

Decision Notice



Decision 026/2009 Ms Alison McGee and East Dunbartonshire Council

Information relating to job evaluation scheme

Reference No: 200800358
Decision Date: 06 March 2009

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Kevin Dunion
Scottish Information Commissioner

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Summary

Ms Alison McGee requested from East Dunbartonshire Council (the Council) information relating to the Council's job evaluation scheme. The Council did not provide a response to this request. After Ms McGee requested a review of its failure to respond, the Council provided some information to Ms McGee, advised her that some of the information was considered exempt from disclosure in terms of section 38(1)(b) of FOISA and stated that some of the information was not held by it. Ms McGee remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Ms McGee's request for information in accordance with Part 1 of FOISA by failing to advise her that it did not hold some of the information which she had requested, by failing to identify all of the information falling within the scope of Ms McGee's request and by failing to provide Ms McGee with adequate advice and assistance. The Commissioner also found that the Council had failed to comply with the timescales set out in sections 10(1) and 21(1) of FOISA.

The Commissioner did not require the Council to take any action on this occasion.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1) (Time for compliance); 15 (Duty to provide advice and assistance); 17(1) (Notice that information is not held) and 21(1) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Appendix 1 forms part of this decision.

Background

1. On 5 December 2007, Ms McGee emailed the Council with a number of requests relating to the Council's job evaluation scheme. Although some of these requests were clearly seeking recorded information, other requests were expressed as questions seeking explanations of the process undertaken throughout the scheme. The requests are reproduced in full in Appendix 2 of this decision along with their original numbering.
2. The Council acknowledged receipt of Ms McGee's request on 5 December 2007.



3. The Council did not provide a substantive response to Ms McGee's request and, on 16 January 2008, Ms McGee wrote to the Council pointing this out and requesting a review of its failure to respond.
4. The Council acknowledged receipt of Ms McGee's request for review on 22 January 2008 apologising for the delay in responding to her initial request and advising her that all relevant information relating to her request was currently being collated.
5. The Council subsequently wrote to Ms McGee on 29 February 2008. The Council provided some information in response to certain of Ms McGee's requests. The Council advised Ms McGee that it considered some of the information to be exempt from disclosure in terms of section 38(1)(b) of FOISA as it related to personal information. The Council also advised Ms McGee that some of the requested information was not held by it.
6. On 10 March 2008, Ms McGee wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Ms McGee had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

8. On 19 March 2008, the Council was notified in writing that an application had been received from Ms McGee and was asked to provide the Commissioner with any information withheld from her. The Council responded with the information requested and the case was then allocated to an investigating officer.
9. At this stage, the Council indicated that, following a review of its files, it had identified certain relevant emails which had not been filed at the time of its previous searches, and which had therefore been overlooked in its response to Ms McGee. The Council indicated that copies of these emails would be sent to Ms McGee, subject to the redaction of the names of staff involved in the job evaluation process.
10. In her application to the Commissioner, Ms McGee stated that she agreed with the Council that the identification of the names of individuals is personal information and that the names were exempt from disclosure. Accordingly, the Council's application of the exemption under section 38(1)(b) of FOISA has not been considered in this decision.
11. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked explain the searches undertaken to locate the information sought by Ms McGee.



12. The Council responded to the Commissioner on 19 June 2008, addressing the points raised by the investigating officer. In this letter, the Council explained that further searches had been undertaken and a further note of a meeting was identified, and that this was to be sent to Ms McGee, again following the redaction of the names of certain staff members.
13. Ms McGee was also invited to submit further comments regarding certain aspects of her application and did so on 9 June 2008.
14. In further correspondence, the Council was asked whether the disclosures referred to above had been made, and it was found that they had not. Following prompting by the investigating officer, the Council disclosed the additional documents that were identified during the investigation, and Ms McGee confirmed receipt of this information.
15. During the course of the investigation, the investigating officer noted that the Council had not directly responded to certain questions posed by Ms McGee as part of her information request. Following subsequent correspondence between it and the investigating officer, the Council supplied additional information to Ms McGee which addressed these particular questions.

Scope of the investigation

16. In her application to, and subsequent correspondence with, the Commissioner, Ms McGee outlined her dissatisfaction with the Council's response and highlighted several particular areas of concern:
 - A general concern that the Council failed to follow the job evaluation process as laid out by COSLA.
 - The absence of minutes of meetings and discussions in respect of the post (request 2). In her submissions to the Commissioner, Ms McGee stated that she was aware of a meeting that had taken place between Finance Managers and the Job Evaluation Team to discuss her post. Ms McGee also indicated that, as a consequence of this meeting, she would have expected a second mapping process action sheet to have been created to show the evidence considered and changes to the evaluation of her post.
 - The lack of information about the interview with the postholder (request 4).
 - The absence of information concerning feedback from the jobholder regarding completion of the jobholder questionnaire (request 5).
 - Ms McGee expressed dissatisfaction that a management sign off had not been supplied (request 8) and considered this a breach of the job evaluation guidelines
 - The general lack of information provided by the Council in order to support conclusions made in relation to her job suggested that guidelines had not been followed.
17. In its response to request 2, the Council supplied some information which it stated was all of the information held by it in relation to the evaluation process.



18. In its response to requests 4 and 8, the Council stated that the information requested was not held by it.
19. In its response to request 5, the Council gave a general overview of the processes that had been followed in relation to data gathering, the initial evaluation process and the quality assurance review process.
20. During the course of the investigation, the investigating officer also noted that the Council had not responded to certain parts of requests 3, 5 and 7. This is discussed in more detail in the analysis section below.
21. This decision will therefore focus on the Council's responses to requests 2, 3, 4, 5, 7 and 8.

Commissioner's analysis and findings

22. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Ms McGee and the Council and is satisfied that no matter of relevance has been overlooked.
23. The Commissioner notes that his remit in carrying out this investigation extends to the consideration of whether the Council actually holds the relevant information requested by Ms McGee. He cannot comment on whether a public authority should have recorded any or more information about a particular event or process. Consequently, in this instance, he cannot comment on whether the Council ought to hold further recorded information or on whether it has failed to adhere to any stated principles or guidelines. He is not in a position to comment on the accuracy of any information the Council does hold, how the information has been recorded or its relevance to actual practice.
24. The Commissioner has required the Council to address the points raised by Ms McGee in relation to requests 2, 3, 4, 5, 7 and 8.

Has all relevant information been supplied to Ms McGee?

25. In its submissions to the Commissioner, the Council stated that it has undertaken a review of all of the information and searches previously undertaken. All information sources have been reviewed, including formal files, electronic systems and informal notes made to the Job Evaluation team. The Council considered there were no further searches that could be made which had not previously been undertaken.
26. As noted at paragraphs 9 and 12 above, the Council's review of its searches during the investigation, retrieved a note of a meeting and a series of emails which fell within the scope of request 2. The Council stated that it considered there were no further searches that it could undertake.



27. The Council also confirmed that no second mapping action sheet had been created as a result of this meeting and that this had been addressed in the searches undertaken by it. The Council stated that only one mapping action sheet existed for each post and, if any adjustments had to be made, these would be overwritten onto the original sheet.
28. During the course of the investigation, the investigating officer highlighted to the Council that it had failed to answer parts of request 3, specifically whether the postholder was allowed to take the questionnaire away to consider their answers and whether guidance was provided.
29. The Council subsequently provided a response to Ms McGee addressing these particular points.
30. The investigating officer also noted that, in response to request 5, the Council made general reference to having followed job analysis/evaluation processes and practice. However, the Council did not respond to specific questions posed by Ms McGee, i.e. whether the postholder had been aware of the wording that would be put on the job overview document if they answered the questions in a certain way and whether they (the jobholder) agreed the wording reflected their job.
31. Following a request from the investigating officer, the Council contacted Ms McGee in response to these questions. In its response, the Council advised Ms McGee that: "In general, employees were asked to sign off the responses as a true reflection of the discussion with the job analyst. In this way, they were given an indication of the wording to be reflected in the job description".
32. The investigating officer noted that this response did not indicate whether the postholder in this particular case had signed off the responses and sought clarification from the Council as to whether this had occurred. The Council responded by stating that it held no written information that would answer this point.
33. The Commissioner notes that, since the date of Ms McGee's application for a decision by him, the Council has identified and released further information falling within the scope of the request and has addressed specific points which it had not previously answered.
34. The Commissioner considers that by failing to identify all relevant information falling within the scope of the request and by failing to respond to certain aspects of the request at the time of its response to Ms McGee's review request on 29 February 2008, the Council has failed to comply with the requirements of section 1(1) of FOISA.
35. The Commissioner is, however, satisfied that the further searches carried out by the Council were sufficient to have retrieved any correspondence or other recorded information covered by the terms of Ms McGee's request, and that no further information remains to be provided by the Council.



Consideration of section 17 (Notice that information is not held)

36. Section 17(1) of FOISA requires that where an authority receives a request for information that it does not hold, it must give an applicant notice in writing to that effect.
37. In its response to Ms McGee on 29 February 2008, the Council stated that it did not hold the information sought by her in requests 4 and 8. In subsequent correspondence with the investigating officer, the Council also stated that it did not hold specific information contained within request 7.
38. In order to determine whether the Council was correct to advise Ms McGee that it does not hold the requested information, the Commissioner must establish whether the Council holds (or held at the time of Ms McGee's request) information which would address her request.
39. During the investigation, the Council informed the Commissioner that, in the specific case referred to by Ms McGee (in request 4), no interview was held with the postholder, although this fact was not communicated to Ms McGee by the Council. In these circumstances, it is clear that the information sought by Ms McGee in her request 4 could not be held by the Council.
40. In its response to Ms McGee regarding request 7, the Council stated: "In accordance with the Scottish Councils Job Evaluation Scheme, there is a defined quality assurance stage of the Job Analysis Process to ensure consistency of application of the Scheme."
41. The investigating officer subsequently wrote to the Council noting that this response had not answered certain aspects of Ms McGee's request, specifically whether another member of the team would have checked the work of a colleague, when this was done and whether contact was subsequently made with the postholder or a line manager.
42. In response, the Council provided details of the stages of the quality assurance process which had been undertaken. The Council explained the processes carried out in relation to gathering information relating to a post, completion of a questionnaire, interview with the postholder, analysis, assessment and checking of the information and the process of agreeing any finalised changes by consensus within the Job Evaluation Team. The Council explained that as this is an iterative process, minutes of these various discussions were not held and, accordingly, the Council does not hold any further information sought by Ms McGee.
43. In its response to Ms McGee regarding request 8, the Council stated that there was no signed agreement by the line manager or Head of Service.
44. In her submissions to the Commissioner, Ms McGee stated her dissatisfaction at the lack of management sign off. She indicated that this was a fundamental requirement of the job evaluation guidelines and argued that this was a key area where guidelines had not been followed.



45. As the Commissioner has noted at paragraph 23 above, his remit does not extend to consideration or comment on whether the Council ought to hold specific information or whether it has failed to adhere to any guidelines.

Conclusion on section 17

46. Having considered the Council's submissions and its explanation of the steps taken to ascertain that all relevant information has been supplied to Ms McGee and, consequently, that it does not hold the information contained within requests 4 and 8 and specific parts of request 7, the Commissioner is satisfied that the information is not held by the Council, and was not held by it at the time of Ms McGee's request. The Commissioner is also satisfied that the Council has taken all reasonable steps to establish whether any further information is available. The Commissioner has therefore concluded that the Council was correct in informing Ms McGee that it did not hold the information in question in relation to requests 4 and 8.
47. However, in failing to inform Ms McGee that it did not hold certain information contained within request 7, the Commissioner finds that the Council failed to comply with the requirements of section 17(1) of FOISA.

Section 15 of FOISA – the duty to provide advice and assistance

48. As noted at paragraph 39 above, the Council did not advise Ms McGee, in response to questions regarding an interview with a postholder, that no such interview had taken place. Instead, the Council stated that it did not hold the information that had been requested regarding the interview. Whilst this is technically correct, the Commissioner considers it would have been reasonable for the Council to inform Ms McGee that no such interview had taken place. The Commissioner considers the approach taken by the Council to have been misleading to the extent that Ms McGee was unaware whether any such interview had indeed taken place. The Commissioner considers that the Council's response in relation to this aspect of Ms McGee's request was clearly lacking in detail and that the explanation provided to the Commissioner as part of the investigation process could have been made to Ms McGee.
49. The Commissioner also considers that the Council could have provided Ms McGee with an explanation of the job analysis process to which request 7 referred. In its response to Ms McGee, the Council merely noted that the process had been carried out in accordance with an evaluation scheme. In its submissions to the Commissioner, the Council provided more substantive detail of the internal processes which had been followed (which are noted at paragraph 42 above). The Commissioner considers the Council's response to Ms McGee to have been unhelpful and lacking in detail and that it would have been more appropriate had this explanation been provided direct to Ms McGee in response to her request.



50. On this basis, the Commissioner would highlight an authority's duty under section 15 of FOISA to provide an applicant with advice and assistance in relation to a request for information, so far as it is reasonable to expect it to do so. The Commissioner finds in the circumstances that the Council did not provide Ms McGee with such advice and assistance as it would have been reasonable to expect on these points and, therefore, that it failed to comply fully with the duty contained in section 15 of FOISA.

Technical breaches of FOISA – sections 10 and 21

51. Although Ms McGee has not specifically raised this matter in her application to the Commissioner, it is noted that the Council has failed to comply with the requirements of sections 10(1) and 21(1) of FOISA in responding both to her initial request for information and request for review.
52. Section 10(1) of FOISA gives a Scottish public authority a maximum of 20 working days following receipt of an information request to respond to that request, subject to exceptions which do not apply here. In this case, the Council failed to respond to the request within that period and consequently breached the requirements of section 10(1) of FOISA.
53. Section 21(1) of FOISA requires a Scottish public authority to comply with a requirement for review not later than the twentieth working day after receipt by it of the requirement. The Council responded to Ms McGee's request for review outwith the prescribed timescale. In doing so, the Commissioner finds that the Council breached the requirements of section 21(1) of FOISA in this case.
54. Although the Commissioner has identified certain breaches of technical provisions of FOISA in the Council's handling of Ms McGee's request, he does not consider it appropriate in the circumstances to require any action on these matters at this stage. He would, however, urge the Council to note these breaches and consider what steps it can take to ensure appropriate and more timeous responses in future.



DECISION

The Commissioner finds that East Dunbartonshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms McGee.

The Commissioner finds that by correctly advising Ms McGee that it did not hold some of the information that had been requested, the Council complied with Part 1 of FOISA, and particularly section 17(1).

However, by failing to inform Ms McGee that it did not hold certain information contained within request 7, the Council failed to comply with the requirements of section 17(1) and consequently breached part 1 of FOISA.

The Commissioner finds that by failing to identify certain documents which fell within the scope of Ms McGee's request, the Council breached section 1(1) of FOISA.

The Commissioner also finds that the Council failed to comply with Part 1 of FOISA in dealing with Ms McGee's request, by failing to provide Ms McGee with an adequate explanation of certain information which was provided to her (and thereby failing fully to discharge its duty under section 15(1) of FOISA) and by failing to respond to her initial request and requirement for review within the relevant timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of these breaches in response to this particular application.

Appeal

Should either Ms McGee or the Council 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Investigations
06 March 2009



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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).



17 Notice that information is not held

(1) Where-

- (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

....

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...



Appendix 2

Ms McGee's information requests:

Under the Freedom of Information Act I request the following information in respect of SBM395:

1. Can you provide my point score as at 5 Dec 2007, and the level assigned to each factor in respect of my post?
2. Can you provide detailed reasons for changes to the wording on my JOD (and changes in points & factor levels) between the originally issued JOD, and the one in place at 5th Dec 2007? Detailed reasons should include minutes of discussions regarding SBM395 (including any discussions held with senior managers in finance), and their reasoning for changing the wording/points/level that has been changed.
3. Which postholder completed the questionnaire for SBM395 and which version of the questionnaire was it? Was the postholder allowed to take the questionnaire away to consider their answers? Which member of the job evaluation team (if any) gave the postholder guidance in completing the questionnaire? Please provide a copy of the questionnaire including the postholder's answers.
4. When did the postholder's interview with the job evaluation team take place, how long did it last, and did it change the answers to any of the questions?
5. Was the postholder made aware of the wording that would be put on the JOD if they answered the questions in a certain way? Did they agree this wording reflected their job? Did the job evaluation team re-read the answers to the questionnaire in light of the JOD that was produced to ensure the wording seemed reasonable, and if it didn't, could they go back and alter the data they input into the system?
6. How were the answers from the questionnaire then mapped on to the computerised system (i.e. which member of the job evaluation team, and do the questions and answers on the computerised system match those on the questionnaire, or is there subjectivity involved on the part of a job evaluation team member?)
7. If there is subjectivity on the part of a job evaluation team member in inputting the answers on to the system, how has this been controlled to ensure fairness? For example, does at least one other member of the team have to check their work? If so, who did this and when? Did they go back to the postholder or a line manager on instances where they weren't sure how the answers given in the questionnaire would map on to the system, and if so, who and when?
8. At what point has any part of the Accountant's SBM395 been agreed by line managers or the Head of Finance? Please provides a copy of this signed agreement.
9. What reason was given for making the Senior Accountant's position the benchmark post and not the Accountant's position? Has the outcome of the accountant's post been detrimentally affected by



the fact that the Senior Accountant was made to answer an earlier version of the questionnaire which is less 'full' than the later versions?

10. What reason was given for mapping Management Accountant's along with the Senior Accountant's post rather than the Accountant's post? A management accountant is just a form of accountant, the term does not indicate in any a management position. In fact, about 90% of my job could be termed management accounting and my job title could just as rightly be 'management accountant'.

In light of the high likelihood that an appeal will be necessary I also request the following information:

1. There is at least one example of people who have no responsibility for employees been given a generic JOD that has also been given to people who have responsibility for employees. This raises their score despite them not having the responsibility indicated? Will their resulting salary be adjusted because they don't have the responsibilities indicated in their JOD? Surely this leaves the Council open to 'work of equal value' claims that could be just as damaging as Equal Pay claims.
2. During the Job Evaluation training, was the team given comprehensive guidance as to the various professional bodies, the qualifications they provide, and the work involved in achieving these qualifications? If so, can you specify who provided this training, and which JET members received the training?