

**Decision 144/2006 Mr Sharp and West Lothian
Council**

*Request for information relating to the cost of mailing employees
about the impact of strike action*

**Applicant: Andrew Sharp
Authority: West Lothian Council
Case No: 200600958
Decision Date: 7 August 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 144/2006 Mr Sharp and West Lothian Council

Request for information relating to the cost of mailing employees about the impact of strike action

Facts

Mr Sharp asked West Lothian Council ('the Council') for the source of funding for mailing employees involved in industrial action at the Council, and a note of the total amount that the mailing cost. In making his request, he sent two copies; one addressed to the Freedom of Information Officer and one addressed for the attention of the Chief Executive.

On receiving both responses from the Council, Mr Sharp submitted a requirement for the Council to review its actions in regard to his request, requesting specific questions.

Having received no response to his requirement for review, Mr Sharp then appealed to the Scottish Information Commissioner for a decision on the Council's handling of his information request.

Background

1. On 27 March 2006 Mr Sharp asked the Council for the source of funding for mailing employees involved in forthcoming industrial action at the Council, and a note of the total amount that the mailing cost. He also asked how far that the Council was able to go back and investigate council spending abuse.
2. On the same day, Mr Sharp also submitted the same request regarding mailings for strike action to the Chief Executive of the Council for him to answer separately.
3. The Council responded on 20 April 2006, within the 20 working days allowed under FOISA, stating that each service will pay for letters sent to employees, and that the total cost of the mailing was £1978.90. It also traced the specific council spending incident that Mr Sharp had referred to in his last question, and provided details about the outcome of that.



4. In addition, the Chief Executive of the Council responded on the same day, providing Mr Sharp with extra information regarding the reasons for mailing staff, why hard-copy mail was used instead of e-mail. He also stated that it was not possible to provide a further breakdown of costs as the mailing was carried out by an external company. A copy of the original mailing was enclosed with the response to Mr Sharp.
5. Mr Sharp submitted a requirement for the Council to review its actions on 24 April 2006, together with a number of additional information requests. (These additional requests will not be addressed within the body of this decision notice.)
6. The Council acknowledged receipt of Mr Sharp's request for review on 26 April 2006, stating that it was treating the question outlined in point 5 of this decision as a requirement for review. It informed him that he would receive a response not later than 20 working days following receipt of his request of 24 April 2006.
7. Having received no response by 24 May 2006, Mr Sharp appealed to the Commissioner for a decision regarding the Council's handling of his request for information. He particularly highlighted his opinion that the Council had failed to respond within the statutory time limit for response.

Investigation

8. It was first necessary to establish that Mr Sharp had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its original decision
9. In its acknowledgement of 26 April 2006, the Council stated that it was treating the questions outlined in point 5 of this decision notice as Mr Sharp's requirement for review.
10. Section 20(3)(c) of FOISA states that a requirement for review must state the request for information to which the requirement for review relates, and the matter which gives rise to the applicant's dissatisfaction.
11. Mr Sharp's requirement for review stated that he was not happy with the Council's response as he regarded it to be 'what you think I want to read'. He then requested specific details to questions which he went on to detail in his requirement.



12. Of these questions, those relating to whether public money was used to pay the mailing cost, and what is meant by 'Each service will pay for the letters sent to their employees' are related to his original request asking where the funds came from for the mailing. In that respect, these are valid requirements for review, in that Mr Sharp was dissatisfied with the manner in which the Council interpreted his original request concerning the source of funding and its subsequent response.
13. On 8 June 2006, the Commissioner invited comments from the Council as he is required to do under section 49(3)(a) of FOISA.
14. When no response was received from the Council's reviewing officer, the investigating officer telephoned the Council on 3 August 2006. The Council confirmed that a substantial backlog and staff shortages due to annual leave had affected its ability to address Mr Sharp's request for review. It assured the investigating officer that this would be addressed as a matter of urgency.
15. In response to this last statement, Mr Sharp questioned what reason there might be for the backlog and the long delay in providing him with a response, in light of assurances the Council had given him initially for a speedy turnaround.

Commissioner's Analysis and Findings

16. Section 21(1) of FOISA states that a Scottish public authority must comply with a requirement for review not later than the twentieth working day after receipt by it of the requirement. In line with FOISA, the Council should have advised Mr Sharp of the outcome of the review on or before 24 May 2006.
17. The Commissioner has established, however, that Mr Sharp has not been advised of the outcome of the review. The Commissioner therefore finds that the Council has breached section 21(1) in failing to respond to Mr Sharp's requirement for review within the statutory time period required.



Decision

The Commissioner finds that West Lothian Council has failed to comply with Part 1 of FOISA, in failing to respond to Mr Sharp's requirement for review within the statutory time period for doing so laid out in section 21(1) of the Act.

He therefore requires the Council to respond to Mr Sharp's requirement for review.

The Commissioner cannot require the Council to take any action until the time allowed for an appeal to be made to the Court of Session has elapsed. He therefore requires the Council to conduct its review within 45 days of the date of this decision notice.

Appeal

Should either Mr Sharp or the Council 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.

Margaret Keyse
Head of Investigations
7 August 2006