



Scottish Information
Commissioner

**Decision 099/2006 Mr and Mrs Mundell and Argyll
and Bute Council**

*Information about ring fencing of milk quota in the Southern Isles
area*

**Applicant: Mr and Mrs Mundell
Authority: Argyll and Bute Council
Case No: 200502995
Decision Date: 14 June 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 099-2006 Mr and Mrs Mundell and Argyll and Bute Council

Information about ring fencing of milk quota in the Southern Isles area and Argyll and Bute Council's response to the Scottish Executive's consultation regarding changes in the regulations. Information provided or not held (section 17).

Facts

Mrs Mundell asked for information held by Argyll and Bute Council (the Council) about the Southern Isles ring fencing of milk quota and the Council's response to a Scottish Executive consultation about changes in the associated regulations.

The Council supplied Mrs Mundell with various documents which it believed to comprise all the information which the Council still retained in relation to milk quota ring fencing. The Council pointed out that it had no statutory requirement to retain information on this subject.

Mr and Mrs Mundell were not satisfied that Mrs Mundell had been provided with all information held by the Council which related to her request, and asked the Council to review its response. They listed certain documents which they expected the Council to hold. The Council searched again for information relating to Mrs Mundell's initial request and provided the Mundells with information retrieved from that search. However, Mr and Mrs Mundell believed that the Council still retained information which it had not provided, and applied to the Scottish Information Commissioner for a decision on the matter. During the course of the investigation the Council agreed to supply Mr and Mrs Mundell with another set of copies, to avoid any doubt about what information had been provided to them.

Outcome

After investigation, the Commissioner accepted that the searches carried out by the Council were adequate to establish that no further information was held in relation to the issue of the Southern Isles ring fencing of milk quota and the Council's response to the Scottish Executive's consultation on that subject.

In this respect the Council had complied fully with the Freedom of Information (Scotland) Act 2002 (FOISA).



The Commissioner found that the Council's initial reply to Mrs Mundell had not been sent within the timescale laid down in section 10(1) of FOISA. The Commissioner did not require the Council to take any remedial action in relation to this matter.

Appeal

Should either Mr and Mrs Mundell or Argyll and Bute Council wish to appeal against the Commissioner's 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.

Background

1. During a phone call on 24 March 2005 Mrs Mundell asked to see information held by the Council in relation to the Southern Isles ring fencing of milk quota and a Scottish Executive consultation about changes in the regulations governing this, together with the Council's response to that consultation. Mr and Mrs Mundell had had correspondence with the Council about this matter over a period of several years.
2. The substance of Mrs Mundell's request was noted by a Council official, and treated as an information request under the Freedom of Information (Scotland) Act 2002 (FOISA).
3. The Council replied to Mrs Mundell on 13 May 2005, enclosing "all the information which the Council holds with regard to your request for information". The Council acknowledged that it had taken more than 20 working days to supply the information, and provided information about the Mundell's right to seek a review of the response (and subsequently to apply to the Commissioner for a decision) if dissatisfied.
4. On 20 June 2005 Mr and Mrs Mundell wrote to the Council to say that that they believed the Council should hold more information about the milk quota ring fence than had been supplied, particularly as the Southern Isles milk quota ring fence was an ongoing issue. They did not accept that the Council had fulfilled its obligations in terms of FOISA. Mr and Mrs Mundell listed five pieces of information which they believed should still be available from the Council.



5. The Council accepted this as a request for review in terms of section 20(1) of FOISA, and wrote back on 11 July 2005 to inform Mr and Mrs Mundell that a review had been carried out by processing their request for a second time. Some additional information retrieved during this process was enclosed.
6. The Council also addressed the Mundells' concerns about missing information, commenting on each of the five points raised in their letter of 20 June 2005. The Council believed that where relevant information was held it had been provided, but stated that in four of the five cases raised by Mr and Mrs Mundell the information requested was not held by the Council.
7. The Council added it was under no obligation to keep all records relating to the Southern Isles milk quota ring fence and in the interests of data protection and best value in terms of storage, information was routinely destroyed unless there was a statutory requirement for it to be retained. It raised the possibility that the Scottish Executive might hold some of the information which had not been retained by the Council.
8. On 28 October 2005 Mr and Mrs Mundell applied to me for a decision on the matter. In their letter of application they stated their view that they had not received all the information they had requested, and explained why it was important to them to find out why the Council had taken the stance it had over the continuation of milk quota ring fencing after deregulation of the milk market in 1994.
9. The case was allocated to an investigating officer.

The Investigation

10. Mr and Mrs Mundell's application was validated by establishing that their request had been made to a Scottish public authority, and they had appealed me only after requesting the authority to review its response to that request.



11. The Council was advised that an investigation had begun, and invited to comment on matters raised by the applicant and on the application as a whole. The Council was also asked to provide the following information:
 - a) a copy of the information released to the applicants;
 - b) information on the Council's records retention policy;
 - c) a detailed statement of the steps taken by the Council to determine that it held no information other than that provided to Mr and Mrs Mundell, in relation to their request;
 - d) any record of the disposal of information relating to Mr and Mrs Mundell's request, in line with the Council's records management and disposal policy.
12. In its response, the Council advised that it was unable to provide copies of the information released to the applicants without performing a full search again: as the Council had not intended to withhold any information from Mr and Mrs Mundell and had believed that it had provided all information that was held, there had been no perceived need to keep a record of the information supplied.
13. The Council provided a copy of the data retention policy which had been adopted on 1 September 2004. It reiterated that it was under no statutory duty to retain the information in relation to the ring fencing issue, and stated that destruction of information on subjects which do not constitute core Council business would be in accordance with the Council's data retention policy. It described the searches undertaken for the information requested: further information about these was obtained from the Council in the course of the investigation.

The Commissioner's Findings and Analysis

14. The investigation into this case focused on two points:
 - a) whether the Council had supplied Mr and Mrs Mundell with all information to which they were entitled under FOISA; and
 - b) whether the Council had fully complied with FOISA in dealing with their request.



Information held by the Council

15. The Council has stated that it has no intention to withhold any information relating to the Southern Isles ring fencing of milk quota, the Scottish Executive consultation on the subject, or the Council's response to that consultation. However, Mr and Mrs Mundell believe that it is likely that the Council holds relevant information which has not been supplied to them. I have therefore examined whether the Council can demonstrate that the searches carried out were sufficiently thorough to locate and retrieve all information that the Council holds on the subject.
16. I have also investigated whether it is possible to demonstrate that the Council has disposed of information it previously held on the subject of milk quota ring fencing, by examining the Council's records management policies and procedures.

Searches carried out by the Council

17. The Council has described how it searched for any information falling within the scope of Mrs Mundell's request, explaining that it first identified which officers had been responsible for the milk quota ring fencing policy area, or had had line management responsibilities for the officer most directly involved. The officer who had been most closely associated with the milk quota ring fencing issues had left the Council some time before Mrs Mundell made her information request. The search included files held by this officer's then line manager, and files held by officers who subsequently took over her responsibilities. These officers were asked to search their email inboxes and archives together with all their paper files.
18. When an officer leaves the Council's employment it is the Council's practice to delete their email account after a 3 month period. Any other documents held by the officer and no longer required for the Council's business purposes would also be destroyed on the officer's departure. This meant that there was no mail box to search for the key officer. However, some emails sent by this officer were found in searches of other officers' mailboxes, and have been supplied to Mr and Mrs Mundell.
19. The Council has confirmed that several different search terms were used in the search of electronic files, in order to ensure that any relevant information was retrieved. Both the subject line and the body text of emails were included in the search. The search included the electronic storage facilities available on the Council's shared computer drives.



20. A search of the Council's paper-based information holdings was also carried out, including the filing cabinets in the office of the departmental Director, and files held by relevant officers.
21. Additionally, the Council archivist carried out a search of the central archives, but found no information there which fell within the scope of Mrs Mundell's request.
22. I note that the search carried out during the review of the response to Mrs Mundell's request did retrieve some documents which it believed had not been found during the initial search. As no record was kept of what was provided to Mr and Mrs Mundell at each stage it is impossible to establish how many, or which, documents were not retrieved by the initial search. It is therefore only possible to say that it appears likely that the initial response to Mrs Mundell's request did not fully comply with Part 1 of FOISA, in that it failed to provide her with all the information relating to her request which the Council held.
23. However, I accept that the searches carried out during the review of Mrs Mundell's request were sufficiently wide-ranging and thorough to establish what relevant information was currently held by the Council.

Information not retrieved by the searches

24. In their letter of 20 June 2005 Mr and Mrs Mundell highlighted five instances of information which they expected the Council to hold, and which had not been provided. The investigating officer searched the Council minutes (available online) but found nothing to contradict the reply provided by the Council on 11 July 2005 (summarised in paragraph 7 above), regarding points 1, 3 and 5 of Mr and Mrs Mundell's letter. The Council was asked whether Council minutes for 1999 and 2000 had been searched for references to the ring fencing of milk quota, and confirmed that this had been part of the search carried out in response to Mrs Mundell's request.
25. Point 2 of Mr and Mrs Mundell's letter of 20 June 2005 related to copies of previous submissions to the Scottish Executive on the subject of the Southern Isles Milk Quota Ring Fence. The Council has stated that it has provided Mr and Mrs Mundell with all copies of its submissions which are still held. The investigating officer made enquiries to the Scottish Executive about the Council's submissions regarding the Southern islands milk quota ring fence. This produced one additional document not retrieved by the Council's search of its own holdings: a letter from the Leader of the Council to the Scottish Executive in April 2000. My office will forward a copy of this document to Mr and Mrs Mundell.



26. In point 4 of their letter of 20 June 2005 Mr and Mrs Mundell asked about the correspondence with a consultant based at the Scottish Agricultural College from one of the Council officers, which was known to have outlined the Council's current position regarding the Southern Isles Ring Fence at the time (March 2003).
27. The Council has informed the investigating officer that although there is a record of correspondence with the consultant, no copies of the documents sent were retained by the officer concerned and there is now no way of establishing precisely what information was involved. The Council has told Mr and Mrs Mundell that it would have no objection to them seeking the information from the consultant. The Scottish Agricultural College is one of the public authorities covered by FOISA, so Mr and Mrs Mundell would be free to make a request for this information to be provided under section 1 of FOISA if they wished.
28. In general terms, the Council explained that after a member of staff leaves its employment it is normal practice for other officers to go through any remaining files and to destroy anything no longer required for business purposes. The officer concerned left some four years ago, by which time the Council considered the issue of its response to the Scottish Executive consultation exercise to be closed business.
29. I note that Mr and Mrs Mundell do not agree with this assessment; however, I accept that if the Council has taken this view then it is more likely that information relating to the consultation about ring fencing of milk quota would not have been retained.

Records management

30. In seeking to establish whether there was likely to be any relevant information held by the Council which had not been provided to Mr and Mrs Mundell, the investigating officer examined the records retention policy of the Council. This document provided general confirmation that it is Council policy to dispose of any information which is no longer actively being used as soon as retention of the data is no longer appropriate, or at the latest, 2 years after a file is closed.
31. The investigating officer found nothing in the records retention policy to indicate that the Council would keep information relating to policy discussions and deliberations for any pre-determined period. The general right of access to information provided by FOISA only applies to recorded information currently held by a Scottish public authority: it is outside my remit to comment on the question of whether or not certain information should have been recorded or should have been retained. The Council has asserted that there is no statutory requirement for it to have retained all information relating to its policy on milk quota ring fencing, and I have found nothing to disprove this.



32. The Council confirmed that it retains minutes of Council and committee meetings dating back to at least 1995, and that these had been searched for references to the ring fencing of milk quota. Mr and Mrs Mundell have queried why there is no written record of the reasons underlying a policy decision of the Council which profoundly affected the interests of businesses within its area. This lies outside my remit: my decision can only consider whether Mr and Mrs Mundell has received all the recorded information which was held by the Council at the time of the original request and to which they are entitled under the terms of FOISA.
33. The investigating officer asked whether the records management policy document was supported by a records retention schedule or disposal schedule, which would show which records are retained for pre-defined periods by the Council.
34. The Council advised that it does not have a records retention schedule or disposal schedule. I suggest that the Council reviews the guidance provided in the Code of Practice on Records Management relating to section 61 of FOISA. This stresses the need for Scottish public authorities to document the keeping, management and destruction of their records.
35. However, I accept that in this case the information concerned would not have formed part of a record or record set relating to a core function of the Council, and that even if a records retention schedule had existed, it would have been unlikely to document the retention period and disposal arrangements for information relating to this particular policy area.
36. The Council has explained that when it first responded to Mrs Mundell's request it believed that it had provided her with all the relevant information it held, and as there was no question of any information being withheld, it did not consider it necessary to keep a record of the information provided.
37. Given that any applicant has the right to request a review of a public authority's response to their information request and subsequently to apply to me for a decision in respect of the authority's handling of that request, it may have been wiser for the Council to have kept a record of the information provided, especially as it seems possible that some original documents were sent to Mr and Mrs Mundell rather than copies. The lack of any record showing what information had been provided to Mr and Mrs Mundell has significantly increased the work required of the Council in first carrying out a review of Mrs Mundell's request and then responding to the investigating officer's questions.



38. After re-running its searches, the Council provided a list of documents which it believed had been provided to Mr and Mrs Mundell. Mr and Mrs Mundell were asked to check whether they had received all the documents listed. However, the list was not detailed enough for her to identify some of the documents on it, and as a result the Council was asked to provide both Mr and Mrs Mundell and my office with another set of the documents retrieved in the Council's searches.
39. The Council's co-operation in providing Mr and Mrs Mundell with another set of documents is noted; however, this would not have been necessary if there had been adequate recording of the information they had been sent previously.
40. I am satisfied that Mr and Mrs Mundell have now received copies of all the information the Council still retains in relation to the issue of ring-fencing milk quota.

Decision

I find that the Council generally dealt with Mrs Mundell's request in accordance with Part 1 of FOISA and provided her with all the information it retained which related to her request.

I find that the Council failed to comply with section 10(1) of FOISA, in failing to reply to Mrs Mundell's request within 20 working days.

Kevin Dunion
Scottish Information Commissioner
14 June 2006