



Scottish Information
Commissioner

**Decision 013/2006 Mr David Keown and West
Dunbartonshire Council**

Request for policy on absenteeism from Nursery Education

Applicant: Mr David Keown
Authority: West Dunbartonshire Council
Case No: 200503301
Decision Date: 1 February 2006

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Decision 013/2006 Mr David Keown and West Dunbartonshire Council

Request for policy on absence from nursery education – request made to authority’s online forum – no response received within 20 working days contrary to section 10(1) – request for review made – authority responded and advised it did not hold the information requested – section 17(1) notice issued

Facts

Mr Keown made a request for information to West Dunbartonshire Council (the Council) via its online Forum. No response was received within 20 working days. Mr Keown requested a review. The Council responded to the request for review and advised that it did not hold the information requested. It issued a notice under section 17(1) of FOISA. Information had been created by the Council in response to Mr Keown’s request. This information was supplied to him.

Outcome

The Commissioner found that the Council partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to respond to Mr Keown’s request for information within twenty working days as required by section 10(1) of FOISA.

The Commissioner does not require the Council to take any remedial steps.

Appeal

Should either the Council or Mr Keown wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.



Background

1. On 24 October 2005 Mr Keown posted a message on the Council's Forum requesting the following information:
 - Does WDC have a policy on absence by pupils from Nursery Education?
2. Mr Keown did not receive a response. On 22 November 2005 Mr Keown posted a further message on the Council's Forum.
3. Mr Keown cited an earlier posting on the Forum (dated 1 July 2005) in which he had asked whether requests for information left on the forum were valid requests for information in terms of the Freedom of Information (Scotland) Act 2002 (FOISA) providing that all the necessary criteria were met for that request. The Council had responded to this query on 6 July 2005 by confirming that this was the case. It advised that a council officer checks the forum on a regular basis and, if he sees a posting that is asking for information, it is forwarded to the relevant department with a reminder that it must be complied with under the terms of FOISA.
4. Mr Keown's email of 22 November 2005 went on to state that he had received no response to his request of 24 October 2005. He asked the Council to carry out a review into its decision not to respond to his request for information.
5. The Council responded to Mr Keown's request for review on 29 November 2005.
6. The Council advised that it had carried out an investigation into why Mr Keown's forum response had not been addressed within 20 working days. It advised that the relevant department had been treating this as a request for general information and not a specific request for documentation under FOISA.
7. The Council advised that in considering the terms of Mr Keown's request it would accept that it did meet the necessary requirements of a freedom of information request. The Council apologised for the manner in which it had failed to deal with Mr Keown's request.
8. The Council confirmed that it did not have a policy on the absence by pupils from nursery education. It was therefore issuing a section 17(1) notice confirming that it did not hold the information requested.
9. The Council advised, however, that on receipt of Mr Keown's forum response the relevant department had prepared a document. This document was prepared on 24 November 2005 subsequent to Mr Keown's request and therefore did not meet the criteria under FOISA. This document was enclosed.



10. The Council indicated that it had noted Mr Keown's comments regarding postings on the forum being FOI requests and suggested this was an oversimplification of the process. The Council accepted, however, that on this occasion Mr Keown's initial request should have been treated as an FOI request.
11. The Council advised that it was putting processes in place to ensure that this oversight did not happen again.
12. Mr Keown applied to the Commissioner for a decision. In subsequent correspondence Mr Keown confirmed that the application should focus on the Council's failure to respond to his initial request for information.

Investigation

13. This case was slightly unusual in that the original request for information had been posted on the Council's Forum. This Forum appears on the Council's website and is described as "our main forum for discussion on any topic relating to West Dunbartonshire."
14. An FAQ on the Commissioner's website advises that:

"The Commissioner takes the view that an email to a discussion group could be a request for information – provided that the email request is received by a public authority."
15. Therefore, the Commissioner has accepted that, theoretically, an email to a discussion group or, as in this case, to an online Forum could be an FOI request.
16. In this particular case, the Council accepted that the posting made by Mr Keown on 24 October 2005 constituted a request for information in terms of FOISA. In the circumstances the Commissioner sees no reason to challenge this although he agrees with the Council that not all postings of this nature will be requests for information in terms of FOISA.
17. Mr Keown's appeal was validated by establishing that he had made a request to a Scottish public authority, and had appealed to the Commissioner only after asking the authority to review its response to his request.



18. The Investigating Officer contacted the Council on 21 December 2005 giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was asked to comment on the issues raised by Mr Keown's case. In particular, the Council was asked to expand on why this occurred and the steps the Council had taken to ensure that this kind of situation did not arise in the future.
19. The Council responded to this letter on 9 January 2006. The Council provided further information about the Forum. It advised that information posted on the Forum is received by the Council Webmaster. The information is then copied on to the Forum Page. If information is required from a specific Department then the Webmaster would copy the request to that Department. If the matter was clearly an FOI request then the Webmaster would highlight that to the Department concerned.
20. The Council advised that the Webmaster would not, as matter of course, pass the email address to the Client Department. The Department would then return to the Webmaster with the information for relevant posting on the Forum.
21. The Council advised that, unfortunately, this case was overlooked. It indicated that the Client Department did not receive an email contact address and therefore did not treat it as an FOI request.
22. In the light of this case, the Council advised that the Webmaster will now forward email addresses to Client Departments and leave them to judge whether or not the request meets the requirements under FOISA.

Decision

The Commissioner finds that West Dunbartonshire Council partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 by failing to respond to Mr Keown's request for information within 20 working days as required by section 10(1). Given that the Council responded to Mr Keown's request for review and the steps it has taken to avoid this kind of incidence happening in the future, the Commissioner does not require the Council to take any remedial steps.

Margaret Keyse
Head of Investigations
1 February 2006

