

**Decision 082/2005 Ms X and Scottish Borders
Council**

*Information about Scottish Borders Council's role in trainee
Architect's training courses provided by the Royal Institute of
British Architects*

**Applicant: Ms X
Authority: Scottish Borders Council
Case No: 200502792
Decision Date: 19 December 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

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Information about employer's role in architect's training – information not held – section 17 – content of certain notices – section 19 – failure to respond to a request for review within timescales provided – section 21

Facts

Ms X requested a copy of an employee of Scottish Borders Council's logbook sheets for the duration of his Royal Institute of British Architects (RIBA) Part 3 Practical Training. She also requested the name of the employee's supervisor and that another manager of Scottish Borders Council confirm his understanding of the employer's role in the relevant RIBA training. Scottish Borders Council refused to release the logbooks as it claimed that they were the personal data of the employee concerned and it would be unreasonable to disclose them without that employee's consent (which was withheld). It withheld information regarding the employer's role in the RIBA training, as it argued that the information was reasonably accessible from elsewhere, but released the name of the supervisor to Ms X.

Ms X was not satisfied with Scottish Borders Council's response to her request, and requested a review of its decision. This request was acknowledged but not responded to further within the 20 day period stipulated by the Freedom of Information (Scotland) Act 2002. Ms X applied to the Scottish Information Commissioner for a decision.

Outcome

The Commissioner found that Scottish Borders Council did not deal with Ms X's request for information in accordance with the requirements of Part 1 of Freedom of Information (Scotland) Act 2002 in that it failed to comply with sections 16, 17, 19 and 21(1).

The Commissioner however also found that Scottish Borders Council did not hold copies of logbooks completed as part of the Royal Institute of British Architects Part 3 Practical Training, or information relating to the employer's role in the Royal Institute of British Architects Part 3 Practical Training (or the Head of Service's understanding of that role).

As Scottish Borders Council did not hold the information which Ms X requested, the Commissioner did not require Scottish Borders Council to take any action as a result of his decision.

Appeal

Should either Scottish Borders Council or Ms X 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.

Background

1. On 2 August 2005, Ms X e mailed Scottish Borders Council (the Council) requesting copies of an employee's logbook sheets for the duration of his Royal Association of British Architects (RIBA) Part 3 Practical Training, which he had carried out whilst employed at the Council. Ms X also requested the name his supervisor for the purposes of the training and for another manager's understanding of the employer's role in the training course.
2. The Council responded to Ms X by e mail on 3 August 2005, providing the name of the employee's supervisor for the purposes of the training. It withheld the logbooks which Ms X requested, as it held that the information was exempt from disclosure by virtue of being the personal data of the employee concerned, which it would be unreasonable to disclose without that employee's consent (which was withheld). It also refused to disclose information relating to the standards set for the employer's role in RIBA Part 3 Practical Training as it argued that the information was reasonably accessible by other means, in that the information was available from the RIBA (which set the relevant standards). It did not, however, specify the exemptions applied under the Freedom of Information (Scotland) Act 2002 (FOISA).
3. Ms X requested that the Council review its response by e mail on 3 August 2005. She stated that the information which had been withheld should be disclosed by the Council, as the training which had been provided was paid for by public money.
4. On 4 August 2005, the Council responded to Ms X's request for review, stating that the request had been passed to the Freedom of Information Advice Group, who would reach a decision on whether the information should be released to Ms X, and inform her of that decision within 20 working days. However, no further response was received by Ms X within the 20 working day period, and so she wrote to the Scottish Information Commissioner on 29 September 2005, requesting that he investigate the matter.

The Investigation

5. Ms X's appeal was validated by establishing that she had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its response to her request.
6. A letter was sent to the Council on 24 November 2005, giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was asked to comment on the issues that Ms X had raised and on the application as a whole. In particular, it was asked to provide an analysis of its use of the section 38(1)(b) exemption under FOISA (being the exemption I understood it to have applied in relation to the logbooks), to detail the methods employed to determine that it held no information in relation to the other part of the application and to advise whether a review of the request had taken place. It was asked to provide copies of the information withheld and for comments in respect of its subsequent retrospective identification of Ms X's requests as vexatious.
7. The Council responded on 9 December 2005 stating that neither the Council nor the Head of Service (the manager whose understanding had been sought) had any role in RIBA Part 3 Practical Training for architects, as the scheme was administered by RIBA itself. It went on to state that the supervisor of the trainee signed off the training as a registered architect, and not on behalf of the Council.
8. It commented that, for the reasons stated above, the Council did not hold copies of logbooks completed by its employees for the purposes of RIBA Part 3 Practical Training.
9. With reference to Ms X's request for information relating to the Head of Service's understanding of the employer's role in the relevant RIBA training, the Council contested that the Head of Service had no involvement with that training and that in any event the employer had no role in the training beyond providing opportunities for training in the course of employment.
10. The Council also held that it had originally applied the exemption contained within section 38(1)(b) of FOISA to the information as the information requested was personal data relating to a third party, and that to release the information in response to Ms X's request would contravene principles 1 (fair and lawful processing) and 6 (processing in accordance with the rights of the data subject) of the Data Protection Act 1998. However, while it adhered to this view in principle, it subsequently concluded that it did not hold the information requested by Ms X.

11. The Council also wished to make it clear that after having reviewed Ms X's multiple requests for information made to the Council in a meeting on 14 September 2005, it had deemed them to be vexatious, as they were directed at the competence or conduct of employees of the Council. Ms X was informed of this by letter on 26 October 2005
12. Following the submission of the Council's comments, RIBA was contacted on 12 December 2005 to discuss the role of employers in RIBA Part 3 Practical Training.

The Commissioner's Analysis and Findings

13. The Council breached certain procedural requirements of FOISA in its handling of Ms X's request for information.
14. When Ms X requested information from the Council, the Council responded by providing her with certain information in response to her request, stating that the remainder of the information was either exempt from disclosure, or not held by the Council. It did not, however, specify the exemptions it was relying on by reference to the relevant provisions of FOISA, or give Ms X details of her rights to seek a review its decision or make a subsequent application to me.
15. Section 16 of FOISA includes among the information to be contained in any refusal notice specification of the exemptions relied on by the authority in claiming that the information requested is exempt. I am not satisfied that Scottish Borders Council gave adequate specification of the exemptions claimed in this case.
16. Section 19 of FOISA requires an authority, where it has refused to disclose information or stated that the information requested is not held, to include details about the requester's rights to seek a review of the decision from the authority and subsequently to apply to the Commissioner for a decision. This information was not included in the Council's response to Ms X's request.
17. I am satisfied that Ms X made a request for information to the Council on 2 August 2005 which was valid under the terms of section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 3 August 2005. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply a requirement for review. The Council did not fully respond to Ms X's requirement for review in accordance with these requirements.

18. I therefore find 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 sections 16, 19 and 21(1).

Whether the information requested is held by Scottish Borders Council

19. Section 17 of FOISA states that where an authority receives a request that would require it to comply with section 1(1) of FOISA, but it does not hold the information requested, it must inform the applicant that this is the case. Although the Council has subsequently submitted to me that it does not hold the information requested, it did not inform the applicant that this was the case in response to her request for information. I am satisfied that the Council does not hold the information requested for the reasons set out below, but must conclude that the Council failed to comply with section 17 of FOISA in that it did not inform the applicant that this was the case at the outset.
20. In arguing that it did not hold the information, the Council stated that while it provided opportunities for trainee architects to take part in RIBA training, the training was wholly administrated by the RIBA itself. It held that any participation by employees of the Council in training courses, either as trainees or supervisors, was in their capacity as prospective or registered architects and not in their capacity as employees of the Council. Therefore, it maintained, logbooks for training courses provided by RIBA would not be held by the Council. Furthermore, it made clear that no copies of the training logbooks for the employee in question actually existed within Scottish Borders Council. Regarding the Head of Service's understanding of the role of the employer in the Part 3 Training, the Council made clear in addition that the officer in question had no involvement in the process.
21. My investigating officer contacted the RIBA on 12 December 2005, who confirmed that a trainee architect's employer has no role in RIBA Part 3 Practical Training, and would not hold copies of training logbooks on site.
22. In relation to information claimed not to be held by an authority, I think I must regard my role as being to satisfy myself as to the actual situation rather than simply what should or should not be the case. It is, however, relevant to consider whether there is any reason why an authority should hold information of the kind requested. It is also important to bear in mind that FOISA is concerned only with information in recorded form: it cannot be used to elicit an individual's understanding of a situation or their opinion in relation any particular matter where that understanding or opinion has not been recorded in any way at the time of the request. In this case, I am satisfied (having considered the submissions put forward by the Council and the other information gathered in the course of the investigation) that the information requested by the applicant is not held by the Council.

Vexatious requests

23. I note that the Council, in retrospect, deemed Ms X's request to be vexatious under section 14(1) of FOISA. However, Section 14(1) of the FOISA states that an authority is not obliged to respond to a request for information if the request is deemed to be vexatious. FOISA does not give a Scottish public authority the power to deem a request to be vexatious at any point other than in response to an initial request for information. In its response to Ms X's request for information in this case the Council did not indicate that it considered the request to be vexatious. The request was treated as a valid request for information, and therefore I do not consider Scottish Borders Council's finding the applicant's request to be vexatious to be relevant to Ms X's application to me.

Decision

I find that Scottish Borders Council did not deal with Ms X's request for information in accordance with the requirements of Part 1 of the Freedom of Information (Scotland) Act 2002 in that it failed to comply with sections 16, 17, 19 and 21(1).

I find that Scottish Borders Council do not hold copies of logbooks completed as part of the Royal Institute of British Architects Part 3 Practical Training, or information relating to the employer's role in the Royal Institute of British Architects Part 3 Practical Training (or the Head of Service's understanding of that role).

As Scottish Borders Council does not hold the information which Ms X requested and Ms X has not been impeded in the exercise of her rights under FOISA by any of the breaches identified, I do not require Scottish Borders Council to take any action as a result of this decision.

Kevin Dunion
Scottish Information Commissioner
19 December 2005

