



Scottish Information
Commissioner

**Decision 013/2005 Mr Wright and Perth & Kinross
Council**

*Request for details of the professional qualifications of
members of staff*

**Applicant: Mr Wright
Authority: Perth & Kinross Council
Case No: 200500978
Date of Decision: 13 July 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 013/2005 – Mr Wright and Perth & Kinross Council

Request for details of the professional qualifications of members of staff – information withheld under section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 – personal data.

Facts

Mr Wright, the applicant, requested details of the professional qualifications of members of staff in the Planning Department of Perth & Kinross Council. The Council refused to disclose the information on the basis that it constituted personal data under the Data Protection Act 1998.

Mr Wright was dissatisfied with the response he received from the Council to his initial request and to his subsequent request for review. He then lodged an application for a decision by the Scottish Information Commissioner to obtain the information he had requested.

Outcome

The Commissioner found that although Perth & Kinross Council (“the Council”) failed to fully comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the initial request for information, it was correct to withhold some of the information requested on the grounds that it constituted personal data (i.e. the qualifications of its Enforcement Officer and Planning Officers). Details of the professional qualifications of the Executive Director of Planning and Transportation should however have been disclosed.

The post of Executive Director is a senior position in the Council and people who hold such positions should expect these details to be made public in the interest of openness, transparency and accountability. During the investigation, the Council obtained the consent of the Executive Director to disclose his qualifications to Mr Wright and the information has now been supplied to Mr Wright by the Council. In view of this, no further action is required to be taken by the Council in relation to Mr Wright’s request.



Appeal

Should either the Council or Mr Wright wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

- 1 On 7 January 2005, Mr Wright wrote to the Chief Executive of the Council, asking to be provided with the professional qualifications for the Executive Director (Planning and Transportation), Planning Officers, and Enforcement Officer. Mr Wright asked for this information to be provided for each person separately.
- 2 The Council acknowledged Mr Wright's request on 11 January 2005 and passed it on to its Freedom of Information Team ("FOI Team"). The FOI Team responded to Mr Wright's request on 2 February 2005.
- 3 The Council provided Mr Wright with details of the qualifications required for each of the posts specified:
 - Executive Director – Engineering qualification and at least 10 years senior management experience in local government;
 - Planning Officer – Degree in Town and Country Planning. Membership of RTPI (Royal Town Planning Institute);
 - Enforcement Officer – HNC in relevant discipline or equivalent experience.
- 4 The Council also provided Mr Wright with a leaflet explaining how to complain or request a review of the Council's decision.
- 5 Mr Wright wrote to the Council on 7 February 2005, stating that he was unhappy with the Council's response to his request for information. In his letter, Mr Wright asked the Council to review its decision on the basis that:
 - a) The Executive Director had not been named and the Council had failed to state which engineering qualification he holds or whether or not he is a member of RTPI;
 - b) the Council had failed to name "the Planning Officer who has a degree in Town and Country Planning" and had also "failed to state whether any or all of the other Planning Officers on your staff have professional qualifications"; and



- c) the Council had failed to name the Enforcement Officer and “failed to state in which discipline he is qualified.”
- 6 The Council wrote to Mr Wright on 2 March 2005, detailing the results of its review. The Council responded to the points raised by Mr Wright as follows:
- a) the qualifications required for the position of Executive Director (Planning and Transportation) had been supplied rather than the exact qualifications held by the Executive Director himself. The Council acknowledged that this should have been explained to Mr Wright in its original response. The Council then stated that it was of the opinion that “the qualifications obtained by individual members of staff are personal information in terms of Section 1(1)(d) [sic] of the Data Protection Act 1998, and as such we are unable to release this information as it is exempt under Section 38(2)(a)(i) of the Freedom of Information (Scotland) Act 2002 (where the disclosure of information would contravene any of the Data Protection Principles).” The Council argued that the first and second Data Protection Principles would be breached by releasing this data. It also named the Executive Director in response to Mr Wright’s request;
- b) the qualifications were provided for the position of Planning Officer rather than the exact qualifications held by Planning Officers for the same reasons given in (b) above. The names of the Planning Officers were not provided as the Council did not deem the provision of the names to be relevant to Mr Wright’s request; and
- c) as in (b) and (c) above, the information provided by the Council in its letter of 2 February 2005 related to qualifications required for the position of Enforcement Officer. The name of the Enforcement Officer was not provided as the Council did not deem the provision of the name to be relevant to Mr Wright’s request.
- 7 In its response to Mr Wright’s request for a review, the Council also clarified its position on recruitment. It stated that a job description and person specification is prepared prior to advertisement and the person specification sets out the essential criteria that candidates must fulfil: “For example, if the person specification for a Planning Officer post states ‘Planning Degree’, then the successful candidate must have a planning degree.” It also added that required qualifications and membership of professional bodies can change over time. For example, few posts 20 years ago asked for a degree as an essential criterion whereas now it is a more common requirement. The information previously provided to Mr Wright would have been taken from the individual person specifications for each of the posts which would have been in the public domain at the time of advertising each post.



- 8 In its letter of 2 March 2005, the Council recognised that its response of 2 February 2005 to Mr Wright provided insufficient detail to explain why individual qualifications would not be released. It also apologised for not making it clear that the qualifications provided as part of the response were those required for the post rather than an individual employee's qualifications. The Council also informed Mr Wright of his right to appeal to my Office if he was not satisfied with the Council's decision.
- 9 Mr Wright contacted my Office on 14 March 2005, applying to me for a decision in relation to the Council's decision to withhold details of the qualifications and identity of members of staff in its Planning Department. Mr Wright detailed the main grounds of his dissatisfaction with the Council's response to his request as follows:
- a) Mr Wright contended that "the admission by the Council that they wrongly stated the qualifications for advertised positions instead of the qualifications of the persons presently in the posts, indicated an initial unwillingness to provide any information";
 - b) he also argued that the Council was wrong to claim that it could not disclose the details of the qualifications requested because of the provisions of the Data Protection Act 1998 ("DPA"). Mr Wright stated that the Council's argument was not sound because "a breach of the Act infers that some harm or injury might be done to the person if there is disclosure of his academic or technical qualifications." Mr Wright stated that no harm or injury would be caused by the disclosure of the information he had requested. He also argued that the award of any degrees will already be in the public domain through publication in newspapers and that there is a public interest in knowing that a person who claims to be a graduate does in fact hold the relevant degree. Mr Wright asserted that "the public are entitled to know how well or badly qualified any Council's officers are" by publishing their qualifications in the same way that solicitors, accountants, doctors and dentists publicise their qualifications. He also maintained that a person claiming to be a member of a professional body is in the same category;
 - c) Mr Wright was unhappy with the Council's response to his enquiry about the Executive Director and Planning Officers. No indication had been given as to how the Executive Director of Planning and Transportation was qualified "in one or the other or both" and there was no identification of "the subjects in which there are stated to be 'graduate Planning Officers'"; and
 - d) as with (c) above, Mr Wright was not content with the reply he received from the Council in response to his enquiry regarding the Enforcement Officer.



- 10 It was not clear from his application whether Mr Wright wanted me to investigate the way that the Council had dealt with his request for information relating to the training of Councillors as well as his request for the qualifications of members of staff. My Office therefore contacted Mr Wright, asking him for clarification. On 1 April 2005 I received a letter from Mr Wright stating that he wished to make an application for a decision in relation to the refusal by the Council to release details about the qualifications of members of staff.
- 11 The case was then allocated to an investigating officer.

The Investigation

- 12 Mr Wright's appeal was validated by establishing that he had made a request to a Scottish public authority, and had appealed to me only after asking the authority to review its response to his request.
- 13 A letter was sent to the Council on 20 April 2005, giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was asked to comment on the issues that Mr Wright had raised and to detail the steps taken in carrying out its review. It was also asked to provide an analysis of its use of the section 38 exemption under the Freedom of Information (Scotland) Act 2002 ("FOISA").
- 14 The Council was asked whether any consideration had been given to the difference between an applicant requesting information that relates to the public lives rather than the private lives of the individuals concerned and was asked to provide information for the purposes of the investigation, including copies of the information disclosed to Mr Wright and copies of the information withheld. The Council was asked to respond by 6 May 2005.
- 15 The Council responded in full on 9 May 2005. In its response, the Council considered Mr Wright's argument that the qualifications should already be public knowledge through prior publication in newspapers of the graduations, and therefore no harm or injury could be caused to the persons who held these posts by the disclosure of such information. The Council argued that many professional qualifications are not actually published in this way, the identity of an individual is not always obvious from a list of graduations and therefore the information cannot be considered readily-accessible identifiable information. The Council also argued that it would be unreasonable to expect it to attempt to determine which qualifications had already been published in the public domain for each member of staff.



- 16 The Council accepted that it is in the public interest for information relating to the roles and responsibilities of Council employees (e.g. job titles, responsibilities, salary scales, etc.) to be published, and the Council acknowledged that it had released information of this nature in response to other FOI requests. However, the Council did not agree that personal qualifications achieved by employees relate to their public lives rather than their private lives. The Council did accept that the public has a right to be reassured that employees are suitably qualified for the posts that they hold, and it recognised the fact that it could have explained this in more detail to Mr Wright.
- 17 Further questions were submitted to the Council by my Office on 7 June 2005, in response to the Council's letter of 9 May 2005. These included the following:
- a) where the Council contended that an employee's qualifications are personal and should not be released to the applicant, the Council was asked if it had considered asking the employees concerned whether they would object to the disclosure of the information requested and whether it had considered asking employees to provide reasons where they do object to disclosure;
 - b) would disclosure of the information be damaging to the employees concerned? If so, how had this been assessed?;
 - c) where the Council stated that it would be unreasonable for it to attempt to determine which qualifications had been published for every member of staff, how was the conclusion reached that it would be unreasonable to provide the qualifications asked for in Mr Wright's information request?;
 - d) the Council had stated that it did not believe that "personal qualifications achieved by employees relate to their public lives rather than their private lives", but what was being asked for in this case were the professional qualifications of members of staff, not information concerning an employee's personal life. As the threshold for releasing professional information will generally be lower than that for releasing personal or sensitive information – the Council was asked if the professional qualifications could be provided in a relatively anonymous form; and
 - e) whether the Council had considered the difference in the degree of access that should be given to information about senior as opposed to junior staff.



- 18 In its reply of 20 June, the Council responded to the above questions as follows:
- a) the Council confirmed that it had considered asking the employees concerned whether they would object to the disclosure of the information requested. It also stated that it would be possible to ask the employees for reasons for their refusal where they objected to the disclosure, but they could not be obliged to do so. The Council was concerned that it could be construed as forcing disclosure from its employees were it to try and seek consent from all of the employees concerned. It also stated that even if an employee was to provide their consent and satisfy the “fair processing” principle, it would still not satisfy the “specific purpose” principle on the basis that the information was not gathered for the purpose for which it would be processed. The DPA also stipulates that personal information should only be processed where necessary and the Council was not convinced of the necessity of this particular form of processing;
 - b) the issue of damage had not been considered as the Council had argued in terms of a contravention of the data protection principles and damage does not have to be evidenced in order to prove a contravention of one of the principles;
 - c) the Council would have to verify each qualification individually for each employee concerned. Having agreed that the information may well be in the public domain the Council argued that expecting it to verify this in every case would be completely unreasonable;
 - d) it is not possible for the Council to provide the information in a relatively anonymous form as two of the three posts in question relate to one individual. The Council also maintained that it had already given an appropriate response by providing Mr Wright with the minimum requirements for each post; and
 - e) the Council recognised that more information may be made available about senior staff as opposed to junior staff. It conceded that it may be appropriate for the Council to consider releasing some, but not necessarily all, of an Executive Director’s qualifications, but only with their explicit consent.
- 19 The Council stated that all Executive Directors would be contacted to ask whether they consented to their qualifications being disclosed. On 27 June 2005, the Council stated that it had received consent from all Executive Directors for the disclosure of their qualifications and that the information in relation to the Executive Director of Planning and Transportation would be sent to Mr Wright forthwith.
- 20 The Information Commissioner’s office was also contacted by my Office on 28 June 2005, to discuss matters relating to this case that concerned data protection issues.



The Commissioner's Analysis and Findings

- 21 As regards Mr Wright's arguments for the release of the information, he contended that the Council had admitted that it had "wrongly stated the qualifications for advertised positions instead of the qualifications of the persons presently in the posts" and that this "indicated an initial unwillingness to provide any information". This is incorrect. In its letter of 2 March 2005 to Mr Wright, the Council conceded that it had not fully explained to Mr Wright why he had been provided with the minimum qualifications for the posts rather than the exact qualifications held by the individuals in question. At no point did the Council declare that it had wrongly stated the qualifications.
- 22 Mr Wright also contended that the Council's argument that it could not disclose the information because to do so would result in a breach of the data protection principles under the DPA was not sound because "a breach of the Act infers that some harm or injury might be done to the person if there is disclosure of his academic or technical qualifications." However, the possibility that harm or injury may be caused by disclosure is a sufficient but not necessary condition of the application of the exemption under section 38(1)(b) of FOISA.
- 23 Although the Council conceded that there is an argument for information being made available to the public about the roles and responsibilities of Council employees it maintained that the qualifications held by employees constituted personal data. Mr Wright argued that there is a public interest in knowing that a person claiming to be a graduate does in fact hold the relevant degree, but the exemption relied on by the Council, i.e. section 38(1)(b) is absolute and the public interest test does not have to be considered by the Council. Mr Wright also argued that information about Council employees' qualifications should be made available in the same way that solicitors, accountants, doctors and dentists publicise their qualifications. However, I do not consider this to be relevant to this particular case.
- 24 The Council's main responses to Mr Wright's information request will now be considered.

Application of the section 38(1)(b) exemption

- 25 In its original response to Mr Wright, the Council had not specified any exemptions when it provided its reply. This was because the information provided by the Council was deemed to have satisfied the terms of Mr Wright's request. In its subsequent letter detailing the outcome of its review, the Council cited section 38(2)(a)(i) as being the relevant exemption under FOISA for refusing to disclose the information concerning the exact qualifications held by members of its staff.



- 26 Where an authority refuses to disclose information on the basis that it constitutes the personal data of a third party and where any of the data protection principles would be contravened if this information were to be released to a member of the public otherwise than under FOISA, section 38(1)(b) and section 38(2)(a)(i) should both be cited as being the applicable sections that apply and their use should be explained to the applicant. The Council recognised, in its letter of 9 May 2005, that it should have cited both of these sections in this case.
- 27 The Council argued that section 38(1)(b) of FOISA applies since the information requested by Mr Wright is biographical in nature, given that it relates to information about specific individuals. The Council argued that it therefore falls under the definition of personal data as specified in section 1(1) of the DPA, and as defined in the recent case of *Durant v Financial Services Authority* [2003] EWCA Civ 1746 Court of Appeal (Civil Division).
- 28 The Council also argued that the condition in section 38(2)(a)(i) was satisfied because the disclosure of the information would breach both the first data protection principle (processing data fairly and lawfully) and the second data protection principle (obtaining data for specific and lawful purposes and not processing that data in a manner incompatible with those purposes). As mentioned above this is an absolute exemption and is not subject to the public interest test. The Council also asserted that at the time of supplying their qualifications employees are not aware that this information may be made public and to do so would therefore breach both fair processing and specific purpose principles.
- 29 As the Council has stated, the first data protection principle requires personal data to be processed fairly and lawfully. Disclosure would be unlawful, for example, if it would be a breach of confidence. The concept of “fairness” is harder to define, although in practice it may not be difficult to judge whether it would be unfair to someone to pass on their information without consent. The assessment of fairness involves looking at whether the third party would expect that his or her information might be disclosed to others and/or whether the person had been led to believe that his or her information would remain confidential. In my view, information that is included on an application form submitted to a specific organisation in response to a job advertisement, such as qualifications obtained, is supplied in the expectation that it will be seen by only those involved in the recruitment process. Applicants would not normally expect this information to appear subsequently in the public domain.



- 30 Details of an individual's professional qualifications may fall within the definition of personal data. However the more senior a position an individual holds in an organisation, the more likely they are to expect that the qualifications they hold for their position should be made available to the public. This is particularly so in the case of public authority employees. As a person's position becomes more high profile their expectations of privacy, in relation to the professional qualifications they hold for their post, are likely to diminish.
- 31 It is not always clear where the line is to be drawn between the seemingly conflicting aims of FOISA and the Data Protection Act 1998. One piece of legislation upholds the principles of openness in public life whilst the other upholds the personal right to privacy of individuals. Nevertheless, a balance must be struck between the two.
- 32 When processing a request for information, a public authority should always take into account the personal nature, or sensitivity, of the information requested. The more sensitive or personal the information, the more likely that disclosure under FOISA would breach data protection principles and the stronger the argument would be for withholding the information. Likewise, where information is deemed to be less sensitive, e.g. where it relates to an individual's professional life, such as job title or details of professional responsibility, the argument for releasing the information will be much stronger. According to the Information Commissioner, public authorities should consider basing their policy for the disclosure of information on staff seniority or function. Indeed, guidance issued by the Information Commissioner states that, "the more senior a person is the less likely it will be that to disclose information about him or her acting in an official capacity would be unfair."
- 33 Whilst I recognise the personal aspect of professional qualifications held by the employees of public authorities, I also recognise the argument for encouraging the openness, transparency and accountability of persons working in senior positions within such organisations. It seems to me that the cut-off point between personal data and public/private information is highly dependent upon the relevance of the qualification to the individual's position within a public authority. Higher levels of authority and responsibility within an organisation usually demand higher levels of professional qualifications. This is often reflected in the seniority of decision-taking within such an organisation. The higher the position and the greater the authority of an individual the greater is the argument for openness, transparency and accountability.



- 34 It is therefore my view that, in terms of the seniority of individuals and their attendant duties and responsibilities, it would be in the interest of openness, transparency and accountability, for such persons to be open to scrutiny. Indeed, the expectations of senior post holders may be such that they no longer expect details such as their professional qualifications to remain confidential. I am therefore of the view that whereas the professional qualifications of the Enforcement and Planning Officers and of the Executive Director of Planning and Transportation constitute personal data, the qualifications of the Enforcement and Planning Officers are exempt under section 38(1)(b) of FOISA in that the release of the information would be unfair and would therefore breach the first data protection principle. On the other hand, given the senior role played by the Executive Director of Planning and Transportation, his qualifications are not exempt under section 38(1)(b) of FOISA as there would be no breach of the data protection principles. I am pleased to note that the Council has already released this information to Mr Wright.
- 35 I also note that Mr Wright advised my Office on 22 June that his main aim was to find out the qualifications that are held by the Executive Director of Planning and Transportation. Now that Mr Wright has been provided with the details of the qualifications of the Executive Director of Planning and Transportation, I am satisfied that the main part of his information request has in fact been answered.



Decision

I find that although Perth & Kinross Council (“the Council”) failed to fully comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the initial request for information, it was correct to withhold some of the information requested on the grounds that it constituted personal data (i.e. the qualifications of its Enforcement Officer and Planning Officers). Details of the professional qualifications of the Executive Director of Planning and Transportation should however have been disclosed.

The post of Executive Director is a senior position in the Council and persons who hold such a position should expect these details to be made public in the interest of openness, transparency and accountability. The Council obtained the consent of the Executive Director to disclose his qualifications to Mr Wright towards the end of this investigation and these have now been supplied by the Council to Mr Wright. In view of this, no further action is required to be taken by the Council in relation to Mr Wright’s request.

Kevin Dunion
Scottish Information Commissioner
13 July 2005