

Decision 003/2006 Ms X and Scottish Borders Council

***Request for information in relation to an employee's job title
and an outline of that employee's duties within Scottish
Borders Council***

**Applicant: Ms X
Authority: Scottish Borders Council
Case No: 200502670
Decision Date: 10 January 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

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Failure of Scottish Borders Council to respond to an information request and subsequent request for review within the statutory timescales set out in the Freedom of Information (Scotland) Act 2002.

Facts

1. On 21 July 2005, Ms X made an information request to Scottish Borders Council (the Council) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). In her email, Ms X requested information in respect of the title of an employee's post within the Council and an outline of the duties undertaken by that employee.
2. The Council did not respond to Ms X's information request.
3. Ms X then emailed the Council on 24 August 2005 requesting that it review its decision as she had had no response to her initial application. Again, she did not receive a response from the Council.
4. On 22 September 2005, Ms X applied to the Scottish Information Commissioner, requesting that he investigate the Council's refusal to respond to her request for information and to her subsequent request for review.
5. The Commissioner notified the Council of the application made by Ms X and invited its comments on 29 November 2005. The Council responded to this letter on 13 December 2005, stating that no response was made to Ms X's request for information because the request had been referred to the Council FOI Advice Group. The Council have submitted that this group was asked to consider whether several requests made by Ms X were vexatious.
6. The FOI Advice Group met on 24 August 2005, but no decision was taken on that date. A further meeting was held on 7 October 2005 at which time it was decided by the Council that multiple requests from Ms X were vexatious.
7. A letter was sent to Ms X by the Council on 26 October 2005, informing her that after having reviewed Ms X's several requests for information made to the Council in a meeting on 7 October, it had deemed them to be vexatious, as they were directed at the competence or conduct of employees of the Council.

The Commissioner's Analysis and Findings

8. Under section 49(1) of FOISA, except where an application is frivolous or vexatious or where an application has been withdrawn or abandoned, I must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a Decision Notice to both the applicant and the public authority.
9. I am satisfied that Ms X made a request for information to the Council on 21 July 2005 which was valid under section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 24 August 2005.
10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from the receipt of the request to comply with the request for information.
11. Additionally, section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review.
12. The Council did not respond to either Ms X's request for information or to her requirement for review within the respective timescales specified in FOISA.
13. If a public authority decides that a request is vexatious, it must, under section 16(5) of FOISA, issue a refusal notice unless the public authority has already given that applicant such a notice or it would be unreasonable to expect the public authority to serve a further notice on the applicant. Such a notice must be given within 20 working days of receipt of the request under section 16(1) of FOISA.
14. However, no notice was served on Ms X until 26 October 2005, more than three months after her initial request for information was made.
15. In addition, the Council failed to respond to Ms X's request for review. Although a public authority does not have to comply with a request for review if the original request (or the request for review itself) is vexatious, the public authority must still issue a notice to the applicant to explain why no review is being carried out. Such a notice must be given within 20 working days of the request for review under section 20(1) of FOISA.

Decision

The Commissioner finds that the Council did not deal with Ms X's request for information in accordance with the requirements of Part 1 of FOISA in that it failed to comply with section 10(1) and section 21(1).

The Commissioner requires Scottish Borders Council to respond to Ms X's request for information, by either providing the information requested or giving notice in terms of section 16 (refusal of request) or section 17 (notice that information is not held) of FOISA (as appropriate), within 42 days of receipt of this Decision Notice.

Appeal

Should either party wish to appeal 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 notice.

Margaret Keyse
Head of Investigations
10 January 2006