



Decision Notice 052/2024

Complaint investigation details

Authority: City of Edinburgh Council

Case Ref: 202200408

Summary

The Applicant asked the Authority for the details of a taxi driver who he alleged had overcharged him for a fare, as well as the details of the investigation into this incident. The Authority disclosed some information under the DPA 2018, but it withheld its correspondence with the taxi driver. The Commissioner investigated and found that the Authority had been entitled to withhold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(c) (Prejudice to effective conduct of public affairs); 47(1) and (2) (Application for decision by Commissioner)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 3 June 2021, the Applicant complained to the Authority about the service he had received from a taxi driver. The Authority later notified the Applicant that it had investigated his complaint, appropriate enforcement action had been taken and the driver had been issued with corrective advice.
2. On 17 November 2021, the Applicant made a request for information to the Authority. The Applicant asked the Authority to provide him with the defendant's [taxi driver's] details, along with details of its investigative report.

3. The Authority responded on 5 January 2022, in terms of the DPA 2018, and provided the Applicant with the taxi driver's name and address, as well as a copy of the investigation report into the incident. The Authority did not respond to the request under FOISA.
4. On 5 January 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because the Authority had not provided him with the correspondence between itself and the taxi driver referred to in his complaint.
5. Following advice from the Commissioner, the Authority notified the Applicant of the outcome of its review on 30 March 2022. It withheld the information under sections 38(1)(a) and (b) (personal information) and section 30(c) (the effective conduct of public affairs) of FOISA.
6. On 7 April 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because it was in the public interest for the information to be disclosed.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 11 May 2022, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was subsequently allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Scope of the investigation

11. The Commissioner can only consider the matters raised by an applicant in both their requirement for review and their application.
12. In this case, the Commissioner's decision notice is limited to considering whether the Authority was correct to withhold correspondence between itself and the taxi driver in relation to the Applicant's complaint.

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

13. Section 30(c) of FOISA exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs". The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in sections 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority applying it to show what specific harm would (or would be likely to) be

caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure.

14. The prejudice has to be substantial and the exemption, if engaged, is subject to the public interest test in section 2(1)(b) of FOISA.

The Authority's submissions

15. The Authority submitted that it was continuing to rely on section 30(c) of FOISA, to withhold the information requested by the Applicant.
16. The Authority explained that it fulfils a statutory function as a licensing authority for taxi drivers within the local authority boundaries. It noted that among the duties that it exercises within this role is to investigate any and all complaints made by members of the public in relation to the standard of service that they may have received from a taxi or licensed hire vehicle. The Authority argued that public disclosure of the information would substantially prejudice its ability to carry out such complaint investigations.
17. The Authority stated that the process of investigation relies on both the complainant and the subject of the complaint engaging with the Authority in a fair and honest manner, and it took the view that this could only be achieved by maintaining the confidence of all parties involved.
18. The Authority argued that disclosure of the information would be likely to undermine the investigation and the confidence of individuals involved in future complaints or incidents. It commented that, if members of the public, businesses or any other interested party believed that the information they provided to the Authority, during a formal investigation would be released in response to a FOI request, it would negatively impact on its ability to carry out its statutory role and regulatory functions.
19. The Authority argued that if the information was disclosed, it would deter future engagement with the Authority by both complainers and those who may be the subject of a complaint, and this would meet the threshold of substantial prejudice.

The Applicant's submissions

20. The Applicant disagreed with the Authority's application of section 30(c) of FOISA.
21. He argued that disclosure of the details of investigation, even with the personal details of the taxi driver redacted, would provide clarity and confidence to the public that licensed taxi drivers are operating correctly and that the Authority effectively investigates complaints about the standard of service they provide.

The Commissioner's view

22. Having considered the nature and content of the withheld information, together with the Authority's submissions, the Commissioner accepts that disclosure of the withheld information would be likely to cause substantial prejudice to the effective conduct of public affairs, both to taxi drivers and service users' confidence and, consequently, to the level of candour offered during complaint investigations.
23. He is satisfied that the disclosure of correspondence between the Authority and the taxi driver would dissuade those involved in the complaints process from communicating honestly and openly with the Authority, in its role as regulator, and that, if this occurred, it would, or would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

24. In all the circumstances, the Commissioner accepts that the Authority was entitled to apply the exemption in section 30(c) of FOISA to this information.

Public interest test - section 30(c)

25. As mentioned above, the exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.

The Authority's submissions

26. The Authority submitted that the information was gathered during the course of fulfilling a public task. It reiterated that it fulfils a statutory function as a licensing authority for taxi driver and it has a duty to investigate complaints made by members of the public in relation to the standard of service received from licensed taxi drivers
27. The Authority recognised that there was a public interest in it carrying out this role in a fair and transparent manner. However, it argued that there was a greater public interest in it being able to fulfil its statutory duty as a regulator. The Authority submitted that if information regarding such complaints and their investigations were made publicly available through FOISA, it would deter future engagement, and would result in it being unable to fulfil an important statutory function in a manner that would be to the benefit of the public.
28. The Authority concluded that the public interest favoured withholding the information.

The Applicant's submissions

29. The Applicant argued that disclosure would provide clarity and confidence to the public that licensed taxi drivers are operating correctly and that the Authority effectively investigates complaints about the standard of service they provide.

The Commissioner's view on the public interest

30. The Commissioner agrees that there is always a general public interest in openness and accountability, particularly relating to the statutory functions of public authorities. Openness and accountability allow effective scrutiny and reassure the public, where appropriate.
31. On the other hand, the Commissioner has already acknowledged the risk of substantial prejudice to the effective conduct of public affairs in this case, with particular reference to the effect of disclosure on the open engagement of all parties in the investigation process and thereby the value of these investigations.
32. In all the circumstances, the Commissioner is satisfied that the public interest in disclosure is outweighed by that in maintaining the exemption and allowing the information to be withheld under section 30(c) of FOISA. The Commissioner therefore finds that the Authority was entitled to withhold the information under this exemption.
33. As the Commissioner is satisfied that the Authority was entitled to withhold all of the information under section 30(c) of FOISA, he will not go on to consider whether the Authority was also entitled to withhold that information under section 38(1)(a) and (b).

Handling of request

34. The Commissioner notes that some time elapsed between the Applicant's request for review and the Authority's response because the Authority failed initially to consider his request under FOISA.
35. While this is unsatisfactory, the Commissioner acknowledges that the Authority subsequently, following his advice, issued a review response under FOISA to the Applicant, and that it has committed to take steps to ensure future similar requests will be handled appropriately.
36. Should similar situations arise in the future, the Commissioner would urge the Authority to consider whether more focused guidance (by way of advice and assistance, under section 15 of FOISA) is required to enable the applicant to seek a review.

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

David Hamilton
Scottish Information Commissioner

9 April 2024

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - ...
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by 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.

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...