



Scottish Information  
Commissioner

## **Decision 091/2007 Millar & Bryce Limited and Dundee City Council**

*Information relating to the Council's decision not to enter into a service level agreement with Millar & Bryce Limited*

**Applicant: Millar & Bryce Limited**

**Authority: Dundee City Council**

**Case No: 200601550**

**Decision Date: 25 June 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS



## Decision 091/2007 Millar & Bryce Limited and Dundee City Council

***Information relating to the Council's decision not to enter into a service level agreement with Millar & Bryce Limited – information not held - section 17 of FOISA- failure to respond to initial request within 20 working days - section 10(1) – content of certain notices - section 19***

### Relevant Statutory Provisions and Other Sources

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1)(General entitlement);10(1) (Time for compliance); 17 (Notice that information is not held); 19 (Content of certain notices).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

### Facts

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MacRoberts Solicitors (MacRoberts) on behalf of their clients Millar & Bryce Limited (Millar & Bryce) requested copies of documentation that recorded the process by which Dundee City Council (the Council) came to its decision to refuse to enter into an arrangement with Millar & Bryce to purchase certain information from the Council on a regular basis. The Council responded by stating that it did not hold the information requested. The Council then confirmed this decision without modification following an internal review. Millar & Bryce Limited remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the Council did not hold the information relevant to the applicant's request, and so it acted in accordance with Part 1 and section 17 of FOISA by notifying Millar and Bryce that the information requested was not held.

However, the Commissioner found that the Council failed to act in accordance with Part 1 of FOISA by breaching the technical requirements of section 10(1) and 19(1) of FOISA.



## Background

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1. On 26 April 2006, Millar & Bryce emailed the Council requesting any documentation that recorded the process by which the Council came to a decision to refuse their proposal to enter into a service level agreement whereby the Millar and Bryce would purchase statutory notice information on a regular basis.
2. On 16 May 2006, Millar & Bryce emailed the Council again as they had not received a response to their information request.
3. On 13 June 2006, the Council wrote to Millar & Bryce in response to their request for information. The Council stated that there was no documentation recording the process of how the Council came to the relevant decision. This response did not advise Millar and Bryce of the right to request a review of its handling of the request, or of the subsequent right of application for a decision by the Scottish Information Commissioner.
4. On 28 June 2006, MacRoberts, on behalf of Millar & Bryce, wrote to the Council requesting a review of its decision. MacRoberts noted their client's view that it was reasonable to expect that when reaching a decision of the type concerned, recourse would be made to documented Council policy on how such matters should be dealt with.
5. On 31 July 2006 the Council wrote to notify Millar & Bryce of the outcome of its review. The Council provided some background information on the decision making process concerned. It advised that the decision had been made during a discussion between two Council employees, and that no documentation relating to this discussion was held. The Council therefore upheld its original decision without modification.
6. On 22 September 2006, MacRoberts, on behalf of Millar & Bryce, wrote to my Office, stating that their clients were dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Millar & Bryce had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an Investigating Officer.



## The Investigation

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8. On 27 September 2006, the Council was notified in writing that an application had been received from Millar & Bryce and was asked to provide my Office with information required for the purposes of the investigation. The Council responded with a letter dated 5 October 2006 stating that the information requested by Millar and Bryce did not exist.
9. In subsequent correspondence, the Council reiterated this position, and provided further information on the process by which the relevant decision was made. It submitted that Millar and Bryce's request to enter into a service level agreement was considered by two Council officials in a discussion which resulted in the decision to refuse it. The Council confirmed that the request was considered on only one occasion; no notes of this discussion were taken; and no documents were referred to in the course of the discussion.
10. In May 2007, the investigating officer sought comments from the applicant on whether, in the light of the Council's submissions, they believed there to be relevant information held by the Council. They were asked what type of information they would expect to be held that would fall under the scope of the request, and whether they had any evidence to suggest that such information was held.
11. On 22 May 2007, MacRoberts, on behalf of Millar & Bryce, confirmed that the applicant did not hold any evidence to suggest that further information was held by the Council. However, MacRoberts reiterated their client's view that the decision taken by the Council would not be left unrecorded and would not be made in isolation of any reference to policy or comment by the Council.
12. The investigating officer then relayed the terms of this correspondence to the Council, seeking final comments on whether the Council had policies or procedures that would govern the consideration of proposals of the type made by Millar and Bryce, and if such policies or procedures had been taken into consideration when reaching the specific decision to which the applicant's request relates.
13. The Council responded on 5 June 2007 stating that it did not hold any such policies or procedures and as such none were referred to in the course of reaching its decision not to enter into a service level agreement with Millar & Bryce.



## The Commissioner's Analysis and Findings

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14. In coming to a decision on this matter, I have taken into consideration the submissions provided by both Millar & Bryce and the Council. I am satisfied that no matter of relevance has been overlooked.
15. I must decide whether the Council acted in accordance with Part 1 of FOISA by advising Millar and Bryce in response to their request that it held no relevant recorded information.
16. I have made this decision in the light of Millar and Bryce's initial request for information. This sought any recorded information that would reveal the process by which the Council reached a specific decision.
17. I note that Millar & Bryce did not request more general information about Council policy and procedure that may or may not guide its decision making in general or in specific cases. Such policies would only fall under the scope of Millar and Bryce's information request if they formed part of, or were referred to in, any record of the specific decision making process to which the applicant's information request relates.
18. Having considered the submissions from the parties this case, I am satisfied that the information which Millar & Bryce requested is not held by the Council. In the absence of any record of the discussion that led to the decision, it is not possible to establish which considerations influenced this decision.
19. I therefore conclude that the Council acted in accordance with Part 1 of FOISA by advising Millar and Bryce in terms of section 17 of FOISA that it did not hold the information requested.

### Technical Breach of FOISA

20. I will, however, briefly note that the Council failed to wholly comply with the requirements of Part 1 of FOISA in its response to Millar and Bryce's information request.
21. Section 10(1) of FOISA requires that on receipt of an information request made under section 1(1), a public authority must respond promptly and no later than the twentieth working day following its receipt.



22. In this instance Millar & Bryce submitted their initial request on 26 April 2006, but did not receive a response from the Council until 13 June 2006, the 32nd working day after receipt . This was substantially in excess of the 20 working day timescale laid down by section 10(1) of FOISA and so I find that the Council has breached Part 1 of FOISA by failing to comply with the requirements of section 10(1).
23. Section 19 of FOISA requires that when notifying an applicant in terms of section 17 of FOISA that the information requested is not held, the notice should provide details of:
  - a) the authority's procedure for dealing with complaints about the handling of requests for information;
  - b) the right to request a review in terms of section 20 of FOISA; and
  - c) the right to make an application for a decision by the Scottish Information Commissioner under section 47(1) of FOISA.
24. The Council's response to Millar and Bryce of 13 June 2006 did not contain any of the particulars detailed in paragraph 23 above. I therefore find that the Council failed to comply with the requirements of section 19 of FOISA.

## Decision

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I find that Dundee City Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by advising Millar & Bryce Limited in terms of section 17 of FOISA that the information requested was not held by the Council.

However, I find that the Council failed to comply with Part 1 of FOISA in failing to respond to the applicant's request for information within the 20 working day period set out in section 10(1) of FOISA. I also find that the Council's response to the applicant failed to contain the information required by section 19 of FOISA. I do not require any remedial action to be taken by the Council in respect of these technical breaches.



## **Appeal**

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Should either Millar & Bryce Limited 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 of receipt of this decision notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**25 June 2007**



## Appendix

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### 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.

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
  - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
  - (b) in a case where section 1(3) applies, the receipt by it of 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.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.

## **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).