

# Decision Notice

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**Decision 244/2014: Ms Ann Simpson and Glasgow City Council**

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**Audit of handling of planning application**

Reference No: 201400776

Decision Date: 21 November 2014



Scottish Information  
Commissioner

## Summary

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On 4 June 2013, Ms Simpson asked Glasgow City Council (the Council) for documentation generated by the Council's Audit and Inspection Team in relation to a particular complaint.

The Council refused to provide the information, on the basis that disclosure would substantially prejudice the effective conduct of public affairs. The Commissioner investigated and found that the Council had properly responded to Ms Simpson's request for information.

## Relevant statutory provisions

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

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

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1. On 4 June 2013, Ms Simpson made a request for information to the Council. The information requested was all documentation generated by the Council's Audit and Inspection Team's inquiry which formed the basis of its view that procedures were properly followed in relation to a particular planning application.
2. The Council responded on 28 June 2013. The Council confirmed that it held information, but stated that it was exempt as disclosure would, or would be likely to, substantially prejudice the effective conduct of public affairs.
3. On 17 July 2013, Ms Simpson wrote to the Council. She requested a review of its decision, as she did not accept that disclosure would result in the harm suggested by the Council. She also argued, given the contentious nature of the planning application, that it was in the public interest to disclose the information relating to the handling of the complaint.
4. The Council notified Ms Simpson of the outcome of its review on 8 October 2013. The Council continued to rely on section 30(c) of FOISA to withhold the information, and also sought to rely on sections 38(1)(b), 34(1)(b) and 35(1)(g) (read in conjunction with 35(2)(b)).
5. On 6 April 2014, Ms Simpson wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Simpson stated she was dissatisfied with the outcome of the Council's review. She did not accept that the exemptions applied and that the public interest favoured withholding the information.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Ms Simpson made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.

7. On 17 April 2014, the Council was notified in writing that Ms Simpson had made a valid application. The Council was asked to send the Commissioner the information withheld from her. The Council provided the information and the case was allocated to an investigating officer.
8. 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 answer specific questions, with reference to the exemptions it had applied earlier.
9. Following the investigator's initial review of the information withheld, the Council was also asked to confirm which information fell within the scope of this request, remove duplicate documents and identify those which were already in the public domain (i.e. published on websites).

## **Commissioner's analysis and findings**

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10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Ms Simpson and the Council. She is satisfied that no matter of relevance has been overlooked.

### **Background**

11. The planning application to which this request relates was approved in December 2011. A complaint was lodged with the Council about how the planning application was handled. The Council's internal audit service started an investigation in August 2012; this was concluded in November 2013 and a report issued to Councillors and interested parties in January 2013.

### **Scope of request**

12. In its submissions the Council narrowed the scope of the documents it considered to fall within the scope of this request. The Council identified those documents which were generated by the Audit and Inspection Team's inquiry and which formed the basis of the Team's conclusions.
13. Having reviewed the information withheld, the Commissioner accepts the Council's interpretation of this request and which information falls within its scope.

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

14. Section 30(c) of FOISA exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs". The use of the word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority citing it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by release of the information, and how that harm would be expected to follow from disclosure. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
15. As the Commissioner has said in previous decisions, there is a high threshold to be crossed in applying the tests contained in the section 30(c) exemption. The prejudice in question must be substantial and therefore of real and demonstrable significance. The Commissioner expects authorities to demonstrate a real risk or likelihood of substantial prejudice at some

time in the near (certainly foreseeable) future, not simply that such prejudice is a remote or hypothetical possibility. Each request should be considered on a case by case basis, taking into consideration the content of the information and all other relevant circumstances (which may include the timing of the request).

#### *The Council's submissions*

16. The Council argued that disclosure of any aspect of the information generated by the Audit and Inspection Team in the course of its investigation would prejudice substantially, or would be likely to prejudice substantially, the effective conduct of public affairs.
17. In this instance, the Council highlighted, the request was not seeking the resulting report produced by the Audit and Inspection Team (which had already been made available to interested parties). Rather, Ms Simpson was seeking the information generated by the Audit and Inspection Team during the process of enquiry which led to the production of the report. This, in the Council's view, distinguished this matter from other cases considered by the Commissioner, which had focussed on the provision of the end report produced following an audit within a public authority.
18. The Council stated that disclosure of the background correspondence, notes of meetings and internal reports generated by the Team would have a significantly disruptive effect on future investigations. The Council referred to *Decision 117/2012 Mr Tom Gordon and the Scottish Ministers*<sup>1</sup>, which states (in paragraph 41) that "...for an internal audit to be effective, staff and auditors must be able to communicate freely and frankly in order that the current policies and practice of the department being audited are openly and accurately described and that any recommendations that are made are full and relevant".
19. The Council stated that its internal audit function operated to the Public Sector Internal Audit Standards, Applying IIA International Standards to the Public Sector. The Council explained that this operated in accordance with a Professional Code of Practice and on the principles of integrity, objectivity, confidentiality and competency. The Council also stated that, as a result, its officers accordingly have a legitimate expectation that matters reported during the course of an internal audit will be kept confidential. The Council therefore argued that disclosure of information generated in the conduct of the investigation, as requested in this case, would be contrary to the principles of effective internal audit.
20. The Council identified a real risk that the effectiveness of the audit function would be critically undermined by disclosure, as Council departments and officers would be inhibited from freely and openly providing required information required on the basis that there was legal precedent that such information could be disclosed into the public domain. This, the Council argued, would be to the material detriment of the effectiveness of the internal audit function in improving an organisation's operations, processes and policies.

#### *Submissions from Ms Simpson*

21. Ms Simpson submitted that the complaint which instigated the internal audit investigation related to a contentious planning application. She stated that perceived serious irregularities in the supporting documentation relating to the planning application were highlighted to the Council, with a detailed complaint about the perceived mishandling of this application. Ms Simpson argued that the resulting report from the Council's Internal Audit Team did not address all of the concerns raised.

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201101539.aspx>

22. She did not accept that disclosure would (or would be likely to) prejudice substantially the effective conduct of public affairs. She believed disclosure was necessary for public confidence, so the Council was able to demonstrate that procedures were properly followed.

#### *The Commissioner's conclusion*

23. The Commissioner has considered the arguments presented by both parties carefully. She accepts that this case can be distinguished from others in which she has considered the disclosure of the resulting report. In this instance she is being asked to consider the documentation generated by the Council's Internal Audit Team which formed the basis of its conclusions.
24. The Commissioner has also considered the withheld information in detail. It reflects the Council's internal investigation into this complaint, including interview notes with Council officers involved. The Commissioner is of the view that these individuals had a legitimate expectation that this information would remain confidential.
25. Having considered the nature and content of the withheld information, together with Ms Simpson's and the Council's submissions, the Commissioner accepts, in relation to this information, that disclosure would, or would be likely to have a significantly detrimental impact on the conduct of future internal audits by the Council. Consequently, she is satisfied that disclosure would, or would be likely to, prejudice substantially the effective conduct of public affairs.
26. The exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.

#### **Public interest**

27. The public interest is not defined in FOISA, but has been described in previous decisions as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interests of the public", i.e. disclosure must serve the interests of the public.

#### *Submissions by Ms Simpson*

28. Ms Simpson explained that the conduct of this planning application had been a highly contentious matter from the start and was recognised by the Council as being worthy of a Planning Committee site visit and full hearing, given the hundreds of representations from local residents during the consultation period. Ms Simpson submitted that a significant number of local people still felt a strong sense of dissatisfaction over the way the matter was handled and questions remained unanswered.
29. The Ms Simpson argued that as public officials were given responsibility for important matters affecting communities in the City, it was entirely appropriate for their professional conduct to be open to scrutiny.
30. Ms Simpson also argued that where serious questions had been raised about conduct, the Council was under a responsibility to demonstrate these questions and concerns were unfounded. She also argued that, for public confidence, it was vitally important to disclose detailed evidence uncovered by the Council, indicating that procedure was properly followed.

### *Submissions by the Council*

31. The Council recognised the general public interest in openness and transparency in local government and the interest in allegations of wrongdoing by public officials being investigated thoroughly.
32. While recognising that Ms Simpson had a specific interest in disclosure of the background information relating to this particular audit investigation, the Council did not believe the wider public interest benefits were strong enough to outweigh the benefits of maintaining the exemption. In particular the Council identified the following public interest grounds for withholding the information:
  - officers being frank and open with internal auditors undertaking investigations
  - ensuring that auditors have access to information which may evidence any procedural wrongdoing or acts which may result in criminal proceedings
  - ensuring that internal audit investigations meet the Public Sector Internal Audit Standards through candid and comprehensive reports.
33. The Council emphasised that the wider public interests in openness and transparency, and in investigations being undertaken in respect of allegations of wrongdoing by public officials, had been met in this case by its provision of the full internal audit report to the interested parties which included Ms Simpson.

### *The Commissioner's conclusions*

34. The Commissioner recognises the public interest in accountability and transparency, particularly in areas where the public have concerns about the procedures and decision-making processes of the authority. She also recognises the importance of transparency, to allow effective scrutiny of decisions made.
35. On the other hand, the Commissioner has acknowledged the risk of substantial prejudice to the effective conduct of public affairs, where individuals who have had a reasonable expectation of confidentiality in their submissions become reticent in providing full and frank accounts for the purposes of future audit.
36. She notes that the Council has made the resulting report available to interested parties and is satisfied that this goes some way towards fulfilling the more general public interest in disclosure.
37. While the Commissioner does not dispute the level of interest Ms Simpson and others had in the planning application and the approval process, this does not, in her view amount to the same as being in the public interest. Having considered the actual information withheld, the Commissioner is not satisfied that disclosure would add significantly to the effective public scrutiny sought by Ms Simpson. The very process of an internal review and published findings has largely served that interest.
38. The Commissioner has balanced the public interest arguments presented to her by both parties. She is satisfied, in all the circumstances of this case, that the public interest in disclosure is outweighed by that in maintaining the exemption. In reaching this conclusion, the Commissioner is mindful that the matters of concern have already been the subject of a necessarily transparent development planning process.

39. The Commissioner therefore finds that the Council was entitled to withhold the information under section 30(c) of FOISA. As the Commissioner has determined that the Council was correct to withhold the information under this exemption, she is not required to consider the application of the other exemptions relied on by the Council.

## **Decision**

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

## **Appeal**

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Should either Ms Simpson or Glasgow City 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**21 November 2014**

### 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 –

...

- (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.



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