



Scottish Information
Commissioner

**Decision 046/2006 Mr James Bell and Central
Scotland Fire Board**

*Authority for the NJC to negotiate the pay and conditions for
Scottish fire services*

**Applicant: Mr James Bell
Authority: Central Scotland Fire Board
Case No: 200501548
Decision Date: 22 March 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 046/2006 Mr Bell and Central Scotland Fire Board

Request for information relating to the authority for the National Joint Council for Local Authority Fire and Rescue Services (the NJC) to determine pay and conditions of service for fire services in Scotland – whether all relevant recorded information had been identified and supplied in response to the request

Facts

Mr Bell emailed Central Scotland Fire Board ('the Board') in March 2005 to request information as to where the NJC received the authority to decide his pay and conditions of service. The Board's response supplied extracts from the "Grey Book", which specifies the terms and conditions of service for fire service personnel across the UK. Mr Bell then complained about this response, stating that the information supplied was not that requested. In response the Board reviewed its decision and advised Mr Bell that it had supplied all information held regarding the NJC and its authority to deal with the pay and conditions of the United Kingdom Fire Service. Mr Bell then applied to the Commissioner for a decision on this matter.

Outcome

The Commissioner found that the Board had acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in its response to Mr Bell's request for information. He found that no further relevant recorded information was held by the Board that could have been supplied to Mr Bell.

Appeal

Should either the Board or Mr Bell wish to appeal against this decision, there is a right to 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.



Facts

1. Mr Bell emailed the Board on 16 March 2005, under the subject heading “Freedom of Information (Scotland) Act 2002”. This email referred to Mr Bell’s concerns that the NJC had no rights under devolution to decide his pay and conditions of service. It went on to ask the Board to supply “the information as to where they [the NJC] have received the authority to do...”.
2. The Board responded to this request in a letter dated 17 March 2005, which enclosed a copy of the Preface and Constitution of the 6th Edition of the *Grey Book*, which sets out the national (UK-wide) conditions of service for fire service personnel. The Board’s letter highlighted the contents of paragraph 2 of the *Grey Book*, which states:

“The National Joint Council for Local Authority Fire and Rescue Services (the NJC) is the body responsible for the supervision, from a national point of view, of all questions affecting the conditions of service of employees [...] To this end the NJC’s principal role is to reach agreement on a national framework of pay and conditions for local application throughout the fire and rescue service in the United Kingdom.”

The Board also supplied the address for the NJC website, and noted that the NJC could be contacted through this website.

3. Mr Bell emailed the Board again on 31 March 2005. He complained that the information supplied to him was not the information requested. He stated that there must have been a decision at the time of devolution that authorised the NJC to deal with pay and conditions of service of a devolved Scottish Fire Service.
4. The Board construed this further email as a request for review under section 20 of FOISA. A response was initially provided in a letter dated 1 April 2005. This informed Mr Bell that the Board had complied with his initial request and provided all information held regarding the NJC and their authority to deal with the pay and conditions of the United Kingdom Fire Service. This letter advised Mr Bell that under section 21(4) of FOISA, the Board could confirm its decision without modification, and again informed him that further information could be found on the NJC website.
5. Following this initial response to Mr Bell’s request for review, the Board asked Stirling Council’s Information Compliance Officer to conduct a further review. This request was prompted by concerns about the Board’s ability to conduct an impartial review internally, because Mr Bell had copied his emails relating to his request for information to all members of staff within Central Scotland Fire and Rescue Service.



6. A further response to Mr Bell's email was then sent by this Council official, on Fire Service headed paper, on 26 April 2005. This letter again advised Mr Bell that the Board had answered his request on the basis of the information available to it. This letter therefore confirmed the Board's initial decision in terms of section 21(4)(a) of FOISA. This letter suggested that the points raised by Mr Bell would be better directed to the Local Government Association or the NJC.
7. Mr Bell applied for a decision by me in a letter (erroneously dated 18 August 2005), which was received on 21 April 2005. This case was then allocated to an investigating officer.

Investigation

8. Mr Bell's appeal was validated by establishing that he had made a valid information request to a Scottish public authority under FOISA (Central Scotland Fire Board) and had appealed to me only after asking the Council to review the response to his request.
9. For the purposes of FOISA, this decision is concerned with the actions of Central Scotland Fire Board, although the correspondence with Mr Bell was conducted under the auspices of Central Scotland Fire and Rescue Service. It is the Board, and not the Fire and Rescue Service itself, which is legally accountable under the terms of FOISA.
10. The investigating officer wrote to the Board on 11 May 2005 to advise it that a valid application for decision had been received and that a full investigation would now commence. The Board was invited to comment on the case in terms of section 49(3) of FOISA. The Board was also asked to supply copies of any further information held which may explain where the NJC derives its authority to negotiate conditions of service of the employees of the Scottish Fire Service.
11. The Board's response to this letter was received on 26 May 2005. A copy of an email from a Scottish Executive official to the Board, dated 4 May 2005 was also supplied. This email provided some background information on the NJC's role in determining conditions of service. Although this email was not held at the time of Mr Bell's request, I understand that a copy of this email has also now been supplied to him by the Board.
12. In March 2006, the Board was asked to provide some further information following on from the previous correspondence.



13. Further information supplied at this point confirmed that no documents were held that demonstrated explicit authorisation for the NJC to continue its role in determining the terms and conditions service for its employees either before or since devolution. Therefore, the type of information Mr Bell had hoped to access via his request under FOISA is not held by the Board.
14. However, the Board did advise me that provisions contained within Mr Bell's contract of employment stated that the post was subject to terms and conditions set by the NJC. As these contract terms had not changed in the interim, this would arguably confirm the authority for the NJC to continue to set the terms and conditions of Mr Bell's own employment.
15. Mr Bell's own contract of employment is personal data for the purposes of the Data Protection Act 1998, and as such is exempt from release under section 38(1)(a) of FOISA. However, since identifying this information to me, the Board has supplied a copy of this to him to clarify the position on this matter further.

The Commissioner's analysis and findings

16. Mr Bell's request sought information that would reveal the basis for the NJC's authority to determine the conditions of employment for the Scottish fire services since devolution.
17. His request assumed that since responsibility for fire service matters was devolved to the Scottish Parliament in 1999, there must have been, since devolution, an explicit decision to allow previous arrangements for UK-wide collective bargaining by fire service employers and employees to continue.
18. However, I am satisfied that there is no further recorded information held by the Board that would provide the explanation that Mr Bell is trying to find. I have found that the Board does not hold records that would reveal its own direct authorisation for the NJC to determine conditions of service for its own staff. Neither does it hold records that reveal any direct authorisation provided on behalf of all eight Scottish Fire Boards. Although Mr Bell's contract of employment refers to the role of the NJC in determining his terms and conditions of employment, this pre-dates devolution, and so provides no evidence of explicit authorisation to do so since.
19. I find that the Board has supplied all relevant information that it held in response to Mr Bell's request, and that it acted in accordance with the requirements of Part 1 of FOISA.



20. I also note that the Board later supplied further background information to Mr Bell (contained in the email from the Scottish Executive) that had not been held at the time of his request, in an attempt to further clarify the role of the NJC in relation to the Scottish fire services.

Decision

I find that Central Scotland Fire Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to Mr Bell's request for information.

Kevin Dunion
Scottish Information Commissioner
22 March 2006