

# Decision Notice



Decision 083/2011 Mr Bobby Park and Glasgow City Council

Copy of a contract

Reference No: 201001818  
Decision Date: 11 May 2011

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Kevin Dunion**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Bobby Park (Mr Park) requested from Glasgow City Council (the Council) a copy of a contract. The Council withheld the information on the grounds that it was exempt from disclosure under sections 30(c) and 33(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, the Council modified its decision and disclosed some information to Mr Park. However, it maintained its decision to withhold the remaining information, but only on the grounds that it was exempt under section 33(1)(b) of FOISA. Mr Park remained dissatisfied and applied to the Commissioner for a decision.

During the investigation the Council disclosed the majority of the information within the contract to Mr Park, and withdrew its previous application of the exemption in section 33(1)(b). This decision is concerned only with the matters with which Mr Park remained dissatisfied at the end of the investigation. These are (a) whether the Council has identified and provided all parts of the contract to Mr Park and (b) whether the Council was entitled to withhold the names of two individuals who witnessed the signing of the contract. The Council submitted during the investigation that the witnesses' names were exempt from disclosure under section 38(1)(b) of FOISA.

Following an investigation, the Commissioner found that (in relation to the matters considered in this decision) the Council had dealt with Mr Park's request for information in accordance with Part 1 of FOISA. He concluded that the Council had identified and considered all parts of the contract requested by Mr Park when responding to his information request. The Commissioner also found that the Council was entitled to withhold the names of the witnesses under section 38(1)(b) of FOISA.

## Relevant statutory provisions and other sources

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(e)(ii) (Effect of exemptions); 38(1)(b), (2)(a)(i), 2(b) and (5) (definitions of "data protection principles", "data subject" and "personal data") (Personal information)

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions – definition of "personal data") and Schedules 1 (The data protection principles – the first principle) and 2 (Conditions relevant for purposes of the first principle: processing of any personal data – conditions 1 and 6)

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 24 December 2009, Mr Park emailed the Council requesting a copy of the contract signed between the Council and Cordia (Care) LLP (Cordia) to deliver 'direct and care' services.
2. The Council responded on 20 January 2010. It withheld the contract in full, on the grounds that it was exempt from disclosure under sections 30(c) and 33(1)(b) of FOISA.
3. On 23 February 2010, Mr Park wrote to the Council requesting a review of its decision. In particular, Mr Park argued that the whole contract could not be considered exempt. He noted that there is case law permitting the redaction of commercially sensitive parts of the contract with the remainder being disclosed.
4. The Council notified Mr Park of the outcome of its review on 6 April 2010. This concluded that its initial decision was incorrect. The Council disclosed a redacted version of one document (entitled Interim Services Agreement (ISA)) and continued to withhold another document (entitled Schedule for Specification of Services). The Council maintained its initial decision that the remaining withheld information was exempt from disclosure under section 33(1)(b) of FOISA. However, it no longer maintained that the exemption in section 30(c) of FOISA was applicable to any of the requested information.
5. On 22 September 2010, Mr Park emailed 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. In his application, Mr Park indicated that he wished to access further information which formed part of the contract and had not been disclosed to him, and the names two witnesses to the signing of the contract which had been redacted from the ISA.
6. The application was validated by establishing that Mr Park 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

---

7. On 18 October 2010, the Council was notified in writing that an application had been received from Mr Park and was asked to provide the Commissioner with any information withheld from him. The Council provided copies of the ISA (which the Council had provided in redacted form to Mr Park) and the Schedule for Specification of Services (which had been withheld in its entirety). The case was then allocated to an investigating officer.



8. 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 comment as to whether the information provided to the Commissioner comprised all of the information forming part of the contract, and to justify its reliance on section 33(1)(b) of FOISA to withhold the information not supplied to Mr Park.
9. The Council responded on 17 December 2010. It provided an explanation of apparent gaps within the information provided to the Commissioner, noting that the contract as signed (and held at the time of Mr Park's request) was limited to the ISA and the Schedule. It explained that other aspects of the agreement (including service fees, schedules of rates, unit costs for the service and payment terms) remained under negotiation at the time of signing (and remained so at the time of Mr Park's request and the Council making its submissions to the Commissioner) and so did not form part of the contract as signed.
10. The Council indicated that it no longer wished to apply the exemption in section 33(1)(b) to the withheld Schedule containing the specification of services, and on 24 December 2010, the Council disclosed this information to Mr Park.
11. Mr Park subsequently confirmed that he had received this information. However, he indicated that he still considered there to be gaps in the information supplied to him. He also indicated that he remained dissatisfied with the withholding of the witnesses' names in the ISA.
12. Further submissions were sought and received from the Council as to whether any additional information which formed part of the relevant contract was held, and its reasons for withholding the witnesses' names. At this stage, the Council confirmed that it now considered the witnesses' names to be exempt from disclosure under section 38(1)(b) of FOISA.
13. Mr Park was also invited to provide submissions with respect to his legitimate interests in accessing the witnesses' names.
14. The submissions received from both Mr Park and the Council, insofar as relevant, will be considered in full in the Commissioner's analysis and findings below.

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

---

15. 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 Park and the Council and is satisfied that no matter of relevance has been overlooked.



16. In what follows, the Commissioner has addressed in turn the issues which Mr Park remained dissatisfied with at the end of his investigation. These are
- a. whether the Council has identified and considered all information falling within the scope of his request and
  - b. whether the Council was entitled to withhold the names of two witnesses on the basis that they were exempt from disclosure under section 38(1)(b) of FOISA.

**Did the Council identify all information falling within the scope of Mr Park's request?**

17. Mr Park's request sought a particular contract signed by the Council and its supplier for the provision of care services. The Council identified two parts to this contract, the ISA, which was supplied subject to minor redaction following the Council's review, and the Schedule, which was disclosed to Mr Park during the investigation.
18. These documents did not appear to be complete, and, during the investigation, the Council was asked to explain why sections of both of the disclosed documents did not appear to contain all the relevant information (including pricing) that would be normal for such a contract.
19. As noted above, the Council's response indicated that, at the date of signing the ISA, the service fees and schedule of rates, the unit costs for the service, and the payment terms were subject to ongoing negotiation. The information contained in the ISA and Schedule constituted the contract as signed and in place at the time when Mr Park submitted his information request. Accordingly, the Council maintained that it did not hold any further information falling within the scope of Mr Park's information request.
20. After Mr Park identified specific elements that seemed to be missing from the Schedule, further questions on these particular areas were raised with the Council. Its response indicated (in line with its previous comments) that this information did not exist as the contract was still in draft form. It again confirmed that it held no further information falling within the scope of Mr Park's information request.
21. Having considered the submissions from the Council, the nature of the contract, and the timing of Mr Park's request with respect to its conclusion, the Commissioner is satisfied that the Council correctly identified the contract requested by Mr Park, as it was signed. While elements of this contract remained in draft form, and elements remained under negotiation between the parties, this was the full contract as it stood at the date when Mr Park submitted his information request, and which remained in place at the time when the Council notified Mr Park of the outcome of its review.
22. The Commissioner therefore finds that the Council complied with Part 1 and in particular section 1(1) of FOISA by supplying most of this contract to Mr Park either following his request for review or during the investigation.
23. The Commissioner next considered its decision to withhold the names of the witnesses.



### The names of the witnesses

24. With respect to the names of the witnesses, the Council submitted firstly that these did not fall within the scope of Mr Park's information request. It noted that FOISA provides a right to information rather than documents, and argued that this information does not form a part of the fundamental understanding of the document. As such, the Council argued that the withheld names do not form part of the information Mr Park had requested, which it described as "the contractual provisions in relation to Cordia's delivery of a certain service on behalf of the Council". It maintained that the names not convey information in the context of the document, but shows that the contract has been formally executed by the parties. The Council went on to comment that the public interest in being open and transparent was met by the disclosure of the remainder of the contract including the names of the individuals who signed the contract.
25. The Commissioner has considered these arguments but cannot accept them. As noted above, Mr Park's request specified that he wished to be provided with a copy of the contract signed between the Council and Cordia. Although FOISA provides a right to information rather than documents, the Commissioner considers that it was clear from Mr Park's request that the information he wanted to access was all of the information contained within the contract document. He did not limit his request to include only the information contained within the contract which would assist him in understanding the terms of the agreement. The names of the witnesses may not provide information about the terms of that agreement, but it does reveal which individuals witnessed its signing. This is information contained within the document referred to by Mr Park, and which forms part of the contract as signed.
26. This conclusion appears to the Commissioner to be supported by an ordinary reading of Mr Park's information request, in the absence of any further comments from him to suggest that his interest was limited only to the information contained within the contract which set out the terms of the agreement between the Council and Cordia. The Commissioner notes that Mr Park's continued dissatisfaction with the Council's decision to withhold the names of the witnesses demonstrates that his request was not intended to be limited in the manner suggested by the Council.
27. Having concluded that the names of the witnesses do indeed fall within the scope of Mr Park's information request, the Commissioner has gone on to consider the Council's secondary arguments with respect to this information, in which it maintained that the names were exempt from disclosure in terms of section 38(1)(b) of FOISA.

### Consideration of section 38(1)(b) of FOISA

28. Section 38(1)(b) of FOISA, read in conjunction with section 38(2)(a)(i) or (as appropriate) section 38(2)(b), exempts information if it is personal data and if its disclosure to a member of the public otherwise than under FOISA would contravene any of the data protection principles laid down in Schedule 1 to the DPA.
29. This particular exemption is an absolute exemption, so is not subject to the public interest test laid down by section 2(1)(b) of FOISA.





30. In order for a public authority to rely on this exemption, it must show firstly that the information which has been requested is personal data for the purposes of the DPA and secondly that disclosure of the information would contravene at least one of the data protection principles laid down in the DPA.
31. The Council took the view that the names of the individuals who witnessed the contract were their personal data. The Council has argued that disclosure of this information would contravene the first data protection principle in the DPA, and that the information is therefore exempt from disclosure under section 38(1)(b) of FOISA.

*Is the information personal data?*

32. 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).
33. The information being withheld and under consideration is the names of two witnesses who counter-signed the contract. It identifies these individuals, and reveals that they acted as witnesses to the signing of a particular contract on a given date.
34. The Commissioner is satisfied that this information relates to these individuals, who can be identified from that information alone or in conjunction with other information in the possession of the Council. The Commissioner is therefore satisfied that the withheld information is the personal data of the two individuals who counter-signed the contract.
35. The Commissioner will now go on to consider whether the withheld information can be disclosed in response to Mr Park's information request or whether this would contravene the first data protection principle.

*Would disclosure breach the first data protection principle?*

36. The first data protection principle requires that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met. The processing under consideration in this case is disclosure of the information into the public domain in response to Mr Park's information request.
37. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA and is satisfied that the personal data in this case does not fall into any of the relevant categories. It is therefore not necessary to consider the conditions in Schedule 3 in this case.



38. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. For example, if there is a specific condition in Schedule 2 which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
39. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, he must then consider whether the disclosure of this personal data would be fair and lawful.

*Can any of the conditions in Schedule 2 to the DPA be met?*

40. During the investigation, the Council was asked if the two witnesses had been asked if their names could be disclosed. It confirmed that both witnesses had declined to consent to the disclosure of their names, and consequently condition 1 (which applies where the data subject consents to the processing of their personal data) cannot be met in this case. In the circumstances, the Commissioner considers that condition 6 is the only one that might apply in the circumstances of this case.
41. Condition 6 allows personal data to be processed if 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 interests of the data subject(s) (the individuals to whom the data relate).
42. There are a number of different tests which must be satisfied before condition 6 can be met. These are:
- Does Mr Park have a legitimate interest in obtaining the personal data?
  - If yes, is the disclosure necessary to achieve these legitimate aims? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate aims be achieved by means which interfere less with the privacy of the data subjects?
  - Even if the processing is necessary for Mr Park's legitimate purposes, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects? There is no presumption in favour of the release of personal data under the general obligation laid down by FOISA. Accordingly, the legitimate interests of Mr Park must outweigh the rights and freedoms or legitimate interests of the data subjects before condition 6 will permit the personal data to be disclosed. If the two are evenly balanced, the Commissioner must find that the Council was correct to refuse to disclose the personal data to Mr Park.





*Does Mr Park have a legitimate interest?*

43. When asked to comment on his interests in seeking the witnesses names, Mr Park argued it was reasonable to know who the witnesses were to make the contract valid. He went on to state that he would have expected that anyone agreeing to be a witness would have understood the implications of the contract, which is worth “millions of pounds”, and delivered on a rolling basis. In addition, Mr Park considered that the information should be disclosed to enhance the scrutiny of decision-making processes and thereby improve accountability and participation and ensure the effective oversight of expenditure of public funds.
44. The Council did not ask Mr Park why he had a legitimate interest in the information. However, it maintained that there was no legitimate interest which would be met by disclosure.
45. The Commissioner has considered both of these submissions carefully. While he recognises that disclosure of the contract as a whole assists understanding of the agreement made between Cordia and the Council, and the expenditure of significant public funds, he does not consider that the identification of the witnesses to that contract would add anything to such understanding.
46. He notes that the role of a witness is legal and administrative – providing confirmation that the signatory to the contract has given their signature and agreement to the terms. The witness has no further role; they are not a party to the agreement and they have no obligation to either understand or agree to the terms of the document in relation to which they have acted as a witness to the signing.
47. The Commissioner therefore does not consider that disclosure of the names of the witnesses would offer any insight into the agreement between the Council and Cordia, or into the views (if any were even held) of those acting as witnesses on the terms of that contract, even if such views were of relevance to the understanding of the contract.
48. In relation to Mr Park’s submission regarding enhancing scrutiny and ensuring effective oversight of expenditure of public funds, the Commissioner considers that these interests have been met by the disclosure of the remainder of the contract. The information disclosed has revealed the full content of the agreement between the parties, and includes the identities of the signatories, the date and location of the contract’s signing, and the fact of the signatures having been witnessed.
49. In the circumstances, the Commissioner has concluded that Mr Park has not identified a legitimate interest in accessing the names of the witnesses and so condition 6 cannot be met in this case. Since the Commissioner has found that no condition in Schedule 2 of the DPA can be met, he concludes that disclosure of the witnesses’ names would breach the first data protection principle.
50. The Commissioner therefore concludes that the Council was entitled to withhold the witnesses’ names on the basis that they were exempt from disclosure under section 38(1)(b) of FOISA.



## DECISION

The Commissioner finds that, in respect of the matters considered in this decision notice, Glasgow City Council (the Council) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Park.

The Commissioner finds that the Council correctly identified and considered all information falling within the scope of Mr Park's information request when responding to that request. He finds that the Council was entitled to withhold the names of the witnesses to the signing of the contract requested by Mr Park on the grounds that they were exempt from disclosure under section 38(1)(b) of FOISA.

The Commissioner does not require any action to be taken in response to this decision.

## Appeal

---

Should either Mr Park 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**  
**11 May 2011**



## Appendix

---

### Relevant statutory provisions

#### 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

....

- (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 –

...

- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.

#### 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 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; or
    - ...
  - (b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.
- ...

- (5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"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;

...



## **Schedule 1 – The data protection principles**

### **Part I – 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**

1. The data subject has given his consent to the processing.

...

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 interests of the data subject.

...