

Decision Notice

Decision 047/2019: Mr J and Glasgow City Council

Out of court settlement

Reference No: 201801330

Decision Date: 19 March 2019



Scottish Information
Commissioner

Summary

The Council was asked how much it paid to a family in an out of court settlement following a death. The Council refused to disclose the amount. The Commissioner found that disclosing the amount paid would contravene the family's privacy rights under the European Convention on Human Rights. The information was therefore exempt from disclosure under section 26(a) (Prohibitions on disclosure) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(b) (Effect of exemptions); 26(a) (Prohibitions on disclosure)

Human Rights Act 1998 section 6(1) (Acts of public authorities)

European Convention on Human Rights (ECHR) Article 8 (Right to respect for private and family life)

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 29 June 2018, Mr J asked Glasgow City Council (the Council) what sum of money, in total, had been paid in a specific out of court settlement following a death.
2. The Council responded on 19 July 2018. It considered that the requested information was personal data and exempt from disclosure under section 38(1)(b) of FOISA.
3. On 24 July 2018, Mr J emailed the Council requesting a review of its decision. He commented that the sum of money was not paid to a single person but to a group of people. He noted that, according to media reports, it was a six figure sum.
4. The Council notified Mr J of the outcome of its review on 8 August 2018. It upheld its response without modification.
5. On 8 August 2018, Mr J applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the Council's review. He considered that disclosing the amount paid would not identify individuals and so the exemption in section 38(1)(b) could not apply.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr J 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.
7. On 4 September 2018, the Council was notified in writing that Mr J had made a valid application. The Council was asked to send the Commissioner the information withheld from

Mr J. 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 to answer specific questions on any exemptions it considered applicable to the information requested. The Council responded on 15 October 2018.
9. In its submissions, the Council stated that it also considered the information to be exempt from disclosure under section 26(a) of FOISA (Prohibitions on disclosure). It was asked to provide further reasoning for applying this exemption and did so.
10. Mr J was informed that the Council was also relying upon section 26(a) of FOISA. Mr J provided comments as to why he did not consider the exemption applied.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered the withheld information and the relevant submissions, or parts of submissions, made to him by both Mr J and the Council. He is satisfied that no matter of relevance has been overlooked.

The information under investigation

12. As part of the investigation, the Council provided details of the family group with whom it had settled out of court. The Commissioner notes that Mr J did not seek details of the amount received by individual family members, but asked for the total sum paid by the Council.

Section 26(a) of FOISA: Prohibitions on disclosure

13. Under section 26(a) of FOISA, information is exempt information if its disclosure by a Scottish public authority, otherwise than under FOISA, is prohibited by or under an enactment. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA.

The Council's submissions

14. The Council submitted that section 6(1) of the Human Rights Act 1998 (HRA) creates a prohibition on disclosure in terms of section 26(a) of FOISA: it makes it unlawful for a public authority to act in a way which is incompatible with an ECHR right.
15. The Council argued that disclosing the amount paid under FOISA would be incompatible with Article 8(1) of the ECHR, which enshrines the right to respect for private and family life, home and correspondence.
16. The Council argued that the sum paid inherently relates to the private lives of individual members of the family group involved in the out of court settlement. The Council did not consider it compatible with the HRA to disclose the settlement amount. It noted that the family group had chosen not to disclose the settlement figure into the public domain; accordingly, the Council considered that this information was being treated as a private matter by the family group.
17. The Council referred the Commissioner to a judgment of the Grand Chamber of the European Court of Human Rights, *Axel Springer AG v Germany*¹. The judgment comments

¹ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-109034"\]}](https://hudoc.echr.coe.int/eng#{)

that the concept of private life is a broad term and “covers personal information which individuals can legitimately expect should not be published without their consent.”

18. The Council noted that Article 8(2) states:

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

19. The Council did not consider that any of the considerations in Article 8(2) applied in this case.

20. Given that, in its view, disclosure would be incompatible with Article 8 of the ECHR, the Council argued that disclosure would also breach section 6(1) of the HRA, meaning that the sum paid was exempt from disclosure under section 26(a) of FOISA.

Mr J's submissions

21. Mr J said he understood why the Council were concerned about their obligation to protect family life, particularly when the out of court award went to a family and not to named individual or individuals. However, he questioned the focus on “family life”. He asked whether any possible public interest in disclosure of the settlement terms would effectively be dismissed, as most people belong to a family of one kind or another.

22. Mr J queried whether the family’s right to keep the out of court settlement private was affected by what he described as their “well-publicised and continual use of the press and other media to pursue their claim”. He asked: “is it in the public interest if families can now pick and choose what is in the public interest in this way, as appears to be the case?”

23. Mr J acknowledged the tragic circumstances around this case, but considered that the taxpayers have a right to know how the Council spends its money.

The Commissioner’s analysis and findings

24. As noted, section 6(1) of the HRA makes it unlawful for public authorities to act in a way which is incompatible with an ECHR right. It is clear that the Council is a public authority for the purposes of the HRA.

25. The right to respect for private and family life is enshrined in Article 8 of the ECHR. The Commissioner is satisfied that, if disclosure into the public domain of the total amount paid in the out of court settlement is incompatible with the rights provided by Article 8, then the disclosure would breach section 6(1) of the HRA, meaning that the amount paid would be exempt from disclosure under section 26(a) of FOISA.

26. The Equality and Human Rights Commission has published guidance on Article 8², including examples and legal case studies that show how human rights work in practice³. The Commissioner notes from this that, even though some events may play out in the public eye, it does not follow that every aspect of a case can be disclosed without breaching Article 8. Although some family members chose to publicise their claim against the Council, this does

² <https://www.equalityhumanrights.com/en/human-rights-act/article-8-respect-your-private-and-family-life>

³ <https://www.equalityhumanrights.com/en/file/2501/download?token=cX71W4Bx>

not necessarily mean that every aspect of the case can be made public without further consideration of their rights under Article 8.

27. The Commissioner is satisfied that the family members do have rights under Article 8 of the ECHR. He notes Mr J's concerns about the phrase "family life." However, although Article 8 refers to the right to respect for privacy and family life, it is the individuals who hold the right and the Commissioner does not believe that the Council has interpreted this phrase too widely on this occasion.
28. The Commissioner must consider whether disclosing the total amount paid to the family in the out of court settlement would constitute an unjustified interference with the exercise of their rights in Article 8(1).
29. The media have reported that the claim was settled for a six-figure sum. Does this mean that the disclosure of the total amount would be justified? The Commissioner considers that it does not, for the following reasons:
 - (i) A "six-figure sum" can involve a wide variation
 - (ii) The sum agreed was a private matter between the family and the Council
 - (iii) It is clear, from information provided to the Commissioner by the Council, that, following the out of court settlement, the family did not want any further news publicised about the case
 - (iv) As is only to be expected, the payments made reflect individuals' relationships to the deceased. Disclosing the total amount paid out could lead to public speculation about the amount paid to individual family members, some of whom are easily identifiable.
30. The Commissioner has taken account of Mr J's comments about some family members publicising their pursuit of a claim with the Council, but he considers that there is a distinction to be made between the pursuit of a claim (particularly if this is done to highlight changes which could be introduced to prevent a further death) and disclosure of the financial agreement reached between the Council and the family.
31. The Commissioner has considered whether anything in Article 8(2) would allow for interference with the family's Article 8 rights in this case, but has concluded that there is not.
32. Accordingly, the Commissioner has found that disclosing the sum paid in the out of court settlement under FOISA would be incompatible with the rights enshrined in Article 8 of the ECHR.
33. That being so, the Commissioner finds that disclosure of the information is prohibited by section 6(1) of the HRA. Accordingly, the withheld information is exempt from disclosure under FOISA in terms of section 26(a).

Section 38(1)(b) of FOISA: Personal information

34. Given the Commissioner's decision in relation to section 26(a) of FOISA, he is not required to (and will not) go on to consider whether the sum paid out is also exempt from disclosure under section 38(1)(b) of FOISA.

Decision

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

Appeal

Should either Mr J 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

19 March 2019

Appendix 1: 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

...

- (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 –

...

- (b) section 26;

...

26 Prohibitions on disclosure

Information is exempt information if its disclosure by a Scottish public authority (otherwise than under this Act)-

- (a) is prohibited by or under an enactment;

...

Human Rights Act 1998

6 Acts of public authorities

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

...

Europem Convention on Human Rights

8 Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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