



Scottish Information
Commissioner

**Decision 044/2006 – Mr Roy J. Miller and Stirling
Council**

Request for unredacted copy of a letter of complaint

**Applicant: Mr Roy J. Miller
Authority: Stirling Council
Case No: 2006000044
Decision Date: 20 March 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 044/2006 – Mr Roy J. Miller and Stirling Council

Request for unredacted copy of a letter of complaint – information withheld under section 38(1)(b) – personal information

Facts

In March 2001 Stirling Council (the Council) received a letter of complaint regarding building work carried out at two properties owned by Mr Miller. Mr Miller was subsequently required to remove two conservatories which had been erected without the required planning consents.

In 2002 Mr Miller asked the Council to provide him with a copy of the letter of complaint. After consulting the signatories to the letter, the Council released a redacted version of the letter to Mr Miller with all information that might identify the signatories removed.

Following the commencement of the Freedom of Information (Scotland) Act 2002 (FOISA), Mr Miller again requested a full copy of the letter of complaint from the Council. After reconsidering his request under the provisions of FOISA, the Council released a version of the letter of complaint with some but not all of the information restored. The identities of the signatories were not disclosed to Mr Miller.

Outcome

The Commissioner found that Stirling Council had fully complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with Mr Miller's information request.



Appeal

Should either Mr Miller or Stirling Council wish to appeal against the Commissioner's 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 of receipt of this notice.

Background

1. In March 2001 Stirling Council (the Council) received a letter of complaint regarding building work carried out at two properties owned by Mr Miller. Mr Miller was subsequently required to remove two conservatories which had been erected without the necessary planning consents.
2. In 2002 Mr Miller asked the Council to provide him with a copy of the letter of complaint in respect of the conservatories. After consulting with the signatories to the letter, the Council released a redacted version of the letter to Mr Miller with all information that might identify the signatories removed.
3. On 18 October 2005 Mr Miller requested a full copy of the letter of complaint from the Council. The Council replied on 21 October, refusing to release the information on the grounds that to do so would breach the Data Protection Act, and that the information was therefore exempt from disclosure under section 38 of the Freedom of Information (Scotland) Act 2002 (FOISA).
4. Mr Miller requested a review of this decision from the Council (24 October 2005) and on 23 November 2005 the Council provided him with a copy of the letter of complaint with some, but not all, the information restored. Some information continued to be withheld under section 38(1)(b) of FOISA.
5. Mr Miller applied to me for a decision on the matter on 27 December 2005, and an investigating officer was allocated to the case.



The Investigation

6. Mr Miller's application was validated by establishing that he had made a written request for recorded information to a Scottish public authority and had appealed to me only after asking the authority to review its response to his request.
7. On 9 January 2006 the investigating officer contacted the Council to inform it that an investigation had begun and to seek its comments on the matter. The Council was asked to supply an unredacted version of the letter of complaint, and to provide any comments beyond those already provided in its letters to Mr Miller.
8. The Council replied on 31 January 2006, enclosing the document requested and in addition providing several file notes relating to Mr Miller's request and his previous dealings with the Council.
9. In its letter the Council explained that it had consulted the signatories to the letter of complaint before responding to Mr Miller's request for a review, and had taken their views into account in deciding that the release of the remaining information in the letter would breach the first data protection principle.

The Commissioner's Analysis and Findings

10. The Council has withheld some information in the letter of complaint on the grounds that it is exempt from disclosure under section 38(1)(b) of FOISA.
11. Section 38(1)(b) of FOISA allows a public authority to withhold information if it is personal data and if disclosure would contravene any of the data protection principles laid down in the Data Protection Act 1998 (the DPA).
12. In reaching my decision I have considered two questions:
 - a) is the information withheld "personal information" as defined by the Data Protection Act 1998 (the DPA)?
 - b) if the information withheld is personal information, would disclosure contravene any of the data protection principles laid down in the DPA?



13. Section 1(1) of the DPA defines “personal data” as data relating to a living individual who can be identified from those data. I must also bear in mind the gloss placed on this definition by the Court of Appeal in the case of *Durant v Financial Services Authority* [2003] EWCA 1746. The information in question must be biographical in respect of the individual concerned to a significant extent and must have that individual as its focus – in short, it must affect the individual’s privacy. The definition would clearly include the names and signatures of the writers of the letter of complaint.
14. The Council has also withheld information from the body of the letter which it feels would be sufficient to identify the signatories of the letter. The Council has provided me with evidence to support this view, which I have accepted.
15. I am satisfied that the information withheld is personal data.
16. The first data protection principle prohibits the “processing” (disclosure) of personal information unless it is both fair and lawful. In deciding whether disclosure would be fair and lawful in this case I have considered the guidance published by the [United Kingdom] Information Commissioner, who is responsible for data protection matters.
17. The data protection principles would not be breached if the individuals whose personal information appears in the letter of complaint were to give permission for the information to be disclosed; this would allow for “fair” processing. The Council contacted the signatories of the letter to ask whether there would be any objection to its providing Mr Miller with a full copy of the letter. However, permission was not obtained, which makes it less likely that disclosure of the information would be fair, according to the Information Commissioner’s guidance.
18. I note that Mr Miller has given assurances that the release of the information would not lead to any “legal or moral action” being taken against the complainant or complainants. However, the Council has advised me that in deciding to withhold the information from Mr Miller it felt it was appropriate to take into account Mr Miller’s conduct at the time of the enquiries into the issues raised in the letter of complaint. The Council has provided file notes in evidence of Mr Miller’s strong feelings on the matter. On the basis of the Information Commissioner’s guidance once more, I take the view that this makes it less likely that disclosing the information would amount to “fair processing”.



19. For the disclosure of personal information to comply with the first principle, at least one of the conditions laid down in schedule 2 of the Data Protection Act 1998 (the DPA) must be met. The individual or individuals concerned have refused to consent to the disclosure of the information (the first condition) and after considering the other conditions set out in schedule 2 I have concluded that none of them would justify the release of the information requested by the applicant.
20. I therefore accept the Council's argument that the information requested by Mr Miller is personal information and that to disclose it would breach the data protection principles laid down in the DPA. This being the case, the information is exempt from disclosure under section 38(1)(b) of FOISA.

Other issues raised by the applicant

21. In his application to me Mr Miller stated that the letter should be made available as "planning issues are public and any correspondence pertaining to a planning application must be made known to anyone". However, the Council has pointed out that the letter in question was not an objection to a current planning application, but was a letter of complaint about building works which had been carried out. It led to enforcement action, and enforcement files are not routinely open for general public inspection, unlike planning application files.
22. I accept the Council's argument that the letter is not the type of correspondence that is routinely made available to the public, and that it is held in a file which is not generally available for inspection.

Decision

I find that Stirling Council complied in full with Part 1 of the Freedom of Information (Scotland) Act 2002 in the manner in which it responded to the information request dated 18 October 2005 from Mr Miller.

Kevin Dunion
Scottish Information Commissioner
20 March 2006