

Decision Notice



Decision 098/2009 Mr Mark Irvine and South Lanarkshire Council

Job evaluation procedure and results of job evaluation benchmarking exercise

Reference No: 200801526

Decision Date: 06 August 2009

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Scottish Information Commissioner

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Summary

Mr Irvine requested from South Lanarkshire Council (the Council) certain information relating to a job evaluation process. The Council responded by claiming that it did not hold the information requested, except in respect of one part of the request for which it provided a single-page table of data. Following a review, Mr Irvine remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Irvine's request for information in accordance with Part 1 of FOISA, by conducting sufficient searches of its records and explaining adequately why the table supplied was a standalone document. He did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is not held)

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 23 June 2008, Mr Irvine wrote to the Council, referring to extracts from an article on Single Status in its magazine for staff, and requesting associated information.
2. The first extract (the one relevant for this case) stated:

“The Council's Competence Initiative Framework has been verified in relation to equality factors and our commitment to the Trades Unions was that we would additionally benchmark the results in relation to the national job evaluation scheme”

Mr Irvine requested details of the Council's verification in terms of equality factors and copy of the benchmark results against the national job evaluation scheme.



3. The Council responded on 17 July 2008. It supplied a copy of the benchmark results (a table), which were enclosed with its letter and marked "Appendix 1". It notified Mr Irvine in terms of section 17 of FOISA that it did not hold the information in relation to the Council's verification in terms of equality factors. The Council advised Mr Irvine that a previous Head of Organisational Development at the Council had entered into discussions with the former Equal Opportunities Commission (EOC) about verification, but that no documentation on this was on file.
4. On 18 August 2008, Mr Irvine wrote to the Council requesting a review of its decision on the basis that the information supplied was incomplete. He expressed the view that the benchmark information supplied was incomplete because it was marked "Appendix 1" and that there ought to be some other document to which the table supplied was subsidiary. Mr Irvine also argued that there must be records of correspondence and documentation about the discussions between the Council and the EOC.
5. The Council notified Mr Irvine of the outcome of its review on 9 September 2008. The review upheld the Council's response to the information request in relation to the verification of equality factors and explained the searches which had been undertaken for this information.
6. On 19 October 2008, Mr Irvine wrote to the Council. He again raised the issue of the table of benchmarked jobs supplied to him, and sought a substantive document to which he argued it must have been appended. He noted that the Council's letter of 9 September 2008 did not address this point.
7. On 20 October 2008, Mr Irvine 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. He argued that the Council must hold further information which had not been provided to him, and that the table of benchmarked posts must have been part of another, larger document which he had not received.
8. On 24 October 2008, the Council replied to Mr Irvine's letter dated 19 October 2008, upholding the Council's previous position that the table marked "Appendix 1" was only so marked because it was appended to its covering letter to Mr Irvine. It did not refer to another document. This letter has been taken by the Commissioner to constitute the response to the request for review made by Mr Irvine on 18 August 2008 in respect of the table marked "Appendix 1".
9. Mr Irvine wrote a letter to the Council dated 28 October 2008 challenging its stance in relation to the table marked "Appendix 1". Mr Irvine remained dissatisfied with the Council's responses, and he confirmed this in his letter to the investigating officer dated 9 February 2009.
10. The application was validated by establishing that Mr Irvine 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

11. On 5 December 2008, the Council was notified in writing that an application had been received from Mr Irvine. The investigating officer gave the Council an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, and to advise what searches were made for the information requested.
12. The Council provided a detailed response by letter dated 12 January 2009, explaining amongst other things why the information requested was not held and the searches which it had conducted. The Council advised that the table of benchmark results supplied to Mr Irvine was a free-standing document and "Appendix 1" only referred to its covering letter.
13. During the course of the investigation, both parties expressed differing views on the interpretation of the information request, and also as to whether information was held in relation to the verification of equality factors. The Council argued that its interpretation of the request had been reasonable, but Mr Irvine argued that its interpretation was unreasonably narrow.
14. During the investigation, a meeting was arranged to allow the investigating officer to better understand the Council's job evaluation process and benchmarking and verification processes that were the subject of Mr Irvine's request. The meeting was held on 9 April 2009 at the Council's main offices in Hamilton. The purpose of the meeting was to investigate further several matters relating to certain concerns raised by Mr Irvine. In addition to the investigating officer, four officers of the Council attended the meeting to provide answers to written questions which had been given in advance to the Council by the investigating officer.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner has considered all the available information and the submissions made to him by both Mr Irvine and the Council, and is satisfied that no matter of relevance has been overlooked.
16. In what follows, two matters will be addressed in turn. These are:
 - whether the Council was correct to advise Mr Irvine in terms of section 17 of FOISA that it did not hold information relating to the Council's verification in terms of equality factors, and
 - whether the provision of the table that the Council maintained set out the benchmarking results (against the national job evaluation scheme) fulfilled the second part of Mr Irvine's request.



Details of the Council's verification concerning equality factors

17. The Council responded to this part of Mr Irvine's request by informing him in terms of section 17 of FOISA that it did not hold relevant information. It explained that the verification process had involved discussion with the (then) EOC, but no records had been identified in relation to this process.
18. Section 17(1) of FOISA requires that where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that it does not hold the information.
19. In order to determine that the Council was correct to rely on section 17(1) of FOISA, the Commissioner must be satisfied that the Council did not, at the time of Mr Irvine's request, hold the information in question.
20. When he requested a review, Mr Irvine indicated that he believed that there must be records relating to these discussions with the EOC. However, during the Commissioner's investigation, he presented a different argument, maintaining that the verification process to which his information request referred should include more than solely the Council's involvement with the EOC, which in his view was a diversion from other issues.
21. At this stage, Mr Irvine's comments suggested that the table of benchmark results was the outcome of the relevant "verification process", which might have taken various forms – internal, external or a combination of both. He noted that his request had made no reference to discussions with the EOC. He maintained that the Council did hold further details of its verification in terms of equality factors, and that this information revolved around the data input and data output of the job evaluation process.
22. Mr Irvine argued that a reasonable interpretation of this part of his request would encompass additional information held by the Council relating to the job evaluation process. He submitted that it was self evident that the verification process covered much more than discussions with the EOC, not least because he had no such knowledge of such discussions and did not mention the EOC when submitting his request.
23. The Council rejected this argument. It noted that Mr Irvine's request referred to the Council's magazine article, in which it maintained that it was advising employees that the EOC was satisfied with its Competency Initiative Framework. In this context, the Council maintained that its interpretation of Mr Irvine's request as relating to all information relating to that "verification" with respect to the EOC was reasonable.
24. The Council also indicated that the meeting with the EOC had probably taken place around 1996/97 and that, despite careful searches, nothing could be found. The Council explained that the employees involved in the discussions with the EOC had left the Council subsequently.



25. The Council also explained the process of benchmarking that produced the table provided to Mr Irvine in response to his request for the outcome of the benchmarking against the national job evaluation scheme. It explained that this process involved the evaluation of certain posts using that scheme (using software known as “Gauge”). The value of the exercise was in the comparison of the rank orders to ensure consistency between the Council’s scheme and the national scheme and, in particular, that the job of any employee would not have been ranked lower under the Council’s scheme than had the national scheme been used.
26. The Council explained that the information inputted into Gauge was responses to a series of multiple choice questions, which would lead the software to award points to a post. The outcomes of this process were then listed in rank order. The Council confirmed that the evaluations themselves were held within the Gauge software. However, the Council did not accept that such information would fall within the scope of Mr Irvine’s request for details of its verification in terms of equality factors.

Interpretation of the request

27. Answering the question of whether the Council was correct to respond to Mr Irvine in terms of section 17 of FOISA first requires the Commissioner to determine whether it interpreted the request reasonably. If it should have been interpreted more widely, as Mr Irvine suggests, then it is clear that relevant information may be held by the Council.
28. In this case, the wording of Mr Irvine’s request was prompted by the particular wording used in the Council’s magazine article. As noted above, this states

“The Council’s Competence Initiative Framework has been verified in relation to equality factors **and** our commitment to the Trades Unions was that we would **additionally** benchmark the results in relation to the national job evaluation scheme” (emphasis added)
29. While the article does not specifically refer to the EOC, the Commissioner notes that its terms do clearly suggest that the process of verification in terms of equality factors was distinct from the process of benchmarking. In this context, the Commissioner believes it is untenable to argue that the “verification” should be construed so widely that it would relate to all aspects of the benchmarking or job evaluation process.
30. The Commissioner’s conclusion is that the Council’s approach of interpreting Mr Irvine’s request to refer to the EOC’s involvement was reasonable in all the circumstances. The Commissioner considers that the wording of Mr Irvine’s request, particularly of the pivotal word “verification”, construed in the light of all the circumstances would be unlikely to cover wider information relating to the benchmarking process, such as input and output data as Mr Irvine contended.

Information not held

31. Having accepted that the Council’s interpretation of Mr Irvine’s request was reasonable, the Commissioner has considered whether it was correct to assert that no information was held relating to the process of verification involving the EOC.



32. The Council explained that the following paper files were searched for relevant information:
- Single Status letters/Committee Reports
 - Grading and Job Evaluation Background
 - Job Evaluations – Competence Initiative Training
 - Equal Pay/Competence Initiative Background
 - Equal Pay
33. The Council explained that it had searched for recorded information in all electronic files related to Equal Pay held on the Local Area Network and archived e-mails.
34. The Council advised that its records retention policy (which was applicable at the time of the information request) did not require any records of destroyed material to be kept, nor certificates of destruction, and the Council was therefore unable to confirm whether any relevant information previously held might have been destroyed.
35. The Commissioner is satisfied that the Council has undertaken reasonable searches and accepts that, after the passage of several years since the apparently informal involvement of the EOC, and the departure of key relevant staff who were involved in that, any information on this which was previously held is no longer held.
36. The Commissioner understands Mr Irvine's arguments that the Council might be expected to keep and to be able to provide the information sought, and he agrees that it might be expected that records would be retained in relation to a process that was sufficiently important to merit reference in a Council magazine article explaining employment related matters to its staff. However, the Commissioner's task in this case is to establish whether information is held, rather than to suggest that particular information should be held or retained.
37. The Commissioner accepts that the Council's attempts to find the information concerning its verification in terms of equality factors were reasonable, both at the time of the request and subsequently, and that they were genuine and sufficiently thorough. He concludes that the Council took all reasonable steps to establish whether any information was available, and that the Council was correct to inform Mr Irvine that it did not hold the information in terms of section 17(1) of FOISA.

Benchmarking results

38. The second part of Mr Irvine's request sought a copy of the benchmarking results against the national job evaluation scheme. In its response, the Council advised that, in partnership with its trade unions, it had identified posts to be benchmarked against the National Job Evaluation Scheme. It stated that the benchmark results were enclosed. The Council's letter enclosed a table headed "Benchmarked Posts"; the page was also headed "Appendix 1".



39. In his request for review, and throughout the investigation, Mr Irvine argued that the table supplied to him could not, in his view, constitute a standalone document, and that the context and the words “Appendix 1” at the top must mean that it was part of another, larger document, to which he considered he had wrongly been denied access by the Council.
40. During the investigation, the Council provided explanation of the background to this document and the process and context of the job evaluation process.
41. The Council supplied a copy of a document which described a procedure for benchmarking, and it explained the process, as set out in paragraphs 25 and 26 above. From this, it appears likely that any records likely to be generated by the process described and falling within Mr Irvine’s information request would be limited. While the input and output data were held in the Gauge software, the Commissioner understands the “results” of that benchmarking process to be the list of posts along with allocated scores, as provided to Mr Irvine.
42. The Council reiterated throughout the investigation that no other document was linked with this one, explaining that it was titled “Appendix 1” in the letter to Mr Irvine to differentiate it from other enclosures with that letter, which it explained were titled “Appendix 2” and “Appendix 3”.
43. The Commissioner observes that, even if the table in question had been subsidiary to another document as Mr Irvine argued, the wording of the information request in this respect was reasonably interpreted by the Council as referring only to the results as presented in the table in question.
44. The Commissioner has concluded on balance that the table in question was likely to be free-standing and that it was not originally appended to another document. Even if it had been part of another document, the Commissioner considers the table alone to fulfil Mr Irvine’s request for a copy of the benchmark results. The Commissioner has therefore concluded that there was no breach of Part 1 of FOISA in the Council’s response to this part of Mr Irvine’s request.

DECISION

The Commissioner finds that South Lanarkshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Irvine.



Appeal

Should either Mr Irvine or South Lanarkshire 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
06 August 2009



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.

...