

Decision Notice



Decision 138/2010 Ms Michelle MacRae and Dundee City Council

Complaints procedure and customer service policy

Reference No: 201000909

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Summary

Ms Michelle MacRae requested from Dundee City Council (the Council) the Council's complaints procedure and customer service policy for responding to letters or questions. The Council indicated that it did not hold any customer service policy for responding to letters or questions, and directed Ms MacRae to its complaints policy online. Following a review, Ms MacRae 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 MacRae's request for information in accordance with Part 1 of FOISA. She was dissatisfied that the information had not been provided, and that the Council had assumed that she had internet access (and so could access the complaint policy online), when she did not.

The Council complied with section 17(1) of FOISA by advising Ms MacRae that it does not hold the requested customer service policy. The Council failed to comply with section 1(1) of FOISA as it did not provide Ms MacRae with a copy of its complaints procedure or notify her it was exempt under Part 2 of FOISA. The Council's response to Ms MacRae also failed to comply with the technical requirements of sections 16(1) and 19 of FOISA.

During the investigation, the Council provided a printed copy of the complaints procedure to Ms MacRae. As a result, the Commissioner does not require the Council to take any further remedial action in response to this decision. However, the breaches of FOISA that have been identified in this decision have been noted and will inform an assessment of the Council's practice in responding to requests for information that is scheduled to take place later in 2010.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 8 (Requesting information); 16(1) (Refusal of request); 17(1) and (2) (Notice that information is not held); 19 (Content of certain notices) 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 10 August 2009, Ms MacRae wrote to the Council requesting a range of information. This decision is concerned only with two parts of this request, which are numbered in what follows line with her letter. These parts sought a copy of the Council's :
 - complaints procedure (part 6) and
 - customer service policy for responding to letters or questions (part 7).
2. The Council responded on 7 September 2009. In response to part 6, the Council indicated that its complaints procedure could be located at a particular weblink. In relation to part 7 of her request, the Council indicated that it did not have a policy on responding to letters or questions but it aimed to reply as promptly as possible.
3. On 18 September 2009, Ms MacRae requested a review of the Council's decision. In particular, Ms MacRae considered that the information she had requested had not been provided to her and that the Council had failed to comply with FOISA.
4. The Council notified Ms MacRae of the outcome of its review on 12 October 2009. The Council upheld its previous response without amendment and concluded that it did not hold any further information.
5. On 23 April 2010, Ms MacRae wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review in relation to parts 6 and 7 of her request solely 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 MacRae 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

7. The investigating officer contacted the Council on 3 June 2010, 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 provide background information and an explanation of its handling of Ms MacRae's information request. The Council responded with the background information requested.
8. The investigating officer requested and received additional submissions from the Council in relation to its policy of responding to letters or questions. The Council also provided Ms MacRae with a hard copy of its complaints procedure on 21 July 2010.



Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Ms MacRae and the Council and he is satisfied that no matter of relevance has been overlooked.
10. The matters considered in this case are primarily technical. The Commissioner first considered whether the Council correctly advised Ms MacRae (in response to part 7) that it did not hold any policy regarding responses to correspondence and questions.
11. He then considered the Council's response to part 6, in the light of Ms MacRae's comments.

Part 7 - Information not held

12. Where a Scottish public authority receives a request for information which it does not hold, it must, in line with section 17(1) of FOISA, give the applicant notice in writing that it does not hold that information. In this instance, the Council notified Ms MacRae on 7 September 2009 that it did not hold any information in response to part 7 of her request (customer service policy on responding to letters or questions).
13. In order to determine whether the Council dealt with Ms MacRae's request correctly, the Commissioner must be satisfied as to whether, at the time it received Ms MacRae's request, the Council held any information which would fall within the scope of that request.
14. In his submissions to the Commissioner on behalf of the Council, a senior Council official explained that he had worked at the Council for many years and was not aware of any Council policy on responding to letters or questions. The Council submitted that it had no general guidance available on responding to letters or questions and if a letter or question was not responded to, it would be up to the individual line manager to deal with.
15. The Commissioner understands that Ms MacRae's request was for a copy of a documented policy on responding to letters or questions. The Commissioner notes that there is no statutory requirement for a public authority to create such a policy, and, after considering the submissions provided by the Council, he is satisfied that the Council does not hold any information that falls within scope of part 7 of Ms MacRae's request. Therefore, the Council was correct to advise Ms MacRae that it did not hold the requested information.
16. Since the Council provided notice to Ms MacRae that it did not hold this information, the Commissioner is satisfied that the Council complied with its obligations under section 17(1) of FOISA.



Part 6 – Complaints policy

17. In response to this request, the Council provided Ms MacRae with a link to information about its complaints policy online. It is not disputed by Ms MacRae that this is the information that she wished to access. However, in her application, she expressed dissatisfaction that the Council's response assumed that she had internet access when she actually did not.
18. The Commissioner notes that Ms MacRae's request for information did not specify the form in which she required the information to be provided to her. However, the fact that this request was made by letter rather than in electronic form might have indicated to the Council that it should not be assumed that Ms MacRae had internet access.
19. Ms MacRae's request for review expressed dissatisfaction with the Council's failure to provide the information she had requested in general terms and referring also to parts of her request that are not considered in this decision. It did not specifically mention that she did not have internet access and so was not able to access the complaints policy online. In the circumstances, the Commissioner accepts that it may not have been obvious to the Council that Ms MacRae had not been able to access the complaints information online.
20. During the investigation, the Council noted that this point had not been raised in Ms MacRae's request for review, but indicated that it would be happy to send a printed copy of this information. It subsequently did so. The Commissioner recognises that once this matter was raised with the Council, it took steps to provide the information in printed form.
21. While Ms MacRae has now received this information, the Commissioner has identified a number of failings in the Council's handling of this request.

Section 1(1) – General entitlement

22. In this case, in relation to part 6 of Ms MacRae's request, the Council's initial response and review response did not disclose any information to Ms MacRae or state that any information was withheld under any exemptions in Part 2 of FOISA. Instead, it directed Ms MacRae on how it could be accessed by members of the public.
23. It is clear from this response, that the Council could have applied the exemption in section 25(1) of FOISA (which applies when the applicant can reasonably obtain the requested information, other than by making a request under FOISA) to this information. However, it did not do so. When asked during the investigation, the Council indicated that it did not intend to apply any exemption to the information about complaints.
24. FOISA requires that where recorded information that is held by a public authority is requested, it is either given to the applicant, or a formal notice is issued specifying the reasons for non-disclosure.



25. As the Council did not give the actual information requested or issue a refusal notice to Ms MacRae advising her that that the information was exempt (in this case under section 25 of FOISA), the Commissioner has concluded that the Council failed to comply with section 1(1) of FOISA.
26. As the Council has now disclosed a copy of its complaints procedure to Ms MacRae, the Commissioner does not require the Council to take any action in response to this failure.
27. The Commissioner notes that the Council's submissions during his investigation specified that it had dealt with Ms MacRae's request as a "business as usual" request and not a request under FOISA. However, Ms MacRae made clear in both her initial request and her request for review that she was requesting information under FOISA. The Commissioner reminds the Council that *any* request for recorded information held by a Scottish public authority which complies with the requirements of section 8 of FOISA is subject to FOISA, whether or not it is framed as such, and the Council is required to respond in line with Part 1 of FOISA.

Section 16 - Refusal of request

28. Section 16 of FOISA sets out what explanation an applicant must be given if a public authority refuses to disclose information in response to an information request. Section 16(1) is set out in full in the Appendix. In terms of section 16(1)(c) and (d), a public authority must specify the exemption it is relying on to withhold the information and, if not otherwise apparent, why the exemption applies.
29. As noted above, the Council's response of 7 September 2009 to Ms MacRae did not indicate that any exemption(s) under Part 2 of FOISA applied to the complaints policy. While it could be inferred from the Council's correspondence with Ms MacRae that the exemption in section 25 *could* have been applied by the Council, it did not do so.
30. Since the Council did not actually give Ms MacRae the complaints policy, the Commissioner considers the Council's response to have had the effect of refusing part 6 of Ms MacRae's request. By failing to specify which exemption entitled it to refuse to supply the information, or why this exemption applied, the Commissioner concluded that the Council failed to comply with sections 16(1)(c) and (d) of FOISA.

Section 19 – Content of certain notices

31. Section 19 of FOISA states that a refusal notice under sections 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 17(1) (information not held)) 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).



32. In her application to the Commissioner Ms MacRae noted that the Council had not advised her of her right of review in its response dated 7 September 2009.
33. The Commissioner notes that the Council's response to Ms MacRae did not include the particulars detailed in paragraph 31. For this reason, the Commissioner has concluded that the Council failed to comply with the requirements of section 19 of FOISA.
34. The Commissioner does not require the Council to take any action with regard to the failures identified above. However, he considers the Council's response fell short of good practice and will note these breaches to inform an assessment of the Council's practice in dealing with information requests that is scheduled to take place late in 2010.

DECISION

The Commissioner finds that Dundee City Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms MacRae.

The Commissioner finds that by advising Ms MacRae that it does not hold information regarding a policy on responding to letters or questions (part 7), it complied with section 17(1) of FOISA. In so doing, the Council complied with Part 1.

In responding to part 6 of Ms MacRae's request, the Council failed to comply with Part 1 and section 1(1) of FOISA as it did not provide Ms MacRae with a copy of its complaints procedure or advise her that this information was exempt from disclosure under Part 2 of FOISA. The Council has since provided a copy of the complaints procedure to Ms MacRae and so the Commissioner does not require the Council to take any action in response to this breach.

The Commissioner also found that the Council's response to both parts 6 and 7 of Ms MacRae's request failed to include the particulars required by section 19 of FOISA. He also found that its response to part 6 failed to comply with sections 16(1)(c) and 16(1)(d) of FOISA.

The Commissioner does not require the Council to take any remedial action in response to this decision. However, the breaches of Part 1 of FOISA that have been identified above will be logged and will inform an assessment of the Council's practice in responding to requests for information that is scheduled to take place later in 2010.



Appeal

Should either Ms MacRae or the 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
11 August 2010



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.

...

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

8 Requesting information

- (1) Any reference in this Act to “requesting” information is a reference to making a request which –
 - (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) states the name of the applicant and an address for correspondence; and
 - (c) describes the information requested.
- (2) For the purposes of paragraph (a) of subsection (1) (and without prejudice to the generality of that paragraph, a request is to be treated as made in writing where the text of the request is –
 - (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.



16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-
- (a) discloses that it holds the information;
 - (b) states that it so claims;
 - (c) specifies the exemption in question; and
 - (d) states (if not otherwise apparent) why the exemption applies.

...

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).