



Scottish Information
Commissioner

Decision 231/2007 Mr R and Dumfries and Galloway Council

Request for names of doctors

Applicant: Mr R

Authority: Dumfries and Galloway Council

Case No: 200701254

Decision Date: 20 December 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 231/2007 Mr R and Dumfries and Galloway Council

Request for names of doctors who had influenced the Council – section 17 – information not held – upheld by the Commissioner - some breaches of technical requirements of Part 1 of FOISA identified

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement), 17(1) and (2) (Notice that information is not held), 19 (Content of certain notices) and 21(4), (5) and (10) (Review by Scottish public authority).

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

Facts

Mr R requested the names of the doctors who had influenced Dumfries and Galloway Council (the Council) in their dealings with him from the Council. The Council responded by advising Mr R that there had been no involvement with doctors throughout the course of its dealings with him. Mr R was not satisfied with this response and asked the Council to review its decision. The Council contacted Mr R again and reiterated that there had been no involvement with doctors throughout the course of its dealings with him. Mr R remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr R's request for information generally in accordance with Part 1 of FOISA, although he did identify breaches of certain technical requirements of Part 1. However, he did not require the Council to take any action in relation to these breaches.



Background

1. On 3 April 2007, Mr R wrote to the Council requesting the following information under the terms of FOISA: "What is/are the name(s) of the doctors who have influenced you in your dealings with myself?"
2. The Council wrote to Mr R in response to his request for information on 4 April 2007. Mr R was advised that no doctors had been consulted by the Council and it was therefore unable to supply him with any details.
3. On 16 April 2007, Mr R wrote to the Council requesting a review of its decision.
4. On 19 April 2007, the Council again wrote to Mr R advising him that there had been no involvement with doctors and therefore it had no information to supply.
5. Mr R wrote to my Office on 14 September 2007, stating that he was dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr R had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

The Investigation

7. On 16 November 2007, the Council was notified in writing that a valid application had been received from Mr R and that an investigation into the matter had commenced. The Council was asked to provide comments in terms of section 49(3) of FOISA and to respond to specific questions on the application.
8. The Council responded on 4 December 2007. The Council acknowledged that the original request from Mr R had not been correctly identified as a request under the terms of FOISA. The Council also acknowledged that it had failed to comply with the technical aspects of FOISA by failing to properly notify Mr R in terms of section 17(1) of FOISA (Notice that information is not held) that the information requested was not held.



9. The Council explained that the request should have been dealt with under FOISA and as such, should have been recorded on the appropriate database and allocated a unique reference number to be used on all correspondence. A suitable acknowledgement should have been sent to Mr R setting out when he could expect a response to his request.
10. The Council acknowledged that this course of action did not take place and, as such, the set format for dealing with such requests had not been followed. The Council advised my Office that it had taken further steps to ensure that this situation does not occur again.
11. The Council stated that Mr R had received two letters dated 4 and 19 April 2007 which set out its position regarding the non involvement of doctors in its dealings with him. The Council also confirmed to my Office that there had been no such involvement in the course of its dealings with Mr R and provided further information which substantiated its position.
12. The Council also pointed out that, although it had not complied with the technical requirements of FOISA, there had been no detriment to the applicant as he did receive accurate information from the Council in response to his request.

The Commissioner's Analysis and Findings

13. 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 R and the Council and I am satisfied that no matter of relevance has been overlooked.

Whether the information requested by Mr R is held by the Council

14. Section 17(1) of FOISA requires that, where a Scottish public authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held. In this case, the Council notified Mr R that no relevant information was held.
15. Mr R disputed this and asked me to determine whether the Council held the information that he had requested.
16. In its submissions to my Office, the Council has explained why it does not hold the information requested by Mr R and why it would not expect to hold the information.



17. Having considered the Council's submissions on this point and its explanation of why it does not hold the information, I am satisfied that the information is not held by the Council (and was not held at the time of Mr R's request). I am therefore satisfied that the Council was correct in informing Mr R that it was unable to supply the information requested by him.

Technical breach of FOISA

18. As noted at paragraph 8 above, the Council has acknowledged that Mr R's request for information was not correctly identified as a request under FOISA. The Council also acknowledged that it had failed to comply with the technical requirements of section 17 of FOISA.
19. Mr R's initial request dated 3 April 2007 was headed "Request for information under the Freedom of Information (Scotland) Act 2002".
20. The Council's response dated 4 April 2007 made no mention of FOISA and did not advise the applicant of his right to request a review and the specified timescale for doing so.
21. In terms of section 17(1) of FOISA, if a request for information is being refused because a Scottish public authority does not hold the information, it is required to give the applicant notice in writing that it does not hold the information. Section 17(2) states that section 17(1) is subject to section 19 of FOISA.
22. Section 19 of FOISA requires that, when notifying an applicant in terms of section 17(1) of FOISA that the information is not held, the notice should provide details of:
- (a) the authority's procedure for dealing with complaints about the handling of requests for information;
 - (b) the right to request a review in terms of section 20 of FOISA; and
 - (c) the right to make an application for a decision by the Scottish Information Commissioner under section 47(1) of FOISA.
23. The Council's initial response to Mr R did not contain any of the particulars detailed in paragraph 22 above. I therefore find that the Council failed to comply with the requirements of section 19 of FOISA.
24. Mr R's letter to the Council dated 16 April 2007 was headed "Requests for information under the Freedom of Information (Scotland) Act 2002 (FOISA)". In this, he requested a review of the decision not to provide him with the requested information and made specific reference to his request for review falling within the scope of section 20(1) of FOISA.



25. The Council's response dated 19 April 2007 also made no reference to FOISA and did not advise Mr R of his right to make an application to the Commissioner in terms of section 47(1) of FOISA, or of the subsequent right of appeal on a point of law against a decision by the Commissioner to the Court of Session.
26. Section 21 of FOISA describes how a Scottish public authority is required to comply with a request for a review of its decision. Section 21(4) states "The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
27. Section 21(5) of FOISA requires an authority to give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
28. Section 21(10) of FOISA provides that a notice under subsection (5) must contain particulars about the rights of application to the Commissioner conferred by section 47(1) of FOISA, and the subsequent right of appeal to the Court of Session provided by section 56.
29. Whilst the Council's letter to Mr R dated 19 April 2007 did confirm its position that the information requested was not held, it did not advise Mr R of his right to apply to the Commissioner for a decision, or of the right of appeal against the Commissioner's decision to the Court of Session. I therefore find that the Council failed to comply with the requirements of section 21(10) of FOISA.
30. The Council has acknowledged the technical failings in the manner in which it dealt with Mr R's request. The Council has advised me that it has taken steps to try and ensure that this situation does not recur. Accordingly, I do not require the Council to take any further action in this regard.



Decision

I find that Dumfries and Galloway Council (the Council) generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request from Mr R. In particular, I find that the information requested by Mr R is not held by the Council.

However, in failing to respond appropriately to Mr R's request for information, I find that the Council breached the technical requirements of sections 19 and 21(10) of FOISA.

For the reasons specified above, I do not require the Council to take any action in response to this decision.

Appeal

Should either Mr R or the Council wish to appeal against this decision, there is right of 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 notice.

Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

Margaret Keyse
Head of Investigations
20 December 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.

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- (2) Subsection (1) is subject to section 19.

[...]



19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

21 Review by Scottish public authority

[...]

- (4) The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

[...]

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.