlords is controlled, so that the access is geared to the purposes for making that information available to the public and does not support other undesirable purposes such as trawling the internet based register.”²
36. The provisions discussed above, which are given practical effect through the Landlord Registration website, therefore grant access to information only in circumstances in relation to specific properties or individual landlords where they are identified by the searcher (subject to any decision to withhold particular details in line with section 88A(4) of ABSA). Under the provisions of ABSA, it is at the *discretion* of the local authority to decide whether to give out additional information over and above that which can be readily obtained via the Landlord Registration website.
37. Therefore, the Commissioner is of the view that the information sought by Mr Giusti (contact details for all landlords within the Council’s area) would not be easily obtainable through the Landlord Registration website. He is of the view, however, that *under ABSA*, the Council has no obligation (but rather the discretion) to provide that information to Mr Giusti in response to his general request.
38. The Commissioner must focus, however, on whether the Council was obliged *under FOISA* to provide the information to Mr Giusti.
39. The test for the Commissioner to consider is whether disclosure of the contact information held within the Landlord Register for all landlords in the North Lanarkshire Council area would cause substantial prejudice to the effective conduct of public affairs.
40. The argument provided by the Council in support of their application of section 30(c) is that providing the information to Mr Giusti would have the effect of directly undermining the intent of the amended ABSA and as such it would place the Council in a situation whereby acting in the spirit of one piece of legislation would mean acting outwith the spirit of another.

² See paragraph 198 at: www.oqps.gov.uk/legislation/acts/acts2006/en/aspen_20060001_en_3



41. The Commissioner recognises that the limited public access to the information within the Landlord Register provided by ABSA was put in place by the Scottish Parliament, and that the intention behind this amendment was to avoid the kind of access requested by Mr Giusti making details of registered landlords being generally and freely available. It is clear that if requesting and receiving that information under FOISA allows the restrictions in ABSA to be set aside, the effect of disclosure would be to undermine the effectiveness of those provisions.
42. Furthermore, the Commissioner notes that if disclosure of the contact details for all landlords in the Council area were required under FOISA, this would prevent the Council from considering on an individual basis (in terms of section 88A(4) of ABSA) whether specific information should be withheld because its disclosure would be likely to jeopardise the safety or welfare of any person; or the security of any premises.
43. Mr Giusti has stated that the information (if disclosed) would be stored by him in a controlled environment and viewed by nobody else other than himself and his research assistants. While he has no reason to doubt Mr Giusti's assurances regarding his willingness to control access to the information should it be disclosed, the Commissioner can give no weight to this point in his consideration in this case. FOISA provides a general right of access to information, which applies equally to all people. It contains no provision for the supply of information only to people who give an undertaking not to distribute that information further. Disclosure of information in response to a request made in terms of FOISA effectively makes that information publicly available, and so the Commissioner is unable to require disclosure on a limited basis, or on an understanding that it will not be shared further.
44. Since disclosure under FOISA has the effect of making information publicly available, disclosure in this case would make information on the landlord register considerably more widely available than was intended by the Scottish Parliament, and would allow the trawling of that data that the provisions in ABSA were expressly designed to avoid.
45. For this reason, the Commissioner accepts that disclosure of the information to Mr Giusti (and therefore to the public at large) would or would be likely to prejudice substantially the effective conduct of public affairs, and so the exemption in section 30(c) applies to the information requested by Mr Giusti.

The public interest test

46. The Council submitted that it was of the view that the public interest in ensuring that a public body acts within the limit of its statutory powers, particularly when the relevant limitation was specifically introduced by an amending statute, outweighs such interest as Mr. Giusti may have in disclosure of the information..
47. Mr Giusti submitted that he required the information to assist with a research project which he was conducting into the residential letting sector in the west of Scotland and that the requested information was the primary source by which reliable and accurate research could be conducted.



48. As noted above, Mr Giusti has maintained that he would limit access to the information only to him and his research assistants. However, for the reasons set out above, the Commissioner must consider the public interest in making the information generally available, as is the effect of disclosure in terms of FOISA.
49. Nonetheless, the Commissioner recognises that there is a general public interest in information held by public authorities being made available in the interests of transparency and accountability. The Commissioner also recognises that there is also some public interest in disclosing the information in full to allow the type of research into the residential letting sector proposed by Mr Giusti. However, this public interest in disclosing must be balanced against the public interest in preserving the limitations on the access to information within the Landlord Register provided for within ABSA.
50. As noted above, the Commissioner has recognised that the Scottish Parliament decided that access to the Landlord Register should be limited, to allow interested persons to check whether a particular person is registered as a landlord, or to establish whether a landlord is registered to a particular property, and to find their contact details, but to prevent more general trawling of the register.
51. Having concluded that disclosure of the information requested by Mr Giusti would undermine the operation of these provisions, he also considers that it would be contrary the public interest. The Commissioner considers that it is in the public interest that decisions of the Scottish Parliament are not undermined through disclosures under FOISA which are contrary to the intention and effect of the statutory provisions of ABSA.
52. On balancing the public interest in favour of disclosure against that in maintaining the exemption in section 30(c) of FOISA, the Commissioner has concluded that there is a greater public interest in ensuring that the effectiveness of the provisions controlling access to information within the landlord register, as set out in ABSA, are not undermined.
53. The Commissioner therefore finds that the public interest lies in maintaining the exemption in section 30(c) and withholding the information requested by Mr Giusti in this case. Accordingly, the Commissioner finds that the Council was entitled to withhold the information under section 30(c) of FOISA, and that it acted in accordance with Part 1 of FOISA when it refused to supply this information to Mr Giusti.
54. Given the above findings, it is not necessary for the Commissioner to go on to consider the exemption at section 38(1)(b) of FOISA in this case.

DECISION

The Commissioner finds that North Lanarkshire Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Giusti.



Appeal

Should either Mr Giusti 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.

Kevin Dunion
Scottish Information Commissioner
22 March 2011



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.

...

- (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-

...

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



Antisocial Behaviour (Scotland) Act 2004

82 Registers

- (1) Each local authority shall prepare and maintain a register for the purposes of this Part.

88A Access to register

- (1) Each local authority shall, on the application of any person (“the applicant”), in relation to –
 - (a) a particular house, provide the applicant with –
 - (i) the name of the owner included in its register by virtue of section 83(1)(a) or 87(2);
 - (ii) the name of any person who acts for the owner in relation to a lease or occupancy agreement to which the house is subject included in its register by virtue of section 83(1)(c), 87(2) or 88(2);
 - (iii) the address to which correspondence with the relevant person should be directed included in its register by virtue of section 83(1)(a) or 87(2); and
 - (iv) any information included in its register by virtue of section 87A(2).
 - (b) a particular person, confirm to the applicant whether that other person is registered in its register.
- (2) A local authority may, on the application of any person, provide that person with such other information from its register as it thinks appropriate.
- (3) Information provided under subsection (2) may be provided subject to such conditions as the local authority thinks appropriate.
- (4) Despite subsection (1), a local authority may withhold information where it considers that providing the information would be likely to jeopardise –
 - (a) the safety or welfare of any person; or
 - (b) the security of any premises.