

Decision Notice



Decision 133/2009 Mr Neil D. Robertson and Aberdeenshire Council

Stable and Acute 2007 risk assessment tool

Reference No: 200900427

Decision Date: 19 November 2009

www.itspublicknowledge.info

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Summary

Mr Neil D. Robertson requested from Aberdeenshire Council (the Council) a copy of the Stable and Acute 2007 (SA07) risk assessment tool. The Council responded by advising Mr Robertson that it was withholding the document in terms of section 30(c) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mr Robertson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Robertson's request for information in accordance with Part 1 of FOISA, by correctly withholding the SA07 in terms of section 30(c) of FOISA. He did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions); and 30(c) (Prejudice to effective conduct of public affairs).

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

Background

1. On 18 December 2008, Mr Robertson wrote to Aberdeenshire Council (the Council) requesting the following information:
A copy of the manual for the use and scoring of the risk assessment tool known as "Stable and Acute 2007"(SA07) together with contact details, if known, for its authors.
2. The Council responded on 12 January 2009. The Council advised Mr Robertson that it held the information he was seeking, but that it considered it to be exempt in terms of section 30(c) of FOISA.
3. On 26 January 2009, Mr Robertson wrote to the Council requesting a review of its decision. In particular, Mr Robertson drew the Council's attention to the fact that it had not addressed his request for contact details for the authors of SA07. Mr Robertson also set out arguments opposing the Council's application of the exemption in section 30(c) to SA07 itself.



4. The Council notified Mr Robertson of the outcome of its review on 24 February 2009. In its review, the Council provided Mr Robertson with the contact details of the authors of SA07 (which were available publicly via the Internet). The Council maintained its decision to withhold SA07 in terms of section 30(c) of FOISA.
5. On 2 March 2009, Mr Robertson wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Robertson had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 9 March 2009, the Council was notified in writing that an application had been received from Mr Robertson and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. The Council responded on 29 April 2009, setting out the reasons for its reliance upon section 30(c) of FOISA.
10. Mr Robertson was invited to comment on why he believed disclosure of SA07 would be in the public interest. Mr Robertson duly provided his views. He also queried why the Council was withholding SA07 when he had obtained similar information (in the form of the Risk Matrix 2000 (RM2000)) from another Scottish public authority under FOISA. Mr Robertson later provided the investigating officer with a copy of RM2000.
11. The investigating officer noted that RM2000, as provided to Mr Robertson, was a 2005 edition of a document similar to that comprising Tab 3 of SA07. The only difference between the two items was that the SA07 version was published in 2007 and included some additional information. The investigating officer asked the Council if it was willing to disclose Tab 3 of SA07 to Mr Robertson, given its similarity to the document already provided to him under FOISA.
12. In its response, the Council advised that it was willing to disclose the 2007 edition of RM2000 to Mr Robertson (which constituted Tab 3 of SA07), and it later provided confirmation that it had done so.



13. The submissions from both Mr Robertson and the Council are summarised, where relevant, in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Robertson and the Council, and is satisfied that no matter of relevance has been overlooked.

Information under consideration

15. Mr Robertson asked for a copy of the SA07 manual which is used by the Council (and other agencies such as the Police) to assess the risk factors of individuals convicted under the Sexual Offences Act 2003. During the investigation, the Council disclosed part of SA07 to Mr Robertson (specifically Tab 3) and so this Decision Notice will only consider the parts of SA07 that have not already been disclosed to Mr Robertson (i.e. all of SA07 apart from Tab 3).

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

16. The Council applied the exemption in section 30(c) of FOISA to all information withheld from Mr Robertson. Section 30(c) exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs". (The word "otherwise" is used here to differentiate this particular exemption from the other types of substantial prejudice - such as substantial inhibition to the free and frank provision of advice or exchange of views – covered in other parts of section 30.) This is a qualified exemption, and as such is subject to the public interest test required by section 2(1)(b) of FOISA.
17. Section 30(c) applies where the harm caused, or likely to be caused, by disclosure is at the level of substantial prejudice. The Commissioner's published guidance on this exemption¹ makes it clear that the damage caused by disclosure must be real and significant, as opposed to hypothetical or marginal. Authorities should therefore consider disclosing the information asked for unless it would (or would be likely to) cause real, actual and significant harm.

¹ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2582&sID=117>



18. In its submissions, the Council argued that disclosure of the manual would substantially prejudice the ability of the criminal justice system to make objective and effective assessments of risk in sensitive or controversial situations. The Council submitted that if the SA07 manual was disclosed and gave prisoners access to this specialised tool, they would be able to present artificially low levels of risk, giving rise to a real and substantial risk of offenders being wrongly released into the community. Offenders would understand how to manipulate their responses to assessment and how to affect the conclusions reached through this risk assessment and management process, presenting an artificially low level of risk of re-offending or of causing serious harm. The Council indicated that it was unwilling to accept any risk of undermining the system of managed release of sex offenders.
19. The Council submitted that the harm caused by disclosure would also undermine the risk management strategies used within the multi-agency public protection process: the Scottish Government has agreed with the authors of SA07 that detailed guidance on the administration of the risk assessment tool would only be made available to those trained and accredited in its use. The Council took the view that accredited professionals themselves must have confidence in the assessments they are making, and that this confidence would be undermined if those professionals, in assessing an offender's risk, brought an inappropriate level of scepticism to bear on SA07 responses.
20. The Council also referred to the views of the Scottish Government. It stated that the Scottish Government took the view that should the detailed scoring guidance be made available to the offender population, this would undermine the Government's ability to ensure the predictive validity of SA07 with its targeted population of sex offenders. This would potentially prejudice its ability at national level to fulfil certain recommendations of the Justice 2 Committee.² The Council provided a copy of Scottish Government Justice Circular JD13/2007 on the implementation of SA07, in support of its arguments.
21. Mr Robertson submitted (in his letter to the Council of 26 January 2009) that the Council's arguments concerning the harm likely to be caused by disclosure of SA07 did not take into consideration that SA07 forms only a relatively minor part in the overall considerations of the Parole Board, and that the recidivism risk determined by this tool would have to be supported by other factors.
22. The Commissioner accepts the arguments put forward by the Council in relation to the degree of harm likely to be caused by disclosure of SA07. The Commissioner cannot comment on Mr Robertson's assertion that SA07 plays only a relatively minor part in the Parole Board's considerations, but is aware that SA07 is widely used by agencies involved in risk assessment of sex offenders, and accepts that the reliability of the risk assessment conclusions reached by using SA07 would be undermined if the information within SA07 had been disclosed and was generally available. The test for the Commissioner to consider is whether disclosure of SA07 would cause substantial prejudice to the effective conduct of public affairs. The Commissioner accepts that disclosure of SA07 would have the effect of undermining the risk assessment procedures used by the Council and within the multi-agency public protection process (MAPPA), and that, accordingly, the exemption in section 30(c) applies.

² Recommendations 13 and 14, [Justice 2 Sub Committee, Report to the Justice 2 Committee 2006 \(session 2\)](#)



23. However, as noted above, the exemption in section 30(c) is subject to the public interest test, so information can only be withheld under this exemption if the public interest in maintaining the exemption outweighs the public interest in disclosure.
24. The Council did not identify any strong factors which would support disclosure of the information in the public interest. It acknowledged that disclosure of information increases transparency and public accountability, and that the public would be reassured to know that there are detailed procedures in place to assess the risks associated with sex offenders. However, the Council took the view that as long as the public know such procedures exist, there would be little additional public interest in disclosing the full, detailed manual.
25. On the other hand, the Council found there were very strong reasons why it was in the public interest to withhold the information and, in doing so, avoid the harmful consequences of disclosure outlined above. The Council stated that the public must have confidence in the offender management system, and that such confidence would be undermined if there was a perception that prisoners were in a position to skew the risk assessment artificially in their favour.
26. Mr Robertson submitted that the public has a right to expect that public servants are dealing with them on a fair, even-handed basis. He believed it went against the principles of freedom of information for information to be withheld on the basis that only one segment of society would be likely to desire access to it. He argued that there should be “no presumption of mendacious intent for information requested from public authorities” and complained that the Council had assumed, with no basis for doing so, that the information would be used to manipulate responses to provide an incorrect level of risk. He stated that the information would, in fact, be used to verify that Council employees had used SA07 accurately (and subsequently to require corrections if necessary); to determine its applicability for use in terms of the Disability Discrimination Act; and to provide feedback from a client perspective to the Risk Management Authority.
27. The Commissioner must take into account that information disclosed under FOISA enters the public domain, and is accessible thereafter to any person. When considering Mr Robertson’s reasons for requiring the information, he must also bear in mind any other ways in which the information could be used. After examining the information withheld, and for the reasons indicated previously in this Decision Notice, he is satisfied that disclosure of SA07 would be likely to reduce the effectiveness of the risk assessment procedures. The Commissioner finds that this creates a compelling reason why disclosure would not be in the public interest, which outweighs any of Mr Robertson’s arguments regarding the public interest in disclosure.
28. The Commissioner finds that the public interest lies in maintaining the exemption in section 30(c) and withholding the information.
29. Accordingly, the Commissioner finds that the Council was correct in withhold the remaining information in SA07 under section 30(c) of FOISA.

Recent Court of Session Opinion



30. The Commissioner notes that the information request by Mr Robertson was for a copy of a document and that in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA gives a right to information, not documents. However, the Court also said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
31. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr Robertson and the Council that the Council questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which the Council has subsequently had with the Commissioner that the Council was unclear as to what the information requested sought.
32. The Commissioner is satisfied that the request is reasonably clear and that the request is therefore valid.

DECISION

The Commissioner finds that Aberdeenshire Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Robertson.

Appeal

Should either Mr Robertson or the Council wish to appeal against this 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 after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
19 November 2009



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.
- (...)
- (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 –
 - (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-

- (...)
- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.