



**Finance and Corporate Resources**  
Executive Director **Paul Manning**  
**Finance Service (Strategy)**

Mr Ewan Cameron  
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**Our ref:** HL/CDCREV/19225/BMcD  
**Your ref:**  
**If calling ask for:** Hazel Lawson  
**Phone:** 01698 454559  
**Date:** 12 August 2019

Dear Mr Cameron,

**Freedom of Information (Scotland) Act 2002 (FOISA)**  
**Request for a review – Decision Notice – R2019/21**

I refer to your email dated 11 July 2019 asking for a review in relation to the way that the Council has dealt with your request for information. I can advise that a review has now been held. This is the formal notification of the decision of the Review Panel.

**Background**

By email dated 2 July 2019 you asked 5 questions regarding the number of schools, head teachers, deputy head teachers and how many of the heads and depute heads were BAME. On 10 July 2019 Finance & Corporate Resources answered 3 of these questions but refused to provide the information in the remaining 2 questions.

On 11 July 2019 you requested a review in respect of the 2 questions which were not answered. These are:

*"How many BAME people are currently employed as headteachers in your council area?  
How many BAME people are currently employed as deputy headteachers in your council area?!"*

In their response Finance & Corporate Resources refused to provide this information on the basis of Section 38(1)(b) of FOISA in that it amounted to personal data and that to disclose would breach the data protection principles laid down by the General Data Protection Regulation ("GDPR"). They explained that the numbers concerned were so low that this could lead to the identification of the employees concerned.

In your request for a review you claimed that you did not agree that the numbers were personal information as no individuals can be identified from them. You also stated that other Councils had provided that information. You did agree that if the number was "fewer than five" that would be an acceptable response.

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## The Review Panel's considerations

Section 38(1)(b) (as read with Articles 6 and 9 of the General Data Protection Regulation ("GDPR")) exempts information if it is sensitive personal data and its disclosure to a member of the public would contravene any of the data protection principles set down in the GDPR. In this instance the first matter the Review Panel had to consider is whether the information is personal data. If it is personal data it would also be sensitive personal data as it relates to the individuals' ethnicity.

The information sought by you is the number of BAME people employed as head teachers or deputy head teachers by the Council. Personal data is defined by the GDPR as *"any information relating to an identified or identifiable natural person ... who can be identified, directly or indirectly ... by reference to an identifier such as a name"*. The House of Lords considered the position in relation to statistics as personal data in **Common Services Agency v Scottish Information Commissioner in 2007** and concluded that if individuals can be identified from the statistics then they are personal data. Guidance issued by the UK Information Commissioner regarding whether individuals can be identified from statistics is to consider what means are reasonably likely to be used by a determined person with a particular reason to want to identify the individuals rather than just the man in the street.

The Review Panel agreed that the information was personal data and accordingly sensitive personal data. Having considered submissions by Personnel Services they agreed that the low number involved means that there would be a realistic prospect of identifying the individuals concerned when combined with other information already in the public domain.

The Review Panel also noted that ethnicity is part of the individuals' private lives and unrelated to their work life. As the Review Panel accepted that the information is sensitive personal data they had to consider whether any of the circumstances set out in Article 9 of the GDPR would permit its disclosure to you. Having considered the terms of Article 9 they were of the view that there is no ground which would permit disclosure of the requested information.

Accordingly the Review Panel decided to confirm the decision of Finance & Corporate Resources that the information is exempt from disclosure in terms of Section 38(1)(b) and (2A) of FOISA (and Articles 6 and 9 of the GDPR) and to refuse to disclose the outstanding information to you.

## Appeal to the Scottish Information Commissioner

If you are unhappy with the outcome of our review, you have the right to appeal to the Scottish Information Commissioner. You have 6 months from receiving this notice to appeal.

The Commissioner will decide whether the Council has dealt with your request properly. The Commissioner's contact details are as follows:-

Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife KY16 9DS  
Tel: 01334 464610  
Fax: 01334 464611

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

For further details, please see the Commissioner's website at <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>. In addition the Commissioner has prepared a form that can be used to appeal to her. It can be found here - <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/ApplicationForm.aspx>

If you are unhappy about the final decision of the Commissioner, you are entitled to appeal to the Court of Session on a point of law.

Yours sincerely



 **Brian Teaz**  
**Reviewing Officer**

