

**Decision 159/2007 Mr Campbell Martin and North
Ayrshire Council**

*Correspondence relating to North Ayrshire Council Schools PPP
Project*

**Applicant: Mr Campbell Martin
Authority: North Ayrshire Council
Case No: 200700509
Decision Date: 3 September 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
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Decision 159/2007 Mr Campbell Martin and North Ayrshire Council

Correspondence between officials of North Ayrshire Council and the Scottish Executive relating to the Council's Schools PPP Project.

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 14(2) (Vexatious or repeated requests).

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

Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002

Facts

Mr Campbell Martin requested copies of correspondence between North Ayrshire Council (the Council) and the Scottish Executive (the Executive) relating to the Council's Schools PPP Project.

The Council considered that the information requested had already been requested by Mr Martin on a number of previous occasions, and that, accordingly, in terms of section 14(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), the Council was not obliged to comply with his request.

Mr Martin did not accept this response and applied for a decision on the matter from the Scottish Information Commissioner.

Following an investigation, the Commissioner found that the Council had failed to deal with Mr Martin's request for information in accordance with Part 1 of FOISA. He required the Council to comply with Mr Martin's information request.



Background

1. On 23 January 2007 Mr Campbell Martin wrote to the Council regarding its Schools PPP Project, and asked for copies of all correspondence between Council officials and representatives of the Executive, including a specific request for a file referred to in an attached copy of an email from a named Council official.
2. On 20 February 2007 the Council replied to Mr Martin. It advised him that it did not intend to comply with his information request, as the information he sought had already been the subject of a number of previous requests submitted by Mr Martin. The Council therefore considered that, in terms of section 14(2) of FOISA, it was not obliged to comply with his request. It attached a list of nine requests previously made by Mr Martin, ranging from 17 June 2005 to his most recent request of 23 January 2007.
3. On 23 February 2007 Mr Martin asked for a review of this response, stating: "I do not accept as valid your reasons for refusing to provide the requested information".
4. On 27 February 2007 the Council wrote to advise Mr Martin that his request for review did not comply with section 20(3), as he was required to specify the reasons why he was not satisfied with the Council's refusal to provide the information requested.
5. On 7 March 2007 Mr Martin wrote to the Council setting out his reasons for dissatisfaction with its response. He stated that only one of the nine requests cited in the Council's response related to a request for information regarding correspondence between the Council and the Executive, and that request had been made in June 2005, almost two years ago.
6. Mr Martin also stated that a Freedom of Information request made to the Executive a year previously had revealed that the information supplied by the Council in response to his request of 17 June 2005 had been incomplete.
7. On 29 March 2007 the Council wrote to Mr Martin with the outcome of its review of the response to his request. The Council advised that the information supplied in response to the request dated 17 June 2005 was substantially the same as that requested in the letter of 23 January 2007.



8. The Council noted that Mr Martin had made a similar request to the Executive on 27 January 2006 (the correct date was later confirmed to have been 27 May 2006). It took the view that both the Executive and the Council are Scottish public authorities in terms of Schedule 1 of FOISA, and therefore the same information would have been made available to Mr Martin following his request to the Executive as would be available from the Council in relation to his request of 23 January 2007.
9. The Council found that the only difference regarding the recent request was its reference to an email sent by an employee of the Council to an employee of the Executive. The Council noted that this email consisted of a copy of another email which Mr Martin had sent to a local radio station. The Council found that, as the contents of the email were initiated by the applicant, there was nothing new to disclose. The Council stated that section 14 of FOISA makes it clear that there is no obligation on a public authority to disclose that which has clearly been disclosed already. It concluded that this was a clear case of seeking information which had already been disclosed, and confirmed the decision to refuse to comply with Mr Martin's request under section 14(2).
10. On 2 April 2007, Mr Martin wrote to my Office, stating that he disagreed with the Council's decision and applying to me for a decision in terms of section 47(1) of FOISA. Mr Martin pointed out that his request of 17 June 2005 was narrower in scope than his request of 23 January 2007: his earlier request was limited to correspondence between the Council and one specific department of the Executive. He also pointed out that the earlier request had been submitted almost two years ago.
11. Mr Martin also stated that the response he had received to a request made to the Executive (May 2006) had shown that the Council's response to his request of 17 June 2005 had been incomplete. Given these circumstances, and the facts that his previous request to the Council had been made almost two years ago, and to the Executive one year ago, he argued that it was legitimate for him to seek correspondence not previously supplied or which had come into existence since his earlier request.
12. The case was allocated to an investigating officer and Mr Martin's application was validated by establishing that he had made a request for information to a Scottish public authority, and had applied to me only after requesting the authority to review its response to his request.



The Investigation

13. On 4 May 2007, the Council was notified in writing that an application had been received from Mr Martin, and was asked to provide my Office with certain information required to investigate his application. The Council was also invited to comment on the matters raised by Mr Martin and to provide any additional information which it believed to be relevant to the investigation.
14. The Council provided this information within the timescale agreed with my Office.

The Commissioner's Analysis and Findings

15. 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 Martin and the Council and I am satisfied that no matter of relevance has been overlooked.
16. The question for me to consider is whether the Council complied with Part 1 of FOISA in refusing to comply with Mr Martin's request, on the grounds that it was a repeated request and that section 14(2) therefore applied.
17. Section 14(2) states:

"Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request."

Was the request identical or substantially similar to a previous request?

18. As noted in paragraph 1, on 23 January 2007 Mr Martin asked for copies of all correspondence between Council officials and representatives of the Executive on the Council's Schools PPP Project, and included a specific request for a file referred to in a particular email.



19. The Council initially decided that the information covered by this request had been the subject of another 8 requests from Mr Martin, which it listed. However, the Council made reference only to one of those 8 requests, in justifying its decision to cite section 14(2) at review. This was the request made on 17 June 2005.
20. For the purpose of comparison, the terms of Mr Martin's request of 17 June 2005 were as follows:

“...all correspondence, and related documents, between North Ayrshire Council and:

 - i. Partnerships UK
 - ii. Scottish Executive Financial Partnerships Unit.”
21. It is clear that Mr Martin's request of 23 January 2007 was expressed in broader terms than his request of 17 June 2005.
22. I have considered whether the two requests, although phrased in different terms, might effectively constitute a request for the same information. However, I do not accept that this is the case. Among the documents provided to me or referred to in the Council's submission are examples of correspondence with the Executive which post-date Mr Martin's request of June 2005, and which the Council should have considered supplying to him in response to his request of 23 January 2007. There are also examples of correspondence with officials from departments or agencies of the Executive which were not included in the scope of Mr Martin's earlier request of 17 June 2005.
23. I note that the Council has now acknowledged that among these documents are some which were not previously provided to Mr Martin but which should have been given to him as part of the response to his request of June 2005. The Council has expressed willingness to provide this information to Mr Martin, and I have asked for this to be done without further delay.



Had a reasonable period of time passed?

24. The section 60 Code of Practice¹ provides some guidance on repeated requests (paragraph 25):
- “...the Act also provides that an authority, which has already complied with a request for information from a person, can refuse to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request. If the information has changed between applications, this unlikely to be viewed as a repeated request...What constitutes a “reasonable period of time” will depend on the circumstances of the case...”
25. I am concerned that the Council has sought to treat Mr Martin’s request as a “repeated request” when 18 months had elapsed since a previous, similar request, during which period the Council had continued to correspond with the Executive about the Schools PPP Project. I consider that 18 months is a reasonable period of time to have elapsed between information requests, particularly given that the Council has continued to correspond with the Executive.
26. In his application to me, Mr Martin made it clear that he is seeking copies of correspondence which had not been previously supplied. The scope of his request is a matter which could have been clarified with Mr Martin before deciding that it should be regarded as a repeated request.
27. I do not accept that section 14(2) should have been cited in relation to Mr Martin’s request, for all the reasons set out above, and find that the Council failed to deal with Mr Martin’s request as required by the provisions of FOISA. I now require the Council to comply with Mr Martin’s request, and to provide all information covered by the terms of his request which is not exempt from disclosure.

Decision

I find that North Ayrshire Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request from Mr Campbell Martin, by wrongly designating his request as a “repeated request” in terms of section 14(2).

¹ Scottish Ministers’ Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002



I therefore require North Ayrshire Council to comply with Mr Martin's request of 27 January 2007 within 45 days of the receipt of this decision.

Appeal

Should either Mr Martin or North Ayrshire 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 of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
3 September 2007



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.

14 Vexatious or repeated requests

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.