

Decision Notice 166/2019

Job evaluation scores

The Applicant

Public authority: City of Edinburgh Council

Case Ref: 201900566



Scottish Information
Commissioner

Summary

The Council was asked for job evaluation scores for two specific posts. The Council refused to disclose the scores on the basis that to disclose them would prejudice the conduct of public affairs. During the investigation, the Council realised that the Applicant was a trade union representative and could access the information otherwise than by requesting it under FOISA.

The Commissioner accepted that the scores were exempt from disclosure under section 25(1) of FOISA as they were otherwise accessible to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible)

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 10 January 2019, the Applicant made a request for information to the City of Edinburgh Council (the Council). The information requested was:
...a copy of the following 2 job descriptions:
Business Support Administrator (Gr4)
Business Support Assistant (Gr3)
Along with the job evaluation factor scores for both posts.
2. On 8 February 2019, the Applicant requested a review on the basis that the Council had failed to respond to his request.
3. The Council notified the Applicant of the outcome of its review on 7 March 2019 and apologised for failing to respond to the initial request within the statutory timescale. The Council provided copies of the two job descriptions, but withheld the job evaluation scores under section 30(c) (Prejudice to effective conduct of public affairs) of FOISA, on the grounds that placing this information into the public domain could undermine the integrity of the job evaluation scheme and inhibit proper management of the process.
4. On 28 March 2019, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner 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 because he did not believe that disclosing the job evaluation factor scores into the public domain would cause the risk or inhibition described by the Council.

Investigation

5. 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.
6. On 8 May 2019, 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. The Council provided the information and the case was allocated to an investigating officer.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and to answer specific questions. These related to the Council's application of section 30(c) of FOISA and the Council's reasoning for withholding the information under this exemption.
8. On the 18 July 2019, the Council submitted that there was an opportunity to resolve the case without the need for a decision to be issued. The Council advised that it had been made aware that the Applicant was in fact a trade union representative and was involved in trade union discussions/representations concerning Council employees relative to the job evaluation scores being requested. Therefore, the Council stated, the Applicant had now been provided with the job evaluation scores under the terms of the Council's Working Together Protocol (WTP), which allows the Council to openly share information with trade union representatives in the light of their representation of members.
9. The Council stated that, had it been made known on the Applicant's information request that he was a trade union representative, it would have applied section 25(1) of FOISA (Information otherwise accessible) rather than section 30(c) of FOISA. It now wished to base its arguments around this exemption. The Council noted that the WTP route for accessing information is not available to members of the public.
10. On 22 July 2019, the Applicant confirmed that he had now been provided with the job evaluation scores but that he still wished the Commissioner issue a decision on the matter as he did not agree with the Council's reliance of section 25(1) of FOISA.
11. The investigating officer therefore asked both the Council and the Applicant to provide any comments or submissions they wished to make on the application of section 25(1) of FOISA.
12. Both the Applicant and the Council provided the investigating officer with their submissions on the matter.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all of 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.

Section 25(1) of FOISA - Information otherwise accessible

14. Under section 25(1) of FOISA, information which a requester can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.

Submissions from the Council

15. The Council submitted that the Applicant was a representative of a named trade union which was one of the trade unions recognised by the Council and that his role was to represent members of his union employed by the Council.
16. The Council stated that it and the recognised trade unions have in place a WTP which was signed on behalf of the Council and the trade unions on 15 December 2015 and which remains in force. The Council provided a copy of the WTP to the Commissioner. The WTP sets out the way that the Council and the recognised trade unions will work together to achieve shared and common interests, and the behaviours expected from each other. One expected behaviour is that all sides will “participate constructively”. To achieve this behaviour the WTP recognises that both sides will “share information openly”.
17. The Council stated that it was this requirement for open information sharing which it was relying on when applying section 25(1) of FOISA to the request. The Council stated that it had committed to sharing information openly with trade union representatives to enable them to participate constructively in their roles. Such information sharing was managed and facilitated via the Lead Consultant - Strategy in the Human Resources Service. The Council argued that this was a routine and frequently used method of accessing and sharing information and one of which the Applicant would have been aware of.
18. The Council refuted the Applicant’s position that the information was not reasonably obtainable by him, and argued that this was evidenced by the fact he had the information he had requested in his possession, this having been provided to him by the Lead Consultant – Strategy via the information sharing processes.
19. The Council identified, from the Applicant’s approach to this matter, that there appeared to be confusion, both by him and perhaps by some staff within the Council, of the way in which information should be requested from Human Resources by trade union representatives. To address this, the Council stated that it would provide a refresher briefing to trade union representatives about ways that they can request and access information required by them to enable effective participation in employee relations matters.
20. The Council accepted that, when initially handling the FOI request, it had not immediately recognised that the Applicant was a trade union representative with the ability to access the information as set out above. As the Council had not recognised the role of the Applicant as a trade union representative, it had not explained to him the information sharing route set out in the WTP.

Submissions from the Applicant

21. The Applicant disputed that the information would have been reasonably obtainable by him as a trade union representative. He stated that, in order to obtain the information, he would have to ask a third party, someone that he may not know personally, and ask them to make the request to the Council on their own behalf, and then hope that the third party then forwards the information on to him.
22. He provided a copy of a response dated 31 October 2018 from the Council to a previous information request he had made for job evaluation scores in which section 30(c) had been applied and which stated that job evaluation scores were only available to the post-holders and their managers. He stated that the Council had known his status as a trade union representative at that time.

23. He argued that, when his request was made (in his own name but without indication of his trade union status), it was known to the Council that he was a trade union representative. He stated that the information request in 2018 was made from his own personal email address, but the response was made to his trade union email address.
24. The investigating officer asked the Applicant if he could provide any evidence that he had requested the job evaluation scores under the WTP as a trade union representative and had been refused access. The Applicant was unable to provide any such evidence. He thereafter submitted that he had made the request for the job evaluation scores for himself and not as a trade union representative on behalf of his members.

The Commissioner's conclusions

25. At the time of making his request for the job evaluation scores, the Applicant was aware of the WTP and therefore had the option of asking for the information under that policy. If he chose to make his request as a private individual without any reference to his trade union status, that does not detract from the fact that the option to use the WTP was still available to him at that time. The fact that he chose not to exercise that option does not negate the fact that the option was open to him.
26. Section 25(1) of FOISA is one of the few sections of FOISA that is not "applicant blind". Whether the exemption in this section applies depends on the ability of the individual requester to be able to obtain the information other than under section 1(1) of FOISA.
27. The option to ask for the information under the WTP was always open to the Applicant, but he chose instead to ask for the information under FOISA.
28. When it had been clearly established by the Council that the Applicant was in fact a trade union representative involved in job evaluation discussions (a fact that came to light through the Applicant's making his application to the Commissioner), the information was then provided to him.
29. Having considered all of the submissions from the Council and the Applicant, the Commissioner is satisfied that the job evaluation scores were reasonably obtainable by the Applicant otherwise than by making a request for the information under section 25(1) of FOISA. Therefore, he is satisfied that the Council was entitled to withhold this information under section 25(1) of FOISA.

Decision

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

Appeal

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

14 November 2019

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

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

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