



Scottish Information
Commissioner

**Decision 025/2006 – Dr R and Glasgow City
Council**

*Request for information relating to the whereabouts of the
applicant's daughter*

**Applicant: Dr R
Authority: Glasgow City Council
Case No: 200501413
Decision Date: 14 February 2006**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 025/2006 Dr R and Glasgow City Council

Request for information relating to the whereabouts of the applicant's daughter – notice that information is not held – section 17 – content of certain notices – section 19 – personal data relating to third parties – section 38(1)(b)

Facts

Dr R has requested 3 separate pieces of information from Glasgow City Council; a copy of a letter from the head teacher of his daughter's former school to the head teacher of her next school, informing the new head teacher of correspondence from Dr R, a copy of the reply received from Dr R's daughter's next school, and a copy of the name and the address of the school which Dr R's daughter attended after leaving her previous school in Glasgow.

Glasgow City Council responded to Dr R, stating that his request was not covered by the Freedom of Information (Scotland) Act 2002, as it related to information covered by the Data Protection Act 1998. The applicant requested twice that Glasgow City Council review its response.

Glasgow City Council responded to Dr R on 21 April 2005, recognising his request as one made under the Freedom of Information (Scotland) Act 2002. The response stated that some of the information requested was not held by Glasgow City Council and upheld its decision to withhold the remainder of the information from Dr R.

Dr R remained dissatisfied with Glasgow City Council and applied to the Scottish Information Commissioner for a decision.

Outcome

In relation to the 2 letters which Dr R requested, the Commissioner found that Glasgow City Council held the first letter requested by Dr R, but did not hold the second. The Commissioner found that Glasgow City Council had not dealt with Dr R's request for information in accordance with the requirements of Part 1 of Freedom of Information (Scotland) Act 2002 in that it failed to comply with sections 17 and 19.



The Commissioner found that the address of his daughter's school, and the letter from the head teacher of his daughter's previous school requested by Dr R were exempt from disclosure under the Freedom of Information (Scotland) Act 2002 by virtue of section 38(1)(b) of that Act.

The Commissioner did not require Glasgow City Council to take any action as a result of his decision.

Appeal

Should either Glasgow City Council or Dr R 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. Dr R wrote to Glasgow City Council (the Council) on 3 January 2005, requesting the following:
 - a) A copy of the letter written by the head teacher of his daughter's school in Glasgow to the head teacher of her subsequent school informing her of Dr R's request to access his daughter's school reports
 - b) A copy of the response received by the Council from the head teacher of the school which Dr R's daughter attended after leaving Glasgow
 - c) A copy of the name and address of the school which Dr R's daughter attended after leaving Glasgow
2. The Council responded to Dr R on 19 January 2005 stating that the information he had requested could not be released under the Freedom of Information (Scotland) Act 2002 (FOISA) as it fell under the Data Protection Act 1998 (DPA).
3. Dr R was dissatisfied with the Council's response, and wrote requesting that it review its decision on 7 February 2005. He did not receive a response, and wrote again on 7 March 2005, again requesting that the Council review its decision to withhold the requested information. In his request Dr R stated that the Pupil's Educational Records (Scotland) Regulations 2003 gave him the right to access his daughter's school reports.



4. The Council responded to Dr R on 21 April 2005, apologising for the delay in its response to his request. As the Council has accepted responsibility for the delay in its review, and Dr R did not cite the matter as a reason for his dissatisfaction in his application to me, I will not consider this matter further.
5. In its response, the Council stated that as it had not received a response from the head teacher of his daughter's current school (outwith Glasgow and therefore not under the Council's management), it did not hold a copy of her response and was unable to provide it.
6. The Council also stated that the remainder of the information requested by Dr R was exempt by virtue of section 38(1)(b) of FOISA, in that the information was personal data relating to Dr R's daughter and to release the information would breach the principles for processing personal data set out within the DPA.
7. Dr R was dissatisfied with the response he received, and applied to me on 25 April 2005, requesting that I investigate whether Glasgow City Council had complied with FOISA in handling his request for information.
8. After having been received, the case was allocated to an investigating officer.

The Investigation

9. Dr R's appeal was validated by establishing that he had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its response to his request.
10. The investigating officer wrote to the Council on 17 June 2005, asking it to comment on the application as a whole, and specifically on the following:
 - a) The information which the Council claimed was not held
 - b) The application of the Pupil's Educational Records (Scotland) Regulations 2003 to the information requestedThe Council was also asked to provide copies of all information requested by Dr R on 3 January 2005 which was held by the Council
11. No response was received by the Council and it appears that the initial letter was not received. A further request was sent on 21 July 2005.



12. On 28 July 2005, the Council responded with comments. It did not supply copies of the information, stating that as the school which held the information was closed for the summer, the Council was unable to search for the information.
13. A letter was sent to Glasgow City Council with a view to confirming the information would be sent when the School reopened. The Council stated that it did not hold either a copy of the letter sent by the previous head teacher to the head teacher of the school where Dr R's daughter had moved to, or a copy of the new head teacher's response to the letter.
14. The Council argued that the address of the school which Dr R's daughter had moved to was exempt from disclosure under section 38(1)(b) of FOISA, on the basis that the information constituted his daughter's personal data. The Council argued that Section 38(1)(b) applied for two reasons, (i) that disclosure would breach data protection principles and (ii) that disclosure would contravene section 10 of the DPA (right to prevent processing likely to cause damage or distress).
15. The Council submitted that for the purposes of the appeal, section 38(2)(a) as read with section 38(1)(b) was relevant to the investigation as his daughter's mother had made it clear that she did not want personal information about either herself or his daughter provided to Dr R.
16. While I note the Council's position in relation to the mother's consent, for section 10 of the DPA to be contravened a notice would require to have been served on the Council, on behalf of Dr R's daughter, requiring the Council to cease processing her personal data to avoid unwarranted substantial damage or distress. The Investigating Officer contacted the Council on 20 December 2005, and requested any documentary evidence of Dr R's daughter's mother providing the Council with a notice served under section 10 of the DPA. The Council responded stating that it did not hold any documentary evidence of this. As there is no evidence of such a notice, there is no basis on which section 38(1)(b) can apply to the information requested by Dr R by virtue of contravention of section 10 of the DPA. I will not, therefore, discuss the application of this exemption by Glasgow City Council further.
17. On 3 February 2006, the Council wrote to my office for a final time, confirming that, having carried out further searches of the records in question, it did hold a copy of the copy of the letter written by the head teacher of his daughter's school in Glasgow to the head teacher of her subsequent school, informing the new head teacher of Dr R's request to access his daughter's school reports. It enclosed a copy of the letter with its submission, reiterating that it considered this information to be exempt from disclosure under section 38(1)(b) of FOISA.



The Commissioner's Analysis and Findings

18. Dr R's application can be separated into 3 distinct requests for information. The first 2 requests were for correspondence between the head teacher of his daughter's former school to the head teacher of the next school which she attended. The Council has stated that it does not hold this information.
19. Dr. R also requested a copy of the name and address of the school which his daughter attended after having left her first school. The Council concedes that it holds this information but argues that it is exempt from disclosure under section 38(1)(b) of FOISA.

Whether Glasgow City Council hold the Information requested by Dr R

20. In its submissions, the Council stated that it did not hold a copy of the first letter requested by Dr R. The Council submitted that it had conducted a search of both its centrally held files, and files held at Dr R's daughter's school in Glasgow relating to his daughter and failed to locate a copy of the letter requested. However, during the course of the investigation, the Council located a copy of the letter in question. Therefore I am satisfied that the Council does hold a copy of the letter requested by Dr R, despite previous submissions to the contrary.
21. The second letter requested by Dr R was from the head teacher of the school which his daughter had moved to, responding to the letter from the Glasgow school. In its submissions, the Council stated that it did not hold the information as it had not received a response from the head teacher. It acknowledged that a telephone conversation had taken place between the sender and recipient of the initial letter, but stated that it did not have written evidence of the conversation having taken place or its content. This information was part of the subject of the search referred to in paragraph 19 above. I am satisfied that the Council has taken all reasonable steps to locate the information, and am satisfied that the Council does not hold a copy of the letter requested by the applicant.
22. Section 17 of FOISA requires an authority to give an applicant notice in writing that it does not hold the information requested in its initial response to the applicant. The section is subject to section 19 of FOISA, which requires an authority to include details about the requester's rights to seek a review of the decision from the authority and subsequently to apply to the Commissioner for a decision. This information was not included in the Council's response to Dr R's request. I find that in not providing details of whether the information requested was held, or details of Dr R's right of review, the Council did not comply with sections 17 and 19 of FOISA in its initial response to the applicant.



The application of section 38(1)(b) of FOISA to the information requested.

23. The Council argues that the address of the school which Dr R's daughter attended after having left her school in Glasgow, and the copy of the letter sent from the head teacher of his daughter's previous school to the head teacher of her next school is exempt from disclosure under section 38(1)(b) of FOISA.
24. In order for the public authority to be able to rely on this exemption it would have to show that the information which has been requested is personal data (of a person other than the applicant) and that either the first condition set out in subsection 2 of section 38 or the second condition set out in subsection 3 of section 38 is satisfied. Only the first condition has been claimed as relevant by the Council in this case.
25. Basically, the first condition is that the disclosure of the information to a member of the public otherwise than under FOISA would contravene either
- (i) any of the data protection principles; or
 - (ii) section 10 of the DPA (right to prevent processing likely to cause damage or distress).
- I have dealt with the applicability of section 10 of the DPA already (see paragraph 16 above). As it is not relevant here, I do not require to consider the public interest in this case.
26. In justifying its use of the exemption the Council has indicated that it is firmly of the view that the information by which individual school children could be identified (which, in the circumstances, would include the name and address of the new school and correspondence between head teachers regarding a child's location) is personal data in terms of Section 1(1) of the Data Protection Act 1998. I am inclined to agree, and to accept that in the circumstances the information would fall within the definition of personal data as refined by the Court of Appeal decision in the case of *Michael John Durant v Financial Services Authority* (2003), being significantly biographical about a living individual and having that individual as its focus.



27. The second principle of the DPA requires that personal data must be obtained only for one or more specified and lawful purpose and must not be processed in a manner which is incompatible for that purpose or those purposes. The Council argues that the purpose of obtaining and recording the information requested was not to release the information to the public but rather to in furtherance of the Council's obligations under the Education (Scotland) Act 1980 and related legislation. It holds that processing of the information to allow a pupil's location to be discovered would amount to further processing which is incompatible with that purpose and so would breach the second principle of the DPA.
28. The Council further argues that processing beyond that which is necessary for the statutory functions for which the information was provided would be unfair to the data subject and therefore would be in breach of the first data protection principle. Education-related information is generally mandatory in nature and pupils have no choice as to whether it is processed by and education authority or not. Neither pupils nor parents are advised that information processed for education purposes will be released more widely, and indeed most school handbooks explicitly state the contrary. Neither the child nor her mother have consented to the data being released.
29. Having considered the Council's submissions, I conclude that it was correct in determining that to release the information requested would be to contravene the first and second principles of the DPA, and consequently I accept that the information is exempt from disclosure under section 38(1)(b) of FOISA. I am not satisfied that any of the conditions in schedule 2 of the DPA (at least one of which would have to apply for the data to be processed in conformity with the first principle) could be met if the information were to be released. I am mindful that the information in question relates to a child, whose own interests must be a primary consideration in determining whether that information should be released into the public domain under FOISA.

The Pupil's Educational Records (Scotland) Regulations 2003

30. Although he was of the opinion that he was requesting personal information relating to his daughter, Dr R stated in his application to me that the Pupil's Educational Records (Scotland) Regulations 2003 (the Regulations) conferred upon him the right to view his daughter's educational records. Regulation 5(2) of the Regulations states that on receiving a request for a copy of a child's educational records, the responsible body should allow access to those records.



31. In response to Dr R's assertion the Council has argued that it is no longer the body responsible for his daughter's education, and as such it is not subject to Regulation 5(2). It states that to release the address requested to Dr R would be to contradict the wishes of his daughter's mother, who has made it clear that she does not wish Dr R to access information about their daughter. Therefore, the Council argues, to release the information to Dr R would be to breach Regulation 6(d), which states that information should not be released under the Regulations if to do so would cause distress or damage to another person.
32. It is not in my remit to rule on whether the Regulations cited give Dr R access to his daughter's records. In any event, it does not follow from information being accessible to a parent under these regulations that it should be accessible under FOISA. The Regulations only give access to parents, not the world at large as FOISA would.

Decision

In relation to the first 2 letters requested by Dr R, I am satisfied that Glasgow City Council hold the first letter requested by Dr R, but do not hold the second. However, Glasgow City Council did not deal with Dr R's request for information in accordance with the requirements of Part 1 of Freedom of Information (Scotland) Act 2002 in that it failed to comply with sections 17 and 19.

I find that the address of his daughter's school and the letter from the head teacher of his daughter's previous school requested by Dr R is exempt from disclosure under the Freedom of Information (Scotland) Act 2002 by virtue of section 38(1)(b) of that Act.

I do not require Glasgow City Council to take any action as a result of my decision.

Kevin Dunion
Scottish Information Commissioner
14 February 2006