

Mr Craig Cummings

Date: 4th December 2019

Via E-mail:
request-610178-5d7537ba@whatdotheyknow.com

Our reference: EDIR: 25451

Your reference:

Dear Mr Cummings

Freedom of Information (Scotland) Act (2002) – Request for Review

I write with reference to your recent email in which you asked us to review the outcome of your request for information under the Freedom of Information (Scotland) Act 2002 (“FOISA”) and our subsequent e-mail exchange in which you provided clarification of the details included in that request.

The purpose of the review is for the Council to consider again the response provided to a request for information it has received. In undertaking the review, I can decide to uphold the response either with or without variation or can substitute the response for a new one.

To undertake this review, I have examined all the previous correspondence relating to your request. I have also spoken with the Information Rights Officer who handled your request and to the relevant officer in our Human Resources Service. Further, I have considered the Scottish Information Commissioner Decision Notice 166/2019 which addressed a similar request made previously to the Council.

Your request asked for the job description and job evaluation scores for the post of senior solicitor. The response provided to you advised that this information is otherwise accessible to you, given your role as a Unite representative within the Council, and therefore under Section 25 of FOISA is exempt from release on this occasion.

I note within your request for review that you disagree with the application of the Section 25 exemption. Further, you highlighted the time which has passed since you asked the HR Service for this information under business as usual processes and raised data protection concerns about the confirmation you have been asked to provide to the HR service. I can confirm that I have considered all that you have written as part of my review and will comment on these matters below.

As you will know, the City of Edinburgh Council and the recognised Trade Unions have in place a ‘Working Together Protocol’. The protocol sets out the way that the Council and recognised Trade Unions will work together to achieve shared and common interests and the behaviours expected from each other. One expected behaviour is that all sides will

“participate constructively”. To achieve this behaviour the protocol recognises that both sides will *“share information openly”*.

As was upheld by the Scottish Information Commissioner in his Decision Notice 166/2019, *“the job evaluation scores were reasonably obtainable by the Applicant otherwise than by making a request for the information”* under the Working Together Protocol. Therefore, I have approached my review from this established position, and have then moved to determine whether the matters you have raised in your review request challenge this.

I note that you indicate that you requested the job description and job evaluation factor scores from the HR Service on 20th August 2019. My understanding, having discussed this matter with HR, is that you were asked to confirm that you required this information for the purpose of representing a member, and to date, you have been unwilling to provide this confirmation.

In considering whether the length of time that has passed since you asked HR for this information has made it unreasonable for the Council to expect you to access data in this way, I have paid careful attention to the wording from the Working Together Protocol that all sides will “participate constructively” and that both sides will “share information openly” (my emphasis added). I must advise that I do not consider it reasonable for your non-engagement with HR to be grounds on which it can be said that the otherwise accessible route is no longer reasonably available to you. Indeed, this other route remains available to you and only requires you to fulfil the expectations of the protocol to progress. Further, until otherwise confirmed, I consider it reasonable for the Council to assume that it is in your Trade Union role that you require the information that you have requested.

Finally, I have considered the data protection concerns that you have highlighted in your review request. The Unite Privacy Notice states that the union will process its members personal data for several purposes, one of which is to “provide you with support, assistance, advice and/or representation in an individual or collective case”. To this end, I do not accept that the request for confirmation made by our HR service asked you to breach your members data protection rights or your obligations under data protection legislation towards them. Your members will, in my assessment, have a reasonable expectation that, to provide the advice and representation available, their Trade Union will engage with their employer and that this will include the processing of their personal information, including trade union membership information.

Therefore, it is the conclusion of my review that, because of your role as a Unite representative in the Council there is in place a way that you can access the job description and job evaluation factor scores without having to request it under FOI legislation. Despite your non-engagement with this arrangement to date, this route remains available to you and it is, in my assessment reasonable for the Council to conclude that, at present and in the absence of further clarification from you, section 25 of FOISA is properly applied to your request. In addition, a Section 25 exemption is an absolute exemption and therefore I am not required to consider the public interest test.

In conclusion, I have upheld the FOISA response previously issued to you. That concludes my handling of the review.

If you are unhappy with this review outcome you have a right of appeal to the Scottish Information Commissioner. You must submit your complaint to the Commissioner within 6 months of receiving this review response. The Commissioner can be contacted at:

The Office of the Scottish Information Commissioner
Kinburn Castle

Doubledykes Road
St Andrews
Fife
KY16 9DS

Telephone: 01334 464610
Fax: 01334 464611

Website www.itspublicknowledge.info/Appeal
E-mail: enquiries@itspublicknowledge.info

Please note that, once the Commissioner provides you with a decision on any application made to him, you have the right to lodge an appeal against the decision on a point of law to the Court of Session.

Yours sincerely,

Fiona Smyth
Information Governance Unit