



Scottish Information
Commissioner

Decision 017/2007 Mr John Rush and Fife Council

Information relating to a court case

Applicant: Mr John Rush

Authority: Fife Council

Case No: 200503347

Decision Date: 29 January 2007

Kevin Dunion
Scottish Information Commissioner

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Decision 017/2006 - Mr John Rush and Fife Council

Two requests for information relating a court case involving the applicant – dispute over the validity of the requests – only one request valid – Section 17(1) information not held

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002: sections 1(1) and 1(3) (General entitlement); 17(1) (Notice that information is not held) and 19 (Content of certain notices); 21(10) (Review by Scottish public authority).

The text of these provisions is reproduced in Appendix I of this decision. The Appendix forms part of this decision.

Facts

Mr Rush submitted two items of correspondence to Fife Council, regarding an ongoing complaint concerning compulsory land purchase orders served by the Council.

The Council did not recognise Mr Rush's correspondence as valid requests under the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner found that, while the Council's failure to recognise Mr Rush's first request was appropriate, its failure to recognise his second was in breach of Part I of FOISA.

The Commissioner also found, however, that the information requested in Mr Rush's second request was not held by the Council.



Background

1. On 15 December 2005 my Office received an application from Mr Rush. This application related to an ongoing complaint with Fife Council (the Council) regarding compulsory land purchase orders served on Mr Rush's late father in 1970 and 1975.
2. While Mr Rush's application was accompanied by correspondence demonstrating that a significant amount of communication had passed between Mr Rush and the Council with regard to this issue, his application did not provide sufficient information to demonstrate that it fulfilled the criteria set out in section 47(2) of FOISA for a valid application.
3. As a result, my staff engaged in correspondence with Mr Rush in an attempt to assist him in identifying information which sufficiently demonstrated the information request and request for review to which his application related.
4. On 3 February 2006, Mr Rush supplied my Office with information which he considered to be appropriate for the validation of his application. The information provided demonstrated that the following correspondence had passed between Mr Rush and the Council in relation to this case:
 - a) Mr Rush had submitted a complaint letter to Fife Council on 8 February 2005, asking various questions regarding to the Council's handling of the compulsory purchase orders. This is transcribed in Appendix 2 of this Decision Notice.
 - b) The Council responded to inform Mr Rush that the matters he had raised had been judicially decided upon, and that it would therefore be inappropriate to comment any further.
 - c) Mr Rush submitted further correspondence on 21 February 2005 which included the following:

"I require a public answer to the following No (5) under the Freedom of Information Act:

(5) For your information – my complaint that I sent your Council on 8th February 2005 i.e. (i) false numbers NT 18079512 and also NT 18029514 – in consideration with correct and honest and true numbers NT 16889519 and also (ii) NT 19049593 – has never been adjudicated in a court of law or by any person – state – power – authority – or person over the past three decades. Please inform me when above (i) and (ii) were judicially decided upon."



- d) The Council's response reiterated that the relevant issues had been judicially decided upon.
 - e) On 11 March 2005, Mr Rush submitted correspondence which was explicitly titled as a requirement for review under FOISA. In this request for review, Mr Rush set out that he required the Council to answer the points raised in his letters of 8 February and 21 February 2005.
 - f) In response, the Council sought clarification from Mr Rush with regard to the specific nature of the information sought.
 - g) Mr Rush's response stated that the information sought in his correspondence of 8 and 21 February was self explanatory and therefore did not require further clarification.
 - h) Various additional correspondence on the above issues subsequently passed between Mr Rush and the Council.
5. In his application to my Office, Mr Rush asserted that his correspondence of 8 and 21 February 2005 contained clear and specific requests, and asserted his firm belief that Fife Council held recorded information which could be provided in response to those specific questions. Mr Rush also expressed his view that Fife Council had been deliberately withholding the information he sought in response to his information requests.
6. Mr Rush's application was validated by my Office. This was done by establishing that Mr Rush had made a request for information to a Scottish public authority, and applied to me for a decision only after asking the authority to review its response to that request. The case was assigned to an investigating officer.

The Investigation

7. Following validation of Mr Rush's application, my investigating officer contacted the Council to request its submissions in relation to this case, in accordance with section 49(3)(a) of FOISA.
8. Relevant submissions were received and reviewed during the course of the investigation.



The Commissioner's Analysis and Findings

9. Mr Rush's requests were submitted as part of a historical dispute with the Council, which relates to his concerns regarding compulsory purchase orders served by the Council on his late father. The issue in question is clearly of great concern to Mr Rush and it is apparent from his submissions that he has been engaged in attempts to resolve this issue for some time.
10. Before proceeding to discuss the substance of the case, however, it is important to note that my remit does not extend to assessing or attempting to resolve Mr Rush's historical complaint with the Council. My remit, as set down by FOISA, requires me to consider only the Council's handling of any requests for information submitted by Mr Rush, and assess whether the Council has acted in accordance with FOISA in dealing with those requests.
11. It should also be noted that the Council has, in its submissions to this Office, disputed whether Mr Rush's correspondence of 8 and 21 February should be considered to be valid requests in terms of FOISA. In doing so, the Council has asserted that Mr Rush's correspondence did not seek access to specific recorded information, but rather contained expressions of opinions, references to legal processes and references to areas of land. The Council points out that, during the course of its correspondence with Mr Rush, it repeatedly attempted to clarify the information sought.
12. Mr Rush, on the other hand, has repeatedly asserted that the information sought in his correspondence of 8 and 21 February was clear and self-explanatory, and required no further explanation or clarification.
13. The primary issue to be considered, therefore, is whether Mr Rush's correspondence of 8 and 21 February should be considered to constitute valid requests for information in terms of FOISA, and should have subsequently been responded to in accordance with that legislation.
14. As set out to Mr Rush by both the Council and my Office in correspondence, FOISA provides access only to recorded information which is held by a Scottish public authority. This is set out under section 73 of FOISA, which states that information means '*information recorded in any form*'. This will include, for example, information which is recorded in a paper or electronic document, and will encompass reports, emails, case files or minutes of meetings. It was also communicated to Mr Rush that the Act does not require authorities to comment on, or explain, past actions (unless information which expressly provides that comment or explanation already exists within a document held by the authority).



15. With regard to Mr Rush's correspondence of 8 February, it is clear from this correspondence that Mr Rush did not explicitly seek access to recorded information held by the Council, but instead appeared to seek comment from the Council in relation to certain opinions held by Mr Rush, such as why the Council had '*kept [him] in a court process for over 30 years*', and why a named individual was "*allowed*" to "*record said notarial instrument fraudulently*". Mr Rush's letter of 8 February was also headed '*Complaint*' and addressed to '*Fife Council's Complaints Procedure*', which clearly indicates that his principal purpose in submitting his correspondence was to register a complaint, as opposed to requesting recorded information.
16. As a result of the above factors, I am satisfied that the Council's failure to respond to Mr Rush's correspondence of 8 February in accordance with FOISA did not constitute a breach of that Act, and the Council's assessment that it should not be processed as a FOISA request was therefore reasonable in the circumstances of this case.
17. Given that I am satisfied that the Council's assessment in this regard was reasonable, it does not fall to me to consider further any aspect of the Council's actions with regard to the correspondence of 8 February.
18. Mr Rush's correspondence of 21 February 2005, however, made explicit reference to FOISA. In doing so, Mr Rush plainly indicated that his purpose in submitting the request was to seek access to information under FOISA.
19. On receipt of this correspondence, it should have been clear to the Council that, regardless of any concerns they may have had with the wording or nature of the request, Mr Rush's intention was to have his communications considered as a request under FOISA. As a result, the Council should have responded to this request accordingly. That is, the Council should have responded to this request for review by either providing relevant information, seeking clarification, informing Mr Rush that the information he sought was not held, seeking to apply a relevant exemption, or declining to deal with the request on another ground permitted by Part 1 of FOISA.
20. In response, however, the Council merely repeated its earlier advice that the matters raised in Mr Rush's letter of 8 February had been judicially decided upon, and that it would therefore be inappropriate for the Council to comment further.
21. The Council's response to Mr Rush's subsequent request for review in relation to the request of 21 February requested clarification from Mr Rush of the specific information sought. In response, Mr Rush's stated that the requests were self explanatory, and there was therefore no need to provide further clarification.



22. The Council's position, in relation to this request, is that it had sought further clarification to enable it to respond, and Mr Rush had subsequently failed to provide that clarification. The Council therefore asserts that its failure to respond further was appropriate in terms of FOISA. Mr Rush, on the other hand, is clearly of the opinion that his information request of 21 February required no clarification.
23. While I have some sympathy with the issues that the Council has faced in responding to Mr Rush's correspondence generally, I am of the view that the Council should, nevertheless, have issued a response to Mr Rush's request for review which was consistent with its obligations under FOISA.
24. While it is true that FOISA does, under section 1(3), provide that authorities are not obliged to respond to an information request in circumstances where they have reasonably requested clarification and that clarification has not been forthcoming, it should be noted by the Council that section 1(3) relates to an authority's response to an initial request, as opposed to its response to a request for a review.
25. In relation to a request for review, while an authority will naturally be entitled to seek equivalent clarification, a failure to provide such clarification does not automatically relieve the authority of its obligation to respond. Indeed, in such circumstances an authority will normally be obliged to issue a formal response, regardless of whether or not full clarification has been provided.
26. Following a review of Mr Rush's request of 21 February, it is also clear that the general nature of the information which Mr Rush is seeking can be established from the request. While it is true that he does not expressly request copies of named documents or files, it is also clear that he is seeking details of when court cases which decided upon matters concerning the co-ordinates provided had occurred. In response to such a request, it would be appropriate for the Council to review its relevant internal systems in order to establish whether it held information which might be provided in response to Mr Rush's request.
27. It should be noted that the Council did, following subsequent communications with my Office, conduct such a review of its internal systems. As a result of this review, the Council concluded that, at the time of Mr Rush's initial request, it held no identifiable information which related to relevant legal cases involving Mr Rush (or indeed any information which related to Mr Rush's complaint with regard to the compulsory purchase orders, other than the correspondence received on or after 8 February 2005 in relation to the matters considered in this decision).



28. During these communications, the Council also confirmed that it had, using an external legal search engine, identified a judicial decision involving the Council's predecessor (Fife Regional Council) and Mr Rush (Rush v Fife Regional Council; 1994 S.C. 104). The Council also stated, however, that, as this decision dated from 1993, any records which might have been held by the Council relating to the decision had been destroyed. The Council added that this destruction would be consistent with its records retention policy of maintaining such records for 10 years.
29. Having considered the searches undertaken by the Council, I am satisfied that these searches were appropriate in the circumstances, and that no relevant identifiable information was held at the time of Mr Rush's request which could be provided in response to that request.
30. I am therefore of the view that the Council should have responded to Mr Rush's request for review by issuing a notice under section 17(1) of FOISA, and in failing to do so the Council breached Part I of that Act.
31. I also note that the Council did not inform Mr Rush of his right of application to the Council (for a review) and thereafter to me, as required by section 19 of FOISA, in response to his initial request of 21 February, or of his right of application to me and thereafter to the Court of Session, as required by section 21(1) of FOISA, in response to his request for review of 11 March 2005.

Decision

I find that the Fife Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in its assessment that Mr Rush's correspondence of 8 February did not constitute a valid information request for the purposes of FOISA.

I also find, however, that the Council breached Part 1 of FOISA in relation to the following areas, with regard to its handling of Mr Rush's request of 21 February 2005:

- Failure to issue a notice under section 17(1) in response to Mr Rush's request.



- Failure to inform Mr Rush of his right of application to the Council and thereafter to me, as required by section 19 of FOISA, in response to his initial request of 21 February, or of his right of application to me and thereafter to the Court of Session, as required by section 21(10) FOISA, in response to his request for review of 11 March 2005.

I also find that the review of internal systems carried out by the Council to identify relevant information following the commencement of the investigation by my Office was appropriate in the circumstances of this case, and therefore I am satisfied that the information requested by Mr Rush was not held by the Council.

I do not require the Council to take any action as a consequence of this decision.

Appeal

Should Mr Rush or Fife Council wish to appeal against this decision, there is a right of 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.

Kevin Dunion
Scottish Information Commissioner
29 January 2007



Appendix I

Relevant Statutory Provisions

The 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) If the authority-

(a) requires further information in order to identify and locate the requested information; and

(b) has told the applicant so (specifying what the requirement for further information is),

then, provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

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).

21 *Review by Scottish public authority*

[...]

(10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.



Appendix 2

Mr Rush's correspondence of 8 February 2005:

"To Fife Council's Complaints procedure,

- (i) Complaint*
- (ii) Cause for serious public concern*

Dear Sirs/Madams,

(1) Re above (i) complaint – I have today received a letter dated 7 February 2005 – from the Scottish Public Services Ombudsman – 4 Melville Street, Edinburgh – advising me to forward my complaint to your Council.

(2) I shall be glad to hear from you and to learn why your Council has kept me in a court process for over 30 years on the (A) false numbers O.S. Ref. – NT 19079512 "purportedly" stated in encl. map referred to in the Fife County Council (Glencraig) Compulsory Purchase Order 1970 – served by your predecessors on my late father James Rush.

(3) I shall also be glad to hear from you – and to learn why your Council has kept me in a court process for over 30 years on the (B) false numbers O.S. Ref. – NT 18029514 "purportedly" stated in encl. map referred to in the Fife County Council Glecraig (NOI) Compulsory Purchase Order 1975 – served by your predecessors on my late father James Rush.

(4) The correct and honest numbers being on the encl. (C) revised Ordnance Survey scale 1:2500 or 25.344 inches to 1 mile (1961) NT 16889519 and also NT 19049593 respectively.

(5) I also encl. (D) the Courier dated July 10th 1970 and the encl. (E) Courier dated 25th March 1971 – which both state i.e. Grid Reference 18079512 – respectively.

(6) I also encl. (F) The Courier dated April 10th 1975 and the encl. (G) Courier dated 4th May 1976.

Which above (F) and (G) – do not mention above false numbers NT 18029514 – why? (i.e. no numbers mentioned)?



(H) Further why was [Name Provided] allowed by your Council to record said notarial instrument fraudulently – registered by [Name Provided] on behalf of your predecessors – the Fife Regional Council – who are vicarious liable – in the General Register of Sasines – County of Fife – presented and recorded – 28th November 1991 – (A blatant attempt by third parties to change valid title deeds by fraudulent claims) where it is started at page first of said fraudulent document – i.e. Grid Reference 18079512 – which fraudulent document also fails to mention above (G) and (F) – i.e. 18029514 – why? – (i.e. no numbers mentioned)?

(I) I Further encl. Fife Abridgement – 30372 – No.30, which states wrongly – viz. (i) 0.46 acre and (ii) 0.168 acre – i.e. (following subjects which belonged to James Rush) (J) I also encl. Fife Abridgement 0881 No. 93 which is my correct and honest title – which neither above 0.46 acre nor 0.168 acre are contained in my 1987 disposition – Encl.”