

# Decision Notice 018/2021

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## Off-street Car Parking Charges

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**The Applicant**

**Public authority: Dundee City Council**

**Case Ref: 202000493**



Scottish Information  
Commissioner

## Summary

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The Council was asked for information on discussions about off-street car-parking charges. It disclosed some information, but withheld the rest due to concerns about prejudice to the effective conduct of public affairs.

During the investigation, the remaining withheld information was disclosed (other than names, which the Applicant stated he did not need.)

The Commissioner accepted that the information held at the time of asking was provided to the Applicant, but found it should have been disclosed at that time.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 17(1) (Notice that information is not held); 30(b)(ii) (Prejudice to effective conduct of public affairs)

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

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1. On 16 January 2020, the Applicant emailed Dundee City Council (the Council). The information requested was “Any and all minutes of meetings and electronic communications (emails, etc.)” relating to discussions of the review of off-street car parking charges for the 2019/20 financial year.
2. The Council responded to the Applicant’s request on 14 February 2020, withholding information under section 30(b)(ii) (Prejudice to effective conduct of public affairs) of FOISA.
3. On 8 April 2020, the Applicant wrote to the Council, requesting a review of its decision and submitting why he disagreed with the application of section 30(b)(ii) of FOISA.
4. The Council notified the Applicant of the outcome of its review on 4 May 2020, upholding its application of section 30(b)(ii).
5. On the same day (4 May 2020), 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 Council’s review, and explained why.
6. The Applicant also stated he was content for names and contact information to be withheld, to protect the confidentiality of the individuals concerned. For this reason, names and identifying data need not be considered further in this investigation.

## Investigation

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7. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

8. On 14 July 2020, the Council was notified in writing that the Applicant had made a valid application. The Council was asked to send the Commissioner the information withheld from the Applicant.
9. During the investigation (30 July 2020), the Council changed its position, disclosing some information to the Applicant. The Council also provided the remaining withheld information to the Commissioner and the case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The investigating officer invited the Council to comment on this application and to answer specific questions, with specific reference to its application of section 30(b)(ii) of FOISA.
11. On 7 October 2020, the Council disclosed more information to the Applicant (what it considered to be the remainder of the withheld information, subject to redaction of personal data). The Applicant continued to require a decision, querying whether his request had been addressed in full.

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

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12. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

### **Disclosures during investigation**

13. As noted above, the withheld information was disclosed by the Council in two parts. The Council provided no submissions in support of its earlier decision to withhold the information.
14. In the circumstances, the Commissioner can only conclude that the information should have been disclosed at the time of asking and that, by not doing so, the Council failed to comply with section 1(1) of FOISA.

### **Whether the request has been fully addressed**

15. The Applicant submitted that the disclosed information did not fully address the terms of the request.
16. Section 1(4) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
17. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
18. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be

relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

19. The Commissioner has noted the information disclosed to the Applicant during the investigation. He has also noted the withheld information and schedule furnished to him at the beginning of the investigation. He is satisfied that all of the information listed on the schedule, and previously withheld, has now been furnished to the Applicant. This would appear to be a full set of information falling within the scope of the request and the Applicant has not explained how it falls short in this regard.
20. On the balance of probabilities, taking all of the above into consideration, the Commissioner is satisfied that the Council does not (and did not, on receiving the request) hold any further information falling within the scope of the Applicant's request.

## **Decision**

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The Commissioner finds that Dundee City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that, by failing to disclose the withheld information until during the investigation, the Council failed to comply with section 1(1) of FOISA. Given that this information was disclosed during the investigation, the Commissioner does not require the Council to take any further action, in response to the Applicant's application.

## **Appeal**

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Should either the Applicant or the Council 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.

**Margaret Keyse**  
**Head of Enforcement**

**3 February 2021**

## Appendix 1: Relevant statutory provisions

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### 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.
- ...
- (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.
- ...

#### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
- if it held the information to which the request relates; but
- (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- ...

#### 30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (b) would, or would be likely to, inhibit substantially-

...

- (ii) the free and frank exchange of views for the purposes of deliberation; or

...

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