



Scottish Information
Commissioner

**Decision 046/2008 Mr A and Glasgow
City Council**

Request for information concerning recruitment policy

**Applicant: Mr A
Authority: Glasgow City Council
Case No: 200700826
Decision Date: 31 March 2008**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 046/2008 Mr A and Glasgow City Council

Requests relating to aspects of the Council's recruitment and selection policy – information not held

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is not held)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr A requested information relating to recruitment policies concerning applications made by individuals previously dismissed from Glasgow City Council (the Council). The Council responded by advising Mr A that the information was either exempt from disclosure or not held by the Council. Following an internal review by the Council, Mr A remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Mr A's request for information fully in accordance with Part 1 of FOISA. However, he did not require the Council to take any action.

Background

1. On 22 March 2007, Mr A emailed the Council with a number of requests relating to the Council's handling of his own job application and about wider recruitment policy relating to the handling of applications from individuals who had previously been dismissed by the Council. Although some parts of the request clearly related to recorded information, others were expressed as questions seeking explanations of the actions of the Council and an individual employee of the Council.



2. I will not detail the requests in full as only three of the seven parts (numbered 2, 4 and 5 in the Council's response) are under consideration in this decision. The relevant parts of the request asked:
 - 2 Under which part of the Council's recruitment policy was the outcome of Mr A's own application determined.
 - 4 Whether a refusal to employ staff previously dismissed is for a fixed period.
 - 5 Whether the refusal is long term, indicating that no applications from dismissed employees are furthered by the Council.
3. The Council wrote to Mr A in response to his request for information. The Council advised Mr A that it held most of the information requested by him and it provided a copy of the Recruitment and Selection Policy referred to in Mr A's request. However, the Council advised Mr A that it considered some of the information requested was exempt from disclosure in terms of section 38(1)(b) of FOISA. It also noted that Mr A was entitled to seek his own personal data under the Data Protection Act 1998 (the DPA) but not under FOISA. The Council also advised Mr A that the information contained in one of his requests was not held by the Council.
4. On 27 April 2007, Mr A wrote to the Council requesting a review of its decision. Mr A advised the Council that he wished to withdraw part of his request and wished the review to address only four of the seven parts of the initial request.
5. On 30 May 2007, the Council wrote to notify Mr A of the outcome of its review. The Council provided a response to the questions posed by Mr A in parts 2 and 4 of the request. The Council advised Mr A that some of the information being sought was personal data of which he was the data subject and was exempt from disclosure in terms of section 38(1)(a) of FOISA. With respect to part 5, the Council noted that it was not clear what the question was. The Council indicated that if further information beyond that provided in response to parts 2 and 4 was required, Mr A would need to expand upon the question and submit a new request for review.
6. On 11 June 2007, Mr A wrote to my Office, stating that he was dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
7. In subsequent correspondence, Mr A advised my Office that he required a decision from me only in relation to parts 2, 4 and 5 of his request.



8. Mr A was asked by my Office to confirm whether he had clarified the intended scope of part 5 of his request in response to the Council's letter of 30 May 2007. Mr A did not respond directly to this question, and so I have proceeded on the assumption that no such clarification was provided. In the circumstances, I have focussed in this case on parts 2 and 4 of the request. In the absence of further clarification, I have interpreted part 5 as seeking similar information to that sought in request 4, concerning the duration of any set period for which any refusal to employ previously dismissed staff would remain in place.
9. Following these exchanges with Mr A, the application was validated by establishing that Mr A had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.

The Investigation

10. On 21 August 2007, the Council was notified in writing that a valid application had been received from Mr A and was asked to provide my Office with specified items of information required for the purposes of the investigation.
11. The Council responded on 26 September 2007. In its response, the Council advised my Office that Mr A had submitted a number of requests to the Council under FOISA. The Council stated that as a result of the numerous, but related requests, some confusion had arisen in responding to the requests that were now the subject of an application to the Commissioner.
12. The Council stated that, in relation to requests 2 and 4, it had obtained a legal opinion on the questions of recruitment of individuals previously dismissed, the content of which was explained to the applicant in its review letter of 30 May 2007. The Council also stated that, in an attempt to offer assistance to Mr A, it had sent him a copy of its Recruitment and Selection policy. The Council explained that it now considered that none of the information being sought by Mr A was his personal data and therefore it was unnecessary to have applied the exemption under section 38(1)(a) of FOISA.
13. The Council submitted that, with respect to parts 2 and 4 of the request (and so, I also understand, part 5) it did not hold any further relevant information other than that which had already been provided to him.



14. The case was subsequently allocated to an investigating officer and on 22 November 2007 the investigating officer contacted the Council, providing it with an opportunity to provide comments on the application in terms of section 49(3)(a) of FOISA and to respond to specific questions on the application.
15. The Council responded on 14 December 2007. In its submissions, the Council explained why it considered it held no further documentation which would be within the scope of Mr A's request.

The Commissioner's Analysis and Findings

16. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr A and the Council and I am satisfied that no matter of relevance has been overlooked.

Whether the Council has supplied all the information it holds to Mr A

17. The Council stated that it had provided Mr A with a copy of its Recruitment and Selection policy. However, it explained that its written policy does not specifically address the circumstances raised in Mr A's requests concerning the re-employment of individuals previously dismissed by the Council. The Council did, however, provide details of the legal opinion, a summary of which had been supplied to Mr A in its letter of 30 May 2007.
18. The Council also noted that it had supplied certain information personal to Mr A which had been requested by him under the terms of the DPA. The Council considered that by providing Mr A with a copy of its Recruitment and Selection policy and the legal opinion which it had obtained in relation to his request and by providing information under the terms of the DPA, it had responded fully to his requests 2 and 4.
19. It is clear to me that the information sought by Mr A in relation to requests 2 and 4 is not contained within the Council's written Recruitment and Selection policy. Although the Council sought legal advice following receipt of Mr A's request of 22 March 2007, this was not recorded information that was held by it at the time of the initial request.
20. Having considered the submissions made to my Office by the Council, I am satisfied that it does not (and did not at the time of Mr A's request) hold recorded information that would allow a response to his requests 2, 4 and 5.



21. 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 that the information is not held. In this case, the Council did not notify Mr A that the information requested was not held by it.
22. As indicated at paragraph 11 above, the Council has admitted that some confusion has arisen in this case due to a number of related requests having been submitted.
23. I accept that the Council has attempted to be helpful by providing Mr A with some details of the legal advice obtained by it. However, I consider that the Council ought to have explained at an early stage that the requested information was not specifically contained in the Recruitment and Selection policy, and was not at that point held in recorded form, and so it was not held by it for the purposes of FOISA.
24. I therefore find that the Council breached the technical requirements of section 17 of FOISA by failing to advise Mr A that it did not hold the requested information at the time of his request. However, as the Council has now acknowledged that this was the case and has provided Mr A with other information in response to his request, I do not require it to take any action in respect of this technical breach.

Decision

I find that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requested by Mr A. In failing to advise Mr A that the information was not held by it, the Council failed to comply with section 17 of FOISA

However, I do not require the Council to take any action in response to this technical failure.

Appeal

Should either Mr A 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.



Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

Margaret Keyse
Head of Investigations
31 March 2008

Appendix

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.

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.