

Decision Notice



Decision 009/2009 Ms Jean Kesson and Glasgow City Council

Workforce Pay and Benefits Review

Reference No: 200800820

Decision Date: 6 February 2009

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Summary

Ms Kesson submitted a request to Glasgow City Council (the Council) for information relating to the Workforce Pay and Benefits Review (WPBR) it had carried out. In responding to Ms Kesson, the Council maintained that it did not hold information which would address one of her requests, while advising that information which would address the other request was otherwise accessible to Mrs Kesson and therefore exempt under section 25(1) of FOISA. Following a review in which the Council upheld its original decision, Ms Kesson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Ms Kesson's requests for information in accordance with Part 1 of FOISA by failing to locate certain information that was relevant to her requests and advise her of it. He required the Council to respond to Ms Kesson in relation to this information in one of the ways permitted by Part 1 of FOISA. He also required the Council to provide certain background information to Ms Kesson in line with its duty under section 15 of FOISA. Finally, he found that the Council had been correct to rely on section 25(1) of FOISA for certain information which was accessible on its intranet.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 15 (Duty to provide advice and assistance); 17(1) (Notice that information is not held) and 25(1) (Information otherwise accessible)

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 28 February 2008, Ms Kesson wrote to the Council to request the following information:
 - a. All recorded information relating to the Education Department's HR team's advice, both to individuals and groups, on proper conduct and record keeping in the WPBR
 - b. All recorded information relating to the measures for monitoring and advising used by the corporate HR team to ensure consistency across the Council in WPBR.



2. The Council responded on 27 March 2008. Within its response, the Council advised that it did not hold any information which would address Ms Kesson's first request. The Council also advised Ms Kesson that information which would address her second request was otherwise accessible to her under the Council's publication scheme (via its intranet site, to which it provided a relevant link) and as such it was relying on section 25(1) of FOISA.
3. Ms Kesson wrote to the Council on 3 April 2008 requesting a review of its decision. In particular, Ms Kesson drew the Council's attention to her view that it could be inferred from certain information available on the Council's website that the Council should hold information which would address the first part of her request. Ms Kesson also advised that she was dissatisfied with the Council's response to her second request as she could not find any reasonably accessible information on the Council's website referring to how the Corporate HR team monitored the work of those conducting the WPBR exercise or advised them on how the records should be kept.
4. The Council notified Ms Kesson of the outcome of its review on 30 April 2008. In responding to Ms Kesson's request for a review, the Council upheld its original decision that it did not hold any information that would address her first request, and also continued to rely on section 25(1) of FOISA for information that would address the second request.
5. Ms Kesson wrote to the Commissioner on 4 June 2008, stating that she 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 Ms Kesson had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.

Investigation

7. The investigating officer wrote to the Council on 1 July 2008, 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 justify its contention that certain information was not held (with reference to the steps it had taken to establish this) and to provide an overview of how the information Ms Kesson requested in her second request would be otherwise accessible to her, and where relevant to provide links to where that information could be accessed and details of any assistance given to her with a view to accessing it.
8. A full response was received from the Council on 1 August 2008. Further communication was entered into with the Council regarding the adequacy of searches that it carried out to determine whether it held any relevant information. The Council's arguments will be considered in more detail in the Commissioner's analysis and findings section below.



Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions and other information presented to him by both the Council and Ms Kesson and is satisfied that no matter of relevance has been overlooked.
10. As indicated previously the Council has argued that it does not hold the information Ms Kesson asked for in her first request, and has relied on section 25(1) of FOISA for information which would address the second request.

The first request – section 17 of FOISA

11. In her application to the Commissioner, Ms Kesson expressed her dissatisfaction with the response from the Council as she believed it could be inferred from certain of the information she had accessed on the Council website that the information which would address her first request must exist and that relevant records must have been kept by the Council.
12. In order to determine that the Council was justified in advising Ms Kesson that no information was held which would address her first request, the Commissioner must be satisfied that at the time the request was received the Council did not hold information which would meet that request.
13. In its submissions to the Commissioner, the Council advised that it had carried out searches of certain personal paper files it considered might hold information relevant to Ms Kesson's first request but had found no relevant information. The Council also advised that all information from the WPBR was filed in folders in accordance with job titles. It submitted that it had searched in the relevant files but identified no information in these searches which fell within the scope of this request. The Council also explained that its Education Department had advised that no other department within the Council would hold information relating to the request: the request was specific to information relating to the Education Department and therefore no Council-wide searches had been carried out in relation to it.
14. The Council also carried out searches of its electronic systems to ascertain if any relevant information was held. The Council provided details of the searches it carried out on its electronic systems, including the keywords used with a view to identifying the information. These searches were carried out on both the P Drive (shared) and H Drive (personal) of the Council's systems. The Council stated that it found one relevant email on the P Drive and had since provided a copy of this to her. The Council identified nothing relevant on the H drive.
15. The Council submitted that during its searches of electronic files no other relevant information had been found. It had intended to carry out a search of its Education Exchange Server in an effort to determine whether any relevant information was held in any Council officer's emails. However, it discovered that its servers had been upgraded in the past few months and that as a consequence such a search would require new computer software.



16. The Council also explained that a particular member of staff had been asked to search their home computer and had confirmed that they did not hold any relevant information.
17. The Council also responded to Ms Kesson's assertion that certain of the information recorded in the "Allocators Guide" (in relation to the responsibility of the HR team in each service for monitoring and advising on proper conduct and record keeping within their service) suggested that the Council must hold information covered by the first request.
18. In its response, the Council explained that the wider HR team in Education Services had not been involved in the job allocation process, which had been the responsibility of two senior officers responsible for HR with a seconded officer managing record keeping. The Council also provided an explanation of the form the monitoring and record keeping had taken (on a form provided to individual employees or their nominated representatives), and of the guidance used (which had been produced at a corporate level).
19. Following a request from the investigating officer, the Council's Internal Audit Department carried out further searches to determine whether any other recorded information was held which would address the first request. The Council has submitted that the cost of carrying out these additional searches exceeded the £600 limit prescribed (for the purposes of section 12(1) of FOISA) in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004.
20. Having carried out additional searches, which included searches of both paper and electronic files, the Council's Internal Audit Department identified further information. The Council advised the Commissioner that its Internal Audit Department has taken the view that these documents did not directly answer Ms Kesson's request, and that it sought to reserve its position as to their release.
21. Having considered this additional information, the Commissioner is of the view that documents 19, 30 and 34 contain information which would be relevant to Ms Kesson's first request, and which was held by the Council at the time that request was received. He accepts, following the Council's additional searches, that adequate steps have been taken to locate any information that would address the first request. He is also satisfied that the one relevant email the Council located during its original searches has now been provided to Ms Kesson. However, he also notes that the Council holds (and held at the time of the request) a form used to record the matrix scores arising from the allocation process, incorporating guidance on completion. He cannot, therefore, accept that the Council was correct to notify Ms Kesson it did not hold any information falling within the scope of her first request.
22. The Commissioner therefore requires the Council to consider the information in this form and in documents 19, 30 and 34 and to respond to Ms Kesson in relation to this information in one of the ways permitted by Part 1 of FIOSA.



Consideration of the application of section 25(1) of FOISA

23. The Council relied on section 25(1) of FOISA for information which would address Ms Kesson's second request. Section 25(1) states that information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information. This is an absolute exemption in that it is not subject to the public interest test contained in section 2(1)(b) of FOISA. In determining whether the Council was correct to rely on section 25(1) of FOISA, the Commissioner must be satisfied that the information in respect of which the Council has relied on this exemption is information the Council held at the time of which would address the second request.
24. The Council withheld from Ms Kesson the information it believed would answer her second request, on the basis that the information was available on its intranet site and therefore otherwise accessible to Ms Kesson as a Council employee. The Council submitted that the information available on its intranet site was all the recorded information it held which would address the second request. In its responses to Ms Kesson, the Council provided links to enable her to access this information.
25. In her submissions to the Council and the Commissioner, Ms Kesson argued that the links provided by the Council to enable her to access this information did not take her to the information she required. She commented on all of the documents referred to by the Council, and in each case made it clear that these did not contain the information she required. However, she inferred from the content of the Council's responses to "frequently asked questions" on the intranet site that there were monitoring measures being used to ensure consistency across the Council in the WPBR, and consequently that there should be information about that monitoring held somewhere within the Council.
26. It is clear from reading Ms Kesson's application and submissions that she has been through all of the information the Council considers is relevant to her request (i.e. what is available on the intranet site), and that she has found nothing which in her opinion addresses her second request.
27. Having considered the information to which the Council directed Ms Kesson (which has been copied to him, as it existed at the time Ms Kesson was directed to it), the Commissioner accepts that there is information there which would address the second part of Ms Kesson's request. In particular, information held in the "Communications Library" relates to the measures used by the Corporate HR Team for advising on the WPBR to ensure consistency across the Council. Certain of the newsletters and "Insider" magazine articles reproduced on its intranet site were prepared by the Head of Corporate HR and contained advice on what was being done within the Council for WPBR and also certain of the measures used by particular teams and groups set up to monitor to ensure consistency across the Council. The Commissioner has accessed all of the relevant information then on the intranet site, including that in the "Communications Library", and accepts that there is information there (undoubtedly held by the Council at the relevant time) addressing the second part of Ms Kesson's request.



28. Ms Kesson made particular reference to an article which appeared in the October 2006 edition of the Council's "Insider" magazine, which indicated that the Council had reviewed, challenged and validated the decisions from the Job Family Allocation Process (i.e. the exercise she was concerned about). In Ms Kesson's view, this clearly demonstrated that some form of monitoring had been carried out (and therefore that information about it must be held) and she concluded from the article that there must have been protocols to do with monitoring, record-keeping and conduct if the process of review, challenge and validation had indeed been carried out. There is certainly information in this and other documents on the intranet site describing how the process was carried out. The Commissioner also recognises that there are copies of various procedures and guidance notes available on the Council's intranet site which also address this part of Ms Kesson's request, including certain documents on the implementation of the Job Family Allocation Process.
29. In considering the application of section 25(1) of FOISA to withheld information, the Commissioner can take into account the particular circumstances of the applicant in determining whether the information is reasonably accessible to them. At the time Ms Kesson submitted her request and request for review to the Council, and when the Council responded to these requests, Ms Kesson was an employee of the Council and as such would have had access to the Council's intranet site.
30. Having considered the information in respect of which the Council relied on section 25(1) of FOISA, the Commissioner accepts that this information, which was accessible to Ms Kesson as a Council employee at the time she submitted her request for information and her request for a review, was recorded information held by the Council which addressed her second request. As a consequence, the Commissioner is satisfied that the Council has correctly applied the exemption in section 25(1) to the information in question.
31. As indicated at paragraphs 19 and 20 above, following a request from the investigating officer, the Council carried out further searches to determine whether it held any other recorded information which was relevant to Ms Kesson's requests. In doing so, the Council's Internal Audit Department identified other recorded information which was held by the Council. The Commissioner is satisfied that these additional searches were adequate in the circumstances.
32. As indicated above, the Council has indicated that it would seek to reserve its position as to the release of these documents, which it does not believe to be of direct relevance to Ms Kesson's requests.
33. Having considered the additional information that the Council has identified, the Commissioner is of the view that certain of the documents do contain recorded information which was held by the Council at the time of Ms Kesson's requests and which would address her second request. The Commissioner considers that documents 1 (Evaluation tool and modernised pay structure documents only), 3 (Appendix 2 and Appendix 3 only), 7, 8, 9, 10, 11, 12, 17 (*Unison item 2* only), 24, 25, 26, 32 (points 4 and 5 only) and 33 (points 2 and 3 only) all contain relevant information.



34. The Commissioner is also satisfied that certain other information in documents 19 and 20 (documents entitled “Extended Key Principles of Pay, Grading and Benefits Package” only) does relate to the subject matter of Ms Kesson’s second request. While some of the information in these documents is the same as that which Ms Kesson had access to on the Council’s intranet site, the Commissioner notes that there is additional information in these documents which would be of relevance to Ms Kesson’s second request. The Commissioner therefore requires the Council to reconsider the information identified in this and the preceding paragraph and to respond to Ms Kesson in relation to it in one of the ways permitted by Part 1 of FOISA.
35. Overall, the Commissioner is surprised that so little relevant information was identified by the Council in response to Ms Kesson’s information request and request for review, and is concerned that it is only as a result of his investigating officer’s request that further searches be carried out by the Council that this information has been identified, and that these documents all contain recorded information which was held by the Council at the time of Ms Kesson’s request for information and her request for a review. It is important that when a Scottish public authority receives a request for information that it carries out thorough searches to identify whether any relevant information is in fact held.

Consideration of section 15 of FOISA

36. Having considered the Council’s submissions along with the other information provided by the Council for the purposes of the investigation, the Commissioner considers that the provision of certain explanations would have assisted considerably in developing Ms Kesson’s understanding of the issues underlying her second request, and consequently that these explanations should have been provided in pursuance of the Council’s duty to advise and assist under section 15 of FOISA. He therefore requires the Council to provide Ms Kesson with the following:
- the explanation offered at point 1.3 in the Council’s submission of 11 August 2008
 - the explanation offered by the Council in the fourth paragraph of the summary document setting out the job allocation process (as provided to the Commissioner with the Council’s submissions of 8 January 2009)
 - an explanation of the role of the Governance Board in the WPBR process.



DECISION

The Commissioner finds that Glasgow City Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the second part of the information request made by Ms Kesson by relying on section 25(1) of FOISA for information which was otherwise accessible to Ms Kesson.

However, the Commissioner also finds that the Council holds further recorded information which would address Ms Kesson's requests, as detailed in paragraphs 21 and 33 above. He therefore requires the Council to respond to Ms Kesson in relation to this information in one of the ways permitted by Part 1 of FOISA.

The Commissioner finds that the Council failed to comply with Part 1 of FOISA in responding to the first part of her request by relying on section 17 of FOISA when the Council does hold recorded information that would address this part of her request.

The Commissioner also finds that the Council failed to comply with Part 1 of FOISA in not complying with its duties under section 15 of FOISA. In order to meet its duties under this section, the Commissioner requires the Council to carry out the steps specified in paragraph 36 of this decision.

The Commissioner requires the Council to take these steps within 45 days after the date of intimation of this decision notice, that is by 23 March 2009.

Appeal

Should either Ms Kesson or Glasgow City 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
6 February 2009



Appendix

Relevant statutory provisions

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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.

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...