

Decision Notice

Decision 147/2014 Mr B and Dumfries and Galloway Council

Revision of disciplinary policy

Reference No: 201400317

Decision Date: 7 July 2014



Scottish Information
Commissioner

Summary

On 15 May 2013, Mr B asked Dumfries and Galloway Council (the Council) for the information it held relating to the revision of its Disciplinary Policy in 2011. Following a review, the Council provided some information, but withheld the remainder on the basis that disclosure would prejudice the effective conduct of public affairs. During the investigation, this information was disclosed to Mr B in its entirety. The Council stated that this was all of the information that it held.

Mr B believed the Council held further information falling within the scope of his request. The Commissioner investigated and found that the Council did not hold any further information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (General entitlement)

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

Background

1. On 15 May 2013, Mr B wrote to the Council requesting:
All documents including e-mails, memos, notes, minutes relating to the process of the revision of the Council's Disciplinary Policy, whereby to establish the timeline for the initiation, consultation and conclusion of the process of adopting the revised Disciplinary Policy in April 2011
2. The Council provided Mr B with a partial response on 12 June 2013. It supplied some of the information falling within the scope of his request, but explained that a full response would be delayed due to staff absence.
3. Mr B did not receive a further response and, on 20 June 2013, wrote to the Council requesting a review.
4. The Council notified Mr B of the outcome of its review on 17 July 2013. The Council stated that it had identified information, in addition to that already provided, which it was withholding under section 30(b)(ii) and (c) (Prejudice to effective conduct of public affairs). The Council also acknowledged that it had failed to respond to his request on time, but informed Mr B that it was taking steps to address its practice in this area. (While the Commissioner is satisfied that the review outcome was issued on 17 July 2013, Mr B did not receive it until it was re-sent to him on 14 August 2013.)
5. On 14 February 2014, Mr B wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr B made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 20 February 2014, the Council was notified in writing that an application had been received from Mr B and was asked to provide the Commissioner with the information withheld from him.
8. On 7 March 2014, the Council provided Mr B with all of the information which had previously been withheld from him. A copy of this information was also supplied to the Commissioner.
9. On 11 March 2014, Mr B wrote to the Commissioner, stating that he remained dissatisfied. He did not accept that the Council had supplied all of the information it held and which fell within the scope of his request.
10. The case was then allocated to an investigating officer.
11. The investigating officer contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain the steps taken to establish that it had identified, located and provided all of the information that fell within the scope of this request. The Council was also asked to explain why there was no information held in relation to specific examples raised by Mr B. The Council provided comments and further comments were also received from Mr B.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr B and the Council. She is satisfied that no matter of relevance has been overlooked.

Has all relevant information been located and retrieved by the Council?

13. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable in this case.
14. As noted above, the Council disclosed information to Mr B on 7 March 2014. The Council considered this was all of the information it held and which fell within the scope of Mr B's request.
15. Mr B was not satisfied with this response. In expressing his dissatisfaction, he highlighted specific examples of where he considered there to be information missing from the Council's response.
16. In its submissions, the Council provided details of the searches it had undertaken and an explanation as to why, in its view, it held no further information.
17. In relation to the searches conducted, the Council explained that the revision of the Disciplinary Policy was primarily the responsibility of the Human Resources (HR) department and therefore the request was sent to the FOI contact in that department. Searches were carried out in the following areas:
 - (i) email accounts of staff who supported the Lead Officer throughout the revision process;

- (ii) the Governance Clearance email account through which the report was cleared to go to Committee;
 - (iii) the HR G-Drive folder containing versions of the report;
 - (iv) manual files held at the HR department;
 - (v) meeting minutes at which the policy might have been discussed;
 - (vi) the Governance G-Drive folder containing the final version of the report.
18. The Council also provided a list of the staff consulted on the request, alongside job titles and an explanation of their involvement in the revision of the policy. In relation to each individual, the Council explained, full manual and electronic searches were carried out, including searches of their email accounts, personal desktop computers (personal and network drives), individual paper files and team paper files. The Council also provided details of the key search terms used.
19. In terms of date ranges, the Council searched from January 2010 to March 2014. The Council stated that this extensive date search was conducted to assist Mr B as best the Council could, due to its understanding that the review of the policy was originally instigated some time before it was concluded. It was put on hold due to competing work pressures, before being revived in early 2011.
20. The Council stated that these searches would likely have retrieved the information falling within the scope of this request, as it was the HR department that instigated the review of the policy, in the light of legislative and statutory code amendments, and undertook the development and consultation work. The Council added that searches were also conducted in other departments in the Council which were involved in the Committee process and which would have had input from a governance perspective.
21. The Council explained that as this was a review of policy as opposed to the development of a new one, lesser consultation was required. This was conducted through HR colleagues and Trade Unions. In line with agreed best practice, the Council explained, Council officers consulted the Trade Unions on a face-to-face basis, using workshop-style meetings. The Council explained that a full audit trail (as opposed to just the decision reached) was not always fully recorded from such a process, although any agreed change would be incorporated into the new version of the policy.
22. With a view to explaining why it held no further information, the Council acknowledged from the information provided that an individual might assume there was further information held which had not been provided. However, the Council highlighted that consideration must be given to the time which had passed between the creation and processing of this information and the date of Mr B's request. The Council believed it entirely possible that staff would have deleted emails and attachments in the interim.
23. The Council also made submissions which addressed each of Mr B's additional concerns in turn, with regard to information perceived to be missing from the Council's response.
24. The Council concluded that despite repeated in-depth and wide searches, further information to that already supplied did not exist. It submitted that the majority of what Mr B sought either never existed or had been deleted because there was no requirement to retain it.
25. During the investigation, Mr B raised a number of points regarding the veracity of the Council's submissions and expanded on his expectations about the extent of the information he believed the Council should hold. He also raised a number of concerns regarding records management and the conduct of staff. Not all of these fall within the Commissioner's remit.

26. It is clear to the Commissioner that Mr B has strongly-held views about the information the Council should hold. The Commissioner has considered these submissions in detail, but she has found nothing within them, taking into account the circumstances of this case and all relevant submissions she has received from the Council, from which it would be reasonable to conclude that there is further information held, in addition to that already identified and supplied to Mr B by the Council.
27. The Commissioner has considered all relevant submissions made by both Mr B and the Council, including the Council's explanation of the searches undertaken and why it concluded that it held no further information. Having considered all of these in detail, she is satisfied that the Council conducted proportionate and otherwise adequate searches in the circumstances. On the basis of these searches and the other explanations provided by the Council, she is satisfied that all relevant information held on receipt of Mr B's request has been identified, located and disclosed to him.

Decision

The Commissioner finds that, in respect of the matters covered by Mr B's application, Dumfries and Galloway Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr B.

Appeal

Should either Mr B or Dumfries and Galloway Council wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
7 July 2014

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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info