

**Decision 137/2007 The Applicant and Shetland
Islands Council**

*Request for information relating to the care of the Applicant's late
mother*

**Authority: Shetland Islands Council
Case No: 200600851
Decision Date: 13 August 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
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Decision 137/2007 The Applicant and Shetland Islands Council

Request for information relating to the care of the Applicant's late mother – information withheld – upheld by Commissioner

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 38(1)(a) (personal information).

Data Protection Act 1998 (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

The Applicant requested information which Shetland Islands Council (the Council) held relating to its care of his late mother. The Council responded, withholding the information from the Applicant on the basis that it was his own personal information, but informed him that he was able to access the information using the rights afforded him by the DPA. The Applicant was not satisfied with its response and asked the Council to review its decision. The Council carried out a review and, as a result, notified the Applicant that it had nothing further to add. The Applicant remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council dealt with the Applicant's request for information in accordance with Part 1 of FOISA. He did not require the Council to take any action.



Background

1. On 27 November 2005, the Applicant wrote to the Council requesting copies of all recorded information (paper and electronic) which it held relating to his late mother's case from 10 March 2005 (the date of her death) onward.
2. On 16 December 2005, the Council wrote to the Applicant, stating (having responded to a number of more specific requests for information that are not the subject of this decision) that it did not hold any further information which related directly to his mother. It stated that the remainder of information which it held relating to his request related directly to the Applicant. It argued that the information which it did hold was exempt from disclosure under sections 30 and 38 of FOISA, but that the Applicant could apply for it by using the rights given to him under the DPA.
3. On 2 February 2006 the Applicant wrote to the Council and requested that it review its decision.
4. On 1 March 2006, the Council wrote to notify the Applicant of the outcome of its review. The Council upheld its initial response to the Applicant, which it was satisfied had been appropriate.
5. On 3 May 2006, the Applicant 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 terms of section 47(1) of FOISA.
6. The application was validated by establishing that the Applicant 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 that request.

The Investigation

7. On 25 May 2006, the Council was notified in writing that an application had been received from the Applicant and was asked to provide my Office with its comments on the application, all in terms of section 49(3)(a) of FOISA. It was also asked to provide specified items of information required for the purposes of the investigation, including the information withheld and its reasons for applying the exemptions claimed to that information.



8. In its submissions to the Commissioner, the Council argued that the information it held was personal information relating to the Applicant and therefore was exempt from disclosure under section 38(1)(a) of FOISA. It reiterated that it would provide the information requested to the Applicant if he asked for it under section 7 of the DPA. It outlined that it had informed him in its initial response as to how to request information using the DPA; however, the Applicant had declined to do so.
9. The Council also provided comments and information on whether it held any further information in relation to the case (which was not personal information relating to the Applicant).
10. The investigating officer wrote to the Applicant and asked, on the basis that it appeared to be more appropriate to seek access to the information using the rights given to him under the DPA, whether he wished to withdraw his application under FOISA and make a subject access request under section 7 of the DPA for the information which the Council held.
11. The Applicant responded, reiterating that he wished to pursue the application under FOISA and declining to make a subject access request. In conversations with the investigating officer he went on to imply that he believed the Council to hold further information relating to the case.
12. The Applicant also confirmed in his letter that he wished to withdraw his request for any correspondence between himself and the Council. The investigating officer subsequently informed the Council that the Applicant wished to partially withdraw his request. Subsequently, I will not consider the Council's decision to withhold correspondence between itself and the Applicant in my decision.

The Commissioner's Analysis and Findings

13. In this case, I have considered whether the Council was correct to apply section 38(1)(a) of FOISA to the documents which it withheld from the Applicant, and whether it held any further information relating to his request. In coming to a decision on the matter, I have considered all of the information and the submissions that have been presented to me by both the Applicant and the Council and I am satisfied that no matter of relevance has been overlooked.



The application of section 38(1)(a) to the information requested

14. The Council argued that the information which it held was the Applicant's personal information and was exempt from disclosure under section 38(1)(a) of FOISA.
15. Section 38(1)(a) of FOISA states that information is exempt information if it constitutes personal data of which the Applicant is the data subject.
16. "Personal data" is defined in section 1(1) of the DPA as:

"data which relate to a living individual who can be identified –

a) from those data, or

b) from those data and from other information which is in the possession 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."
17. The documentation held by the Council related to certain administrative matters which involved the Applicant and the Council following the death of his mother.
18. The Council argued that all of the information which it held was personal information relating to the Applicant. Having read the documentation requested by the Applicant, I am satisfied that it has the Applicant as its focus and is biographical about him, particularly as it contains details of opinions about him and actions taken by the Council in relation to him. I am satisfied, therefore, that the information is personal data relating to the Applicant and that the Council was correct to withhold it under section 38(1)(a) of FOISA.
19. The Council also argued that section 30(b)(i) of FOISA applied to the information requested by the Applicant. Given that I have found the information to be exempt from disclosure in its entirety under section 38(1)(a), I will not examine the application of further exemptions in my decision.

Whether the Council holds further information relating to the Applicant's request

20. In his submissions to me, the Applicant made it clear he believed the Council held further information relating to his request which did not constitute his personal data.



21. In its submissions to me, the Council provided information in support of its claim that it did not hold any more information which was not the Applicant's personal data. Having examined these submissions, I am satisfied in the circumstances that the Council does not hold any further information falling within the scope of the Applicant's request.

Decision

I find that Shetland Islands Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant, in that it was correct to refuse his request under section 38(1)(a) of FOISA.

Appeal

Should either party 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 of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
13 August 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.

(...)

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-

(...)

"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;

(...)