



Scottish Information
Commissioner

**Decision 084/2007 Mr William Carle and the Scottish Prison
Service**

Minutes of pay negotiations

**Applicant: Mr William Carle
Authority: Scottish Prison Service
Case No: 200501817
Decision Date: 31 May 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 084/2007 Mr William Carle and the Scottish Prison Service

Minutes of pay negotiations – whether disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation or would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002: sections 1(1) (General entitlement); 2(1) (Effect of exemptions) and 30(b)(ii) and (c) (Prejudice to effective conduct of public affairs).

The full text of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Carle wrote to the Scottish Prison Service (SPS), requesting the minutes of past and present pay negotiations. The SPS provided Mr Carle with copies of the information he had requested but had edited out a number of sections of the minutes on the grounds that disclosure would inhibit substantially the free and frank exchange of views in any future pay negotiations. The SPS also argued that disclosure of the information withheld would prejudice the effective conduct of public affairs. Mr Carle objected to the extent of the editing in the documents he received, which he viewed as excessive, and asked the SPS to review its decision to withhold the information.

The decision to withhold the information was upheld by the SPS on review. Mr Carle was dissatisfied with the response he received from the SPS and applied to the Commissioner for a decision. The Commissioner found that the SPS had been correct to withhold most of the information from Mr Carle, but ordered release of a small amount of the information.



Background

1. It may be helpful if I begin by providing a brief description of the pay negotiation process within the SPS. The SPS operates a collective bargaining approach in determining pay and conditions and has four recognised trade unions. These are the Prison Officers' Association (Scotland) (POAS), the Public & Commercial Services Union (PCS), 'Prospect' and the Royal College of Nursing (RCN). Approximately 80 to 90% of staff are members of one or other of the recognised trade unions whose common body is the SPS Trade Union Side (TUS).
2. The TUS is a secretariat body that co-ordinates and presents the views of all four trade unions on matters of joint concern. There are two sets of negotiations on pay and conditions which take place between SPS Management and the recognised trade unions. One is for nursing staff (around 200 staff) and the other is for the Main Staff Group (around 4,300 staff) of whom approximately 80% are prison officers. The SPS stated that the content of negotiations is maintained as strictly confidential and only the outcome of such negotiations is published in the form of an offer. This is then put to a ballot of the trade union membership.

Mr Carle's request for information

3. Mr Carle contacted the SPS by e-mail on 9 January 2005. He resent a copy of his e-mail to the same person within the SPS on 17 January 2005, stating that he understood the individual had been on holiday and that he required a response. In his e-mail, Mr Carle requested a copy of the minutes, past and present, relating to pay negotiations between the SPS Management and the TUS in relation to "the last deal and on the ongoing present negotiations". Mr Carle also asked for details of the "cost involved".
4. On 19 January 2005, the SPS wrote to Mr Carle requesting clarification of a number of points in relation to his information request. In particular, the SPS required Mr Carle to confirm which staff groups he required a copy of the minutes for and to clarify what costs he was referring to in his information request. The SPS added that once it had received clarification of the points raised it would be able to proceed with processing Mr Carle's request. The SPS also raised the possibility that certain exemptions might apply to the information that had been requested.



5. Mr Carle responded to the SPS on 20 January 2005. In his e-mail, Mr Carle stated that he required a copy of all the minutes for the current pay negotiations that had taken place up to that date between the management and union regarding an offer that had been rejected by POAS members. Mr Carle added that he required a copy of the minutes between management and union that had resulted in the previous 3-year pay deal. He added that his reference to costs involved concerned whether there would be any cost involved for the information he had requested.
6. Mr Carle's e-mail was acknowledged by the SPS on 26 January 2005. Mr Carle sent a further e-mail to SPS on 28 January 2005, asking for minutes from the last meeting with the Advisory, Conciliation and Arbitration Service (ACAS) to be included within his information request. In a letter dated 7 February 2005, the SPS informed Mr Carle that the 20 working day time limit to respond to his request would begin from the date the authority received the clarification rather than from the date the initial request was received. This meant that the SPS had until 17 February 2005 to respond to Mr Carle's request.
7. The SPS also informed Mr Carle that it had interpreted his request for minutes of the last meeting as referring to meetings which took place between SPS Management and SPS TUS on 21 and 24 January 2005. It was stated that this constituted a second request for information, separate to his original request of 9 January 2005. It was confirmed by the SPS that no minutes had been taken by the SPS at those meetings, however a Notice to Staff had been issued after the first meeting and a conciliation resolution document had been issued to staff.
8. In relation to Mr Carle's initial request, the SPS gave him a substantive response on 17 February 2005. The SPS provided Mr Carle with 12 sets of minutes from 2001 and 5 sets of minutes which related to meetings held in 2004. In its accompanying letter the SPS stated that careful consideration had been given as to whether the information requested by Mr Carle should be disclosed. It stated that a number of sections had been redacted (i.e. edited out) from the information provided and set out its reasons for doing so. (The minutes were in fact substantially redacted by the SPS.) In its letter, the SPS cited section 30 of the Freedom of Information (Scotland) Act 2002 (FOISA) as a basis for withholding the redacted information and stated that a number of public interest considerations outweighed the general public interest in disclosure. The SPS also cited section 33(1)(b) of FOISA in relation to financial information concerning pay issues that had been redacted from the information provided to Mr Carle, but this exemption was not subsequently relied upon.



9. Mr Carle sent an e-mail to the SPS on 28 February 2005, requesting the SPS to carry out a review of its decision to redact the information from the documents it had provided. Mr Carle argued that the redaction had been too excessive, given that what was agreed was now public knowledge.
10. The SPS carried out a review and subsequently notified Mr Carle of the outcome of its review on 31 March 2005. In its review the SPS decided to uphold its previous decision to withhold the redacted information in the documents provided to Mr Carle.
11. Mr Carle was dissatisfied with the SPS's response and applied to me for a decision on 20 May 2005. An investigating officer was then assigned to this case. Mr Carle's application was validated by establishing that he had made a valid request for information to a Scottish public authority, and had applied to me only after requesting that the authority review its response to his request.

The Investigation

12. The investigating officer contacted the SPS, giving notice that an application had been received and inviting comments on the issues raised by Mr Carle's case in terms of section 49(3)(a) of FOISA. The SPS was also asked to provide supporting documentation for the purposes of the investigation.
13. The SPS was asked to provide a detailed analysis of how it had applied the exemptions under FOISA which it had cited, its consideration of the harm test, and its application of the public interest test in relation to the information withheld. The SPS had only referred to the exemption in "section 30" in its response to Mr Carle and so was asked to confirm that it was relying upon section 30(b)(ii) concerning the free and frank exchange of views for the purposes of deliberation, and section 30(c) where disclosure of the information would, or would be likely to, prejudice substantially the effective conduct of public affairs.
14. In its response the SPS supplied my investigating officer with documentation for the purposes of the investigation and provided a detailed analysis of the exemptions it had relied upon in this instance. In a subsequent letter to my Office the SPS informed the investigating officer that it no longer wished to rely on the exemption contained in section 33(1)(b) for any of the information withheld from Mr Carle.



The Commissioner's Analysis and Findings

15. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Carle and the SPS and I am satisfied that no matter of relevance has been overlooked.

Mr Carle's submission

16. In his application to me, Mr Carle detailed the reasons for his dissatisfaction with the way the SPS had dealt with his request. He was unhappy with the extent of redaction that had taken place within the documentation he had received in response to his request. He noted that many headings and paragraphs had been removed and, while he understood that there may be a case for the removal of some of the points, he was of the view that the majority of the minutes could have been provided to him unedited. In Mr Carle's view, the extent of the redaction was excessive.
17. Mr Carle pointed out that one of the pay deals took place over four years prior to his request for information. Taking into account the changes to budgets and staffing levels since that date, Mr Carle was of the view that such information should no longer be considered sensitive. He argued that, since the SPS is a public body which is accountable to the public, he should have a right to see what was discussed and how parties came to an agreement on a pay deal that affected him.
18. Mr Carle did not accept the SPS's argument that disclosure would inhibit substantially the free and frank exchange of views in any future pay negotiations or that it would otherwise prejudice substantially the effective conduct of public affairs. Instead, Mr Carle argued that the use of the exemptions was excessive and incorrect and the exemptions had been used in order to restrict the amount of information that would be provided to him. He hoped to gain a full understanding of how both union and management came to the offers that were eventually accepted by the employees of the SPS.

The SPS's submission

19. In the SPS's letter to Mr Carle of 17 February 2005, the SPS stated that the minutes for the pay negotiations reflected the discussions between SPS Management and SPS TUS. It was pointed out that during these discussions many possible courses of action were considered but not necessarily adopted. The SPS was of the opinion that if this information were to be disclosed it could inhibit substantially the free and frank exchange of views in any future pay negotiations. The SPS stated that this view was also shared in principle by the SPS TUS.



20. In its letter to my Office, dated 26 July 2005, the SPS provided clarification of the exemptions it had relied upon under FOISA. The SPS argued that the nature of the discussions and negotiations to which Mr Carle's request related was highly sensitive, particularly in relation to pay and potential changes to terms and conditions. In its submission the SPS outlined some of the key features of the negotiations which gave rise to the difficulties involved in disclosing such information and provided details of the context in which industrial relations operate within the SPS regarding pay and conditions.
21. In relation to the provisions of FOISA, the SPS was of the view that ownership of the record of meetings to discuss pay rested with the SPS. However, it was argued that the recognised trade unions had at least as great an interest in the information and that disclosure of the information could risk the stability of the system of employment relations.
22. I will now go on to consider the arguments presented by the SPS in relation to the information which was withheld from Mr Carle.

Section 30(b)(ii) - free and frank exchange of views for the purposes of deliberation - section 30(c) - effective conduct of public affairs

23. Section 30(b)(ii) of FOISA concerns prejudice to effective conduct of public affairs and allows information to be withheld if its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation. This exemption is subject to the public interest test required by section 2(1)(b) of FOISA.
24. To qualify for this exemption, public authorities must be able to show not only that the release of the information would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation, but also that such inhibition would be of a substantial nature.
25. When considering the application of the exemption in section 30(b)(ii) of FOISA, each request should be considered on its own merits, taking into account the effects anticipated from the release of the particular information involved. This is likely to include considering the subject matter of the views being exchanged, the content of the exchange of views, the manner in which the exchange of views is expressed, and whether the timing of release would have any bearing (releasing views whilst a decision was being considered, and for which further views were still being sought, might be more substantially inhibiting than once a decision has been taken or a particular position adopted).



26. It should be noted that the SPS is an agency of the Scottish Executive and the Scottish Executive has issued guidance to its staff on the application of a number of exemptions under FOISA. In relation to section 30(b)(ii) of FOISA the guidance points out that the word “inhibit” suggests a suppressive effect, so that communication would be less likely to be made, or would be made in a more reticent or circumscribed fashion, or would be less inclusive. When taking into account the possible effects that disclosure might have on the exchange of views, the Scottish Executive’s guidance suggests considering whether disclosure would make people less likely to engage in discussion (oral or written) as part of the deliberative process or whether it would distort or restrain that discussion.
27. Section 30(b)(ii) of FOISA refers to “exchanges of views for the purposes of deliberation”. Information does not itself have to relate to such exchanges in order for this exemption to be relied on, although if it does then it is perhaps more likely that the exemption can be claimed. I take the view that “deliberation” refers to the evaluation of the competing arguments or considerations that may have an influence on a public authority’s course of action. It includes expressions of opinion and recommendations, but will not include purely factual material or background information. I accept in this instance that most of the information that has been withheld involves an exchange of views for the purposes of deliberation and I have considered whether disclosure of that information would, or would be likely to inhibit substantially such an exchange.
28. Under section 30(b)(ii) of FOISA, the harm required to engage the exemption must take the form of substantial inhibition from expressing views in as free and frank a manner as would be the case if disclosure could not be expected to follow. The word “substantial” is important here: the degree to which the person is likely to be inhibited in expressing themselves must be of some real and demonstrable significance. For the section 30(b)(ii) exemption to apply, I therefore look for evidence of harm which would be significant enough to have a material effect (or at least be likely to have a material effect) on the outcome of the process of which the deliberation forms part.
29. Section 30(c) of FOISA concerns information which, if disclosed, would otherwise, or would otherwise be likely to, prejudice substantially the effective conduct of public affairs. As with section 30(b)(ii), the exemption under section 30(c) of FOISA is a qualified exemption which means it is subject to the public interest test required by section 2(1)(b) of FOISA.
30. In the Scottish Executive’s guidance to its staff on the section 30(c) exemption under FOISA, it states that substantial prejudice must, by its very definition, go further than just identifying prejudice. It requires not only that there be prejudice, but that prejudice must be material or significant.



31. In its submission to me, the SPS stated that one of the main reasons for withholding the information under consideration was due to the extreme sensitivities involved in the discussions that had taken place. Although it had chosen to rely on both section 30(b)(ii) and 30 (c) to withhold the information, the use of both of these could both be attributed to the same underlying concern: that disclosure of some of the various points raised during discussions would have a destabilising and disruptive effect on industrial relations.
32. The SPS raised a number of concerns it had in relation to the negotiations and discussions about pay and conditions which it argued supported its use of both of these section 30 exemptions. These included the assertion that pay negotiations are by their very nature inherently contentious and some of the options raised for discussion may never be concluded or emerge as part of an outcome, but could remain available to be the subject of discussion in negotiations for future years. The SPS stated that many positions are advanced and later abandoned or diluted by the parties to the negotiations along the way, which are never reflected in the outcome.
33. Additionally, the SPS argued that the discussions reflected in the minutes and associated documents described a state of conjecture and flux as they recorded positions reached only part of the way through a process. The SPS was of the view that to anyone with a “final interest” in the matter, the position reached part of the way through negotiations could never be of material benefit. It was argued that it was the outcome, which was subject to a ballot, which mattered rather than the details of the debates which often led to that outcome.
34. Whilst I recognise the inherently contentious nature of pay negotiations and the associated sensitivities which apply in this case, I do not accept the particular strand of the SPS’s argument which suggests that, were the documents to be disclosed, the public would not be able to differentiate between the earlier stages of a deliberative process which reflect tentative positions reached part of the way through a process and the final outcome of such a process.
35. The SPS also argued that the criticism of positions reached during the process of negotiation or the disclosure of a particularly contentious option that had been discussed but had eventually not been pursued could serve to constrain the system of collective bargaining that operates within the SPS. It was argued that, for the SPS system of employment relations to work effectively, it was required that trade unions are stable, able to manage membership expectations, and have a membership that remains cohesive. The SPS argued that this would be undermined by the release of sensitive information.



36. The SPS voiced concerns that if both the SPS and trade union negotiators knew their discussions would be likely to become public knowledge within even a relatively lengthy period of time, they would feel restricted in what they could say in the scope of those discussions. The SPS pointed out that pay negotiations are by their nature contentious exercises where significant shifts may occur in the positions of those parties involved during those negotiations. This is the basis of a negotiation process: to confer with others on a disputed issue in order to reach a common agreement. During these discussions, different parties will, at different times, reach positions of compromise in order to obtain agreement or to move a matter forward. Additionally, some of the options discussed in relation to specific issues may be highly contentious.
37. As I have stated in previous decisions, an authority should look at the information contained within the documents that have been requested if it wishes to rely upon section 30(b) or section 30(c) of FOISA. These exemptions should not be used to withhold all minutes, agendas and supporting papers where requested, without reference to their actual content and without consideration of whether the release would substantially inhibit or substantially prejudice the respective interests. In this instance the SPS have sought to justify the withholding of specific elements of the minutes by reference to specific concerns about disclosure.

Conclusion

38. The SPS was of the view that it was because of the extreme sensitivities involved in these discussions that it believed that disclosure of the full minutes of these meetings would substantially inhibit the free and frank exchange of views for the purposes of deliberation. The SPS voiced concerns that if both SPS and Union negotiators knew their discussions would be likely to become public knowledge within even a relatively lengthy period of time, they would feel restricted in what they could say in the scope of such discussions.
39. Having examined the content of the information that has been withheld by the SPS, I am satisfied that the minutes contain a significant amount of sensitive information which the SPS was entitled to withhold under section 30(b)(ii) and/or section 30(c) of FOISA. I am of the opinion that the discussions held by the SPS which were set out in the minutes were largely covered by section 30(b)(ii) of FOISA, whereas headings and other descriptive text in the minutes were largely covered by section 30(c) of FOISA (i.e. where they describe sensitive matters that the SPS did not want to be disclosed on the grounds that disclosure would result in the harm envisaged by that exemption).



40. In coming to this decision, I have taken account of the statement from the SPS that the content of the pay negotiations is generally maintained as strictly confidential with only the outcome being published in the form of an offer which is then put to a ballot of the trade union membership. I recognise, in this instance, the need for the parties involved in the SPS pay negotiations to be able to hold free and frank discussions where potentially sensitive or contentious issues or options could be debated in private in order to arrive at an agreed position which could then be presented to the trade union membership for their consideration. I have also taken into account the nature of the SPS's pay negotiation process and the co-ordinating role of the TUS, which represents the views of the four trade unions involved in the pay negotiations.
41. I considered whether different considerations should apply to the negotiations which had already been completed at the time at which Mr Carle made his request for information to the SPS. However, I am satisfied on the basis of the arguments put to me by the SPS, that this information remains sensitive despite the passage of time, given that many of the arguments and possibilities are likely to re-emerge in future discussions.
42. While I am satisfied that the vast majority of information is exempt either in terms of section 30(b)(ii) or (c), I have identified a number of instances where I am of the view that these exemptions do not apply to the information that had been withheld from Mr Carle. In these instances (listed in the following paragraph), I am of the view that disclosure of the information in question would not result in the harm envisaged by sections 30(b)(ii) or (c) of FOISA, for the reasons set out in the following paragraph (e.g. references to other documents within the text of the minutes without disclosing their content or subject matter). Although the information is not of itself significant I think it is appropriate to require it to be released as, in conjunction with the information already released and that further information which the SPS is now willing to release (see paragraph 44), the information listed at paragraph 43 then provides the applicant with the fullest extent of disclosure.
43. I therefore require the SPS to provide Mr Carle with the following information, as I am of the view that the disclosure of the information in question would not result in the harm envisaged by sections 30(b)(ii) or (c) of FOISA,
- a) Document 15, Paragraph 4.1 and 5.1.1 – disclose deleted text (references to other documents);
 - b) Document 16, Paragraph 4.2 – disclose deleted paragraph (references to other documents);
 - c) Document 17, Paragraph 4.2 – disclose paragraph (references to other documents);



- d) Document 18, Paragraph 3.2 – disclose paragraph (references to other documents);
 - e) Document 19, Paragraph 3.2 – disclose paragraph (references to other documents);
 - f) Document 20, Paragraph 2.1 – disclose paragraph (a note about administrative procedures in relation to the minutes of the previous meeting);
 - g) Document 21, Paragraphs 4.4 and 4.7 – disclose paragraphs (these paragraphs refer to requests for clarification and amendment without disclosing any information about the subject matter involved).
44. In addition, and for the same reasons, I do not consider that the following information is exempt in terms of either section 30(b)(ii) or (c) or FOISA (during the investigation, SPS agreed to release this information to Mr Carle and so I will not address the information in the remainder of this decision):
- a) Document 11, Paragraph 1.1 – disclose paragraph, except for last sentence;
 - b) Document 11, Paragraph 3.8 – disclose first sentence;
 - c) Document 13, Paragraph 5 – disclose text deleted from heading;
 - d) Document 15, Paragraph 6.1 – disclose text from deleted paragraph with the exception of items (5), (14), (1), (2);
 - e) Document 16, Paragraphs 5.1, to 5.8 – disclose document references (e.g. “Discussion papers 3 and 4”);
 - f) Document 16, Paragraph 5.8 – disclose paragraph;
 - g) Document 17, Paragraphs 5.1 to 5.17 – disclose only the text that has been deleted which provides document references (e.g. Paper A1);
 - h) Document 18, Paragraphs 5.1 to 5.15 – disclose only the text that has been deleted which provides document references (e.g. Paper A1);
 - i) Document 18, Paragraph 5.11 – disclose heading;
 - j) Document 20, Paragraphs 4.6, 4.7, 4.11, 4.13, 4.15, 4.18, 4.21, 4.22, 4.23, 4.26, 4.27, 4.28, 4.30, 4.31, 4.33, 4.34, 4.35, 4.36, 4.40, 4.41, 4.43, 4.46 to 4.52 – disclose paragraphs;
 - k) Document 22, Paragraph 5 – disclose heading;



l) Document 23, Paragraphs 5.6, 5.7 and 5.9 – disclose headings.

Given that the SPS has agreed to release this information, I will not address this information in the remainder of this decision.

45. Given that I have upheld the use of the exemptions in relation to the majority of the information withheld, I must now go on to consider the public interest in relation to the application of these exemptions.

Public interest

46. As noted above, the section 30(b)(ii) and section 30(c) exemptions of FOISA are qualified exemptions in that they are subject to the public interest test.
47. The public interest test is set out in section 2(1)(b) of FOISA. This states that, as regards information which is exempt information by virtue of any provision of Part 2 of FOISA, a person's general entitlement to receive information under FOISA applies only to the extent that the provision does not confer absolute exemption and, in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
48. Generally I am of the view that in instances where deliberations have ended, the public interest in openness and accountability would generally tend towards release of the information. However, where disclosure of past negotiations could reasonably be expected to prejudice current or future negotiations or cause some other harm, as in this particular case, then this also weighs heavily in the balance in applying the public interest test.
49. The Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (commonly known as the section 60 code) suggests a number of factors which may inform a decision about the public interest. Such factors include the general public interest in information being accessible (such as whether disclosure would enhance scrutiny of decision-making processes and thereby improve accountability and participation) and whether disclosure would contribute to a debate on a matter of public interest.
50. In my briefing on the public interest, which is available on my website (<http://www.itspublicknowledge.info/legislation/briefings/publicinterest.htm>), I note that the public interest is not defined within FOISA but has been variously described as "something which is of serious concern and benefit to the public".



51. I can see that there is a public interest in the employees of a major public authority having an insight into what is being discussed. Those who are members of the trade unions and who entrust this negotiating role to their representatives may have a particular interest in knowing whether the position adopted by the negotiators reflects their mandate. A wider public interest could be argued for the taxpayer in monitoring the efforts made by the employer to secure efficiencies or restrain costs.
52. Set against this however the SPS maintained that there is a strong public interest in withholding the information in order to allow individuals who are involved in such negotiations to be left free to consider all options without being constrained by concerns over presentational issues or being overshadowed by the risk of potential industrial unrest.
53. I recognise that there is a real danger that disclosure of the SPS's negotiating positions or those of the SPS TUS could lead to pressure on these parties to adopt particular positions on specific issues in anticipation of the information becoming public knowledge, and this could harm or seriously impede the negotiation process itself. The likelihood of significant harm to the negotiating process on such a sensitive issue as pay leads me to conclude that disclosure of the redacted parts of the SPS's pay negotiations would not be in the public interest in this instance.
54. It could be argued of course that this could not happen since at least some of the negotiations have been concluded. But the interest in knowing what was discussed and how agreement was arrived at does not to my mind overturn the substantial prejudice to ongoing and future negotiations given that many of the individuals, on both the SPS and trade unions sides, who were active in the 2001 negotiations were active in the negotiations which were being conducted close to the time of Mr Carle's request, and continued to be involved in negotiations on the same matters as being discussed in 2001 and 2004.
55. Taking into account the information that has already been supplied to Mr Carle by the SPS, I do not think there is a strong enough public interest argument to justify the disclosure of the redacted information in the interests of transparency and public participation in the decision-making process when to do so would, or would be likely to, prejudice substantially the SPS's ability to conduct pay negotiations in the future with trade union representatives.



56. I am of the view that the disclosure of the remaining information concerning the SPS's pay negotiations, which contains discussions about sensitive issues and in which potentially contentious matters are debated and considered in a free and frank manner, could consequently serve to undermine the confidence of those involved in such negotiations. In my opinion, there is a real and significant risk that disclosure of such information could seriously impede the SPS's ability to engage in free and frank deliberations with trade union representatives on matters as sensitive as pay negotiations if it was expected that their deliberations would be made available to the public at large.
57. I am of the view that it is in the public interest for the SPS and the trade unions to be able to carry out any negotiations concerning pay arrangements without undue concerns over disclosure endangering the negotiation process itself. Consequently, I am of the opinion that, given the particular circumstances of this case, the public interest in disclosing the remaining information is outweighed by the public interest in maintaining the exemption.

Decision

I find that the Scottish Prison Service (SPS) generally acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by relying upon the exemptions under section 30(b)(ii) and section 30(c) of FOISA to withhold information from Mr Carle. However, in failing to release the information specified in paragraphs 43 and 44 of this decision to Mr Carle, I find that the SPS did not comply with section 1(1) and so failed to comply with Part 1 of FOISA. I therefore require the SPS to release the information identified in paragraphs 43 and 44 to Mr Carle.

I cannot require the SPS to take any action until the time allowed for an appeal to be made to the Court of Session has elapsed. I therefore require the SPS to release the information to Mr Carle within 45 days of receipt of this notice.



Appeal

Should Mr Carle or the SPS wish to appeal against this decision, there is a right of 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.

Kevin Dunion
Scottish Information Commissioner
31 May 2007



APPENDIX

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 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 –
 - (a) the provision does not confer absolute exemption; and
 - (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 –

- (a) ...
- (b) would, or would be likely to, inhibit substantially –
 - (i) ...
 - (ii) the free and frank exchange of views for the purposes of deliberation; or
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.