

Decision Notice



Decision 128/2008 Dr Gordon Macdonald and Strathclyde Fire Board

Communications between members of the Fire Board and the Management Team of Strathclyde Fire & Rescue

Reference No: 200800185

Decision Date: 30 September 2008

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

Dr Gordon Macdonald made a request to Strathclyde Fire and Rescue Service (SFR) for information about correspondence and communications relating to the Pride Scotia event in 2006 and/or subsequent disciplinary action against firefighters who refused to attend that event.

SFR provided Dr Macdonald with one email and advised that no other relevant information was held: this response was confirmed after the review requested by Dr Macdonald.

Dr Macdonald accepted that SFR had provided all information physically in its possession, but was dissatisfied that SFR had not required the Councils whose functions as fire authorities are delegated to Strathclyde Fire Board (the Board) to release any relevant information held on SFR's behalf.

Two of the Councils concerned have carried out searches of email systems used by Councillors serving on the Board, in relation to other applications made to the Commissioner by Dr Macdonald. No information relating to Dr Macdonald's requests to SFR was found in any of the searches. The Commissioner found that it could be demonstrated that SFR (acting on behalf of the Board) had complied with part 1 of FOISA in dealing with Dr Macdonald's requests, and in relation to this case it was not necessary to consider further whether information would or would not have been held on behalf of SFR by the Councils, had it existed.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) section 3(2)(a)(i) (Scottish public authorities)

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. For the purposes of FOISA, this decision is concerned with the actions of Strathclyde Fire Board, which is the joint board serving as the fire authority for twelve local authorities. Strathclyde Fire Board is one of the Scottish public authorities covered by FOISA. The day to day running of the fire service is carried out by Strathclyde Fire and Rescue Service. For clarity, in this decision notice Strathclyde Fire Board is referred to as “the Board”, while Strathclyde Fire and Rescue Service is referred to as “SFR”. SFR is not, itself, a Scottish public authority for the purposes of FOISA, but was responsible for dealing with the information requests considered in this decision notice on behalf of Strathclyde Fire Board.
2. On 21 November 2007 Dr Macdonald made an information request to SFR, asking for copies of “any other” correspondence between members of the Board and members of the SFR Management Team, in relation to the 2006 Pride Scotia event and/or subsequent disciplinary action.
3. In asking for “any other” correspondence, Dr Macdonald was referring to an earlier request (12 November 2007), only part of which is relevant to the current decision: that part was a request for copies of all correspondence between a named member of South Lanarkshire Council and any member of the Management Team of SFR between 19 June and 31 August 2006. In particular, Dr Macdonald had asked for copies of all correspondence relating to the attendance of SFR staff at the Pride Scotia event on 24 June 2006 and/or subsequent disciplinary action against the fire-fighters who refused to attend. SFR had provided one email in response to this request on 19 November 2007.
4. On 18 December 2007 SFR advised Dr Macdonald (by email) that it had provided all the information it held in relation to the Pride Scotia event, and that it was treating his request as vexatious, in terms of section 14 of FOISA.
5. Dr Macdonald immediately requested a review of this decision (email of 18 December 2007). He asked SFR how it could be sure that he had been provided with all information relating to the Pride Scotia event, and disputed that his request was vexatious as he had not previously asked for copies of relevant correspondence from other members of the Board.
6. On 20 December 2007, SFR notified Dr Macdonald that it had reviewed its response to his request. It confirmed that SFR did not hold any further emails in relation to his request, and that its original decision had been upheld without modification. (The review response is understood to relate to the statement that SFR had provided Dr Macdonald with all the information that it held in relation to the Pride Scotia event: the letter did not refer to the decision to treat Dr Macdonald’s request as vexatious and SFR appears to have amended its decision to claim section 14 in this respect.)



7. Dr Macdonald then asked SFR (email of 27 December 2007) to clarify whether all relevant correspondence had been considered in relation to his request, pointing out that the reply referred only to correspondence between members of the SFR Management Team and not members of the Board, as he had requested. He asked SFR to supply copies of any relevant correspondence involving members of the Board.
8. SFR met with Dr Macdonald on 15 January 2008 to discuss his request. The outcome of the meeting was recorded in a letter dated 4 February 2008, in which SFR confirmed that it had provided one email and did not hold any further emails in relation to Dr Macdonald's request.
9. On 6 February 2008, Dr Macdonald wrote to the Commissioner, stating that he was dissatisfied with the outcome of SFR's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10. Dr Macdonald acknowledged that SFR had sought to provide him with any information physically in its possession. His reason for applying for a decision from the Commissioner was to resolve an issue relating to both his request for information to SFR and a related request made to South Lanarkshire Council. Dr Macdonald had asked South Lanarkshire Council to provide copies of correspondence between a named Councillor and members of the Management Team at SFR. South Lanarkshire Council had advised him that this information, if it existed, would be held "on behalf of" SFR and not held by the Council.
11. Under section 3(2)(a)(i) of FOISA, information is only held by an authority for the purposes of FOISA if it is held otherwise than on behalf of another person. In a situation where one public authority holds information on behalf of another public authority, the decision to release or withhold the information under FOISA remains with the depositing authority.
12. Dr Macdonald understood that SFR had not asked South Lanarkshire Council to release any relevant information held on behalf of SFR. He asked the Commissioner to decide whether SFR or South Lanarkshire Council was responsible for dealing with his request under FOISA, and confirmed that it was for this reason that he was appealing against SFR's refusal to release any more information than the emails already provided to him.
13. Dr Macdonald initially confirmed that he was content for the Commissioner to consider his application only as it related to information held on behalf of SFR within premises or on equipment belonging to, leased by, or otherwise controlled by South Lanarkshire Council. However, after further information relating to his request emerged, he asked the Commissioner to include any relevant information similarly held by North Lanarkshire Council on behalf of SFR. As Dr Macdonald's application for a decision had referred to "information which may or may not be held on behalf of SFR by its member Councils", this request was accepted.
14. The application was validated by establishing that he had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

15. On 16 February 2008 Dr Macdonald confirmed to the investigating officer that the key issue, from his perspective, was whether or not there was any correspondence between the named Councillor from South Lanarkshire and any of the SFR Management Team. Accordingly, the investigation into his decision initially focussed on this question. As already noted, Dr Macdonald was content that SFR had sought to provide him with any information physically in its possession, but queried whether other relevant information was held on behalf of SFR by South Lanarkshire Council.
16. On 26 February 2008 the investigating officer contacted SFR, providing SFR with a copy of Dr Macdonald's application to the Commissioner and inviting comments on the application as required by section 49(3)(a) of FOISA.
17. SFR was asked for its views on whether the named member of South Lanarkshire Council was acting in a private capacity or on behalf of SFR in any exchange of correspondence which fell within the scope of Dr Macdonald's request, and whether any such correspondence was now held by South Lanarkshire Council on behalf of SFR. Aside from the question of ownership, SFR was asked whether it was aware of any correspondence which would fall within the scope of Dr Macdonald's request. SFR was also asked about the relationship between the Board and its constituent Councils, and the terms on which Councillors are appointed as Board members.
18. SFR replied on 14 March 2008. It advised that it was not aware of the existence of any relevant correspondence from the named Councillor, and considered that the question as to whether the Councillor had been acting in a private capacity would depend upon the content of the correspondence, were it found to exist. It noted that South Lanarkshire Council understood that neither the Clerk to the Board nor the Councillor had the requested information.
19. SFR provided information about the statutory basis on which Councillors are appointed to the Board. It explained that South Lanarkshire Council provides support services to the Board, in particular the appointment of a Clerk and Treasurer. SFR provided a copy of the Mid and South Western Combined Fire Services Area Administration Scheme Order 1995, and advised that Councillors are appointed to the Board on the terms set out in Paragraphs 4 to 12 of that Order.
20. On 2 April 2008 Dr Macdonald asked for the Commissioner's investigation and decision to be widened to include information covered by his request to SFR but held on premises or equipment owned, leased or otherwise controlled by North Lanarkshire Council. On 4 April 2008 Dr Macdonald advised that he was interested in emails or letters exchanged between the four North Lanarkshire Councillors who sat on the Joint Board during the period 22 June – 30 September 2006, particularly in relation to a named Councillor who was then Convenor of the Board.



21. SFR was advised that Dr Macdonald had asked the Commissioner to widen the scope of his investigation, and that this was permitted by the terms of his application to the Commissioner.
22. On 16 April 2008 SFR confirmed that it was unaware of any information which would fall within the scope of Dr Macdonald's request and which was held on behalf of SFR by North Lanarkshire Council.
23. Enquiries were also made to South and North Lanarkshire Councils. Both Councils carried out searches on their email systems and servers but advised that no trace of any relevant email communication had been found. (North Lanarkshire Council searched only for correspondence involving the Councillor who was the subject of Dr Macdonald's particular interest.) Details of the searches carried out by North and South Lanarkshire Councils are found in other decision notices relating to Dr Macdonald's requests.¹

Commissioner's analysis and findings

24. The Commissioner has found no evidence that any information covered by the terms of Dr Macdonald's requests is held by any of the parties involved.
25. The Commissioner is satisfied that SFR has conducted adequate searches of the records available for searching; that is, the records of correspondence to and from the members of its management team. The Commissioner notes that Dr Macdonald has accepted that SFR has made available to him any information which it holds on its own systems.
26. Regarding email correspondence sent by Councillors serving on the Board, the Commissioner notes that North and South Lanarkshire Council have carried out searches of the Council-controlled email systems which might have been used by those Councillors, and that no information covered by Dr Macdonald's requests was retrieved.
27. The Commissioner is therefore satisfied that no information covered by Dr Macdonald's requests to SFR is held by any of the Scottish public authorities involved or associated with the correspondence in question.
28. The Commissioner notes that in his application for a decision Dr Macdonald asked him to resolve the issue of whether information is held "on behalf of" SFR by any of its member Councils, and in particular whether this would apply to emails sent by a Councillor serving as a member of the Board.

¹ Decision 127/2008 Dr Gordon Macdonald and South Lanarkshire Council and Decision 129/2008 Dr Gordon Macdonald and North Lanarkshire Council.



29. However, given that after extensive searching no relevant information has been found to exist, the Commissioner does not find it necessary on this occasion to consider whether such information would be held by the Councils in their own right as Scottish public authorities or “on behalf of” SFR, in terms of section 3(2)(a)(i) of FOISA (see paragraph 11). On the basis of the evidence available, the Commissioner found that it could be demonstrated that SFR (on behalf of the Board) had complied with Part 1 of FOISA in dealing with Dr Macdonald’s requests, and it was not necessary to consider further whether information would or would not have been held on behalf of SFR by the Councils.

DECISION

The Commissioner finds that Strathclyde Fire Board acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Dr Gordon Macdonald.

Appeal

Should either Dr Macdonald or Strathclyde Fire Board 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Investigations
30 September 2008



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.

3 Scottish public authorities

...

- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-
 - (a) by the authority otherwise than-
 - (i) on behalf of another person; or

...

...