



Scottish Information
Commissioner

**219/2007 Mr Thomas Quinn and East Lothian
Council**

Documents associated with an accident

**Applicant: Mr Thomas Quinn
Authority: East Lothian Council
Case No: 200601230
Decision Date: 19 November 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 219/2007 Mr Thomas Quinn and East Lothian Council

Request for information held by East Lothian Council relating to Mr Quinn's accident – information withheld under sections 35 and 38 of FOISA – Commissioner upheld reliance on section 38(1)(a) (applicant's own personal data)

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 2 (Effect of exemptions); 38(1)(a) (Personal information).

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions).

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

Facts

Mr Quinn requested information held by East Lothian Council (the Council) about his accident. The Council relied on sections 35(1)(g) of FOISA to withhold the information, and latterly also on sections 38(1)(a) and (b). During the investigation, the Council released some information to Mr Quinn under the Data Protection Act 1998 (the DPA). After considering the case the Commissioner found that the Council had complied with Part 1 of FOISA in dealing with Mr Quinn's request, finding in particular that the information withheld was Mr Quinn's own personal data and therefore exempt from disclosure under section 38(1)(a) of FOISA.



Background

1. On 26 October 2005 Mr Quinn's solicitors wrote to the Council to ask it, under FOISA, for copies of all the letters, documents, reports, photographs, videos and other material (referred to as "accident documents" throughout this decision) associated with an accident Mr Quinn had at work on 30 January 2005. Mr Quinn's solicitors also requested the above information via a subject access request under the DPA.
2. On 24 November 2005 the Council wrote to Mr Quinn's solicitors, refusing to release the information under section 35(1)(g) (read in conjunction with section 35(2)(e)) of FOISA. The Council informed Mr Quinn's solicitors that it was still considering the subject access request and would respond within the relevant statutory timescale.
3. Mr Quinn asked the Council to review its decision on 9 January 2006.
4. A review was carried out and, on 7 February 2006, the Council replied to Mr Quinn, upholding its decision to withhold the information under the exemption in section 35(1)(g) of FOISA.
5. On 21 July 2006 Mr Quinn wrote to my Office, stating that he was dissatisfied with the outcome of the Council's review and applying to me for a decision in relation to the Council's decision to withhold the accident documents.
6. Mr Quinn's application was subsequently validated by establishing that he had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to her request.

The Investigation

7. On 16 August 2006, my Office wrote to the Council, giving notice that an application had been received and that an investigation into the matter had begun and inviting comments from the Council as required under section 49(3)(a) of FOISA. Amongst other items, the Council was asked to supply my Office with the accident documents withheld from Mr Quinn and its reasons for applying the exemptions claimed.



8. On 7 September 2006 the Council wrote to my Office, providing copies of the six accident documents withheld from Mr Quinn. At this point, the Council confirmed that it was also relying on the exemption in section 38(1)(a) of FOISA in refusing to disclose the information.
9. The case was then allocated to an investigating officer.
10. In the course of the investigation, the Council released three of the six accident documents to Mr Quinn under the DPA, two of which were redacted to withhold some information. Mr Quinn believed that more information should be released to him and wished the investigation to continue in relation to all of the withheld documents.
11. In response to further enquiries from the investigating officer, the Council confirmed that sections of two documents (Documents 1 and 2) were being withheld under section 38(1)(b) of FOISA and three documents (Documents 3, 4 and 5) were being completely withheld under section 35(1)(g) of FOISA. I understand the Council to be arguing that these exemptions apply in addition to that in section 38(1)(a) of FOISA, which it claimed to be applicable to the information from the commencement of my investigation. It was also clarified that the accident investigation had been completed on 5 February 2006 (when the completed forms had been sent to the Health and Safety Executive) and that all of the individuals named in the withheld documents were Council employees, with the exception of certain construction workers and a site manager.
12. I will consider the Council's arguments for withholding information from Mr Quinn, along with Mr Quinn's arguments that it should be released to him, in my Analysis and Findings below.

The Commissioner's Analysis and Findings

13. 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 Quinn and the Council and am satisfied that no matter of relevance has been overlooked.

Application of section 38(1)(a)

14. Having reviewed the information withheld, it is my view that all of it is absolutely exempt from disclosure under section 38(1)(a) of FOISA. Section 38(1)(a) of FOISA contains an absolute exemption in relation to personal data of which the applicant is the data subject. "Data", "data subject" and "personal data" are defined in section 1(1) of the DPA (see Appendix below).



15. Looking at the information withheld, it is clear that it comprises reports and other records which have Mr Quinn as their focus. They relate to an incident involving Mr Quinn personally and he is clearly the subject of the documents and of the information they contain. In the circumstances, I am satisfied that the content of each document is, in its entirety, personal data of which Mr Quinn is the data subject. It is therefore exempt from disclosure under section 38(1)(a) of FOISA.
16. I note Mr Quinn's concern that further information should have been released to him, in addition to that which he has received already in response to his subject access request under the DPA. Unfortunately, that cannot be my concern. I am satisfied that the information he is seeking is exempt under section 38(1)(a) of FOISA and my jurisdiction ends there. It is not the purpose of FOISA to extend the rights of data subjects to information that is held about them and any question as to whether information has been properly withheld from Mr Quinn as a data subject is rather a question of the proper application of the DPA (which is a matter for the Information Commissioner responsible for that Act and not for me).
17. The exemption in section 38(1)(a) is absolute and I am therefore not required to go on to consider whether the public interest lies in the information being released or withheld. As I am satisfied that all of the information is absolutely exempt under section 38(1)(a), I am not required to (and will not) consider the other exemptions applied to it by the Council.

Decision

I find that East Lothian Council (the Council) acted in compliance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by withholding the information requested by Mr Quinn under section 38(1)(a) of FOISA.



Appeal

Should either Mr Quinn 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 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.
- (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 -
- (...)
 - (e) in subsection (1) of section 38 –
 - (i) paragraphs (a), (c) and (d); and
 - (...)

38 Personal information

- (1) Information is exempt information if it constitutes-
- (a) personal data of which the applicant is the data subject;
 - (...)



Data Protection Act 1998

Basic interpretative provisions

1. (1) In this Act, unless the context otherwise requires-
- "data" means information which-
- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
 - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- (...)
- "data subject" means an individual who is the subject of personal data;
- "personal data" means data which relate to a living individual who can be identified-
- (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
- and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
- (...)