



Scottish Information
Commissioner

Decision 037/2008 Mr David Walker and Falkirk Council

Education (Scotland) Act 1980 and related matters

Applicant: Mr David Walker
Authority: Falkirk Council
Case No: 200701840
Decision Date: 28 February 2008

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
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Decision 037/2008 Mr David Walker and Falkirk Council

Delegation and related matters in connection with the application of the Education (Scotland) Act 1980 – request refused as vexatious and repeated – Commissioner found that the request was repeated

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections: 1(1) and (6) (General entitlement) and 14(2) (Vexatious or repeated requests)

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

Facts

Mr Walker requested information from Falkirk Council (the Council) regarding the Council having delegated power to its Chief Executive to answer questions about the application of the Education (Scotland) Act 1980 and regarding the Council having decided it was unnecessary to debate, make decisions on or delegate powers regarding the application of the Education (Scotland) Act 1980. The Council responded by informing Mr Walker that these were vexatious and repeated requests and therefore subject to section 14(1) and (2) of FOISA. Following a review which upheld this decision, Mr Walker remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Walker's request for information in accordance with Part 1 of FOISA and in particular had been entitled to decline to deal with the request on the basis that it was repeated.



Background

1. On 16 October 2007, Mr Walker wrote to the Council requesting the following information:
 - 1) *any recorded information, held by Falkirk Council, relating to Falkirk Council having delegated to you, The Chief Executive Officer of Falkirk Council, or anyone else, the power to answer, unilaterally, questions about the application of The Education (Scotland) Act 1980.*
 - 2) *any recorded information, held by Falkirk Council, relating to Falkirk Council having decided:-*
 - a) *That it is unnecessary to issue Notes of Guidance, or Instructions, to Head teachers/Teachers with regard to the application of the Education (Scotland) Act 1980?*
 - b) *That it is unnecessary to monitor Head teachers/Teachers while carrying out their responsibilities under Education (Scotland) Act 1980?*
 - c) *That a) and b) are justified because Head teachers/Teachers shall by definition, never breach the Education (Scotland) Act 1980?*
 - 3) *any recorded information held by Falkirk Council relating to Falkirk Council having decided that it is unnecessary for The Council to Debate, make Decisions on, or to Delegate any Powers, with regard to the application of The Education (Scotland) Act 1980?*
2. The Council responded to Mr Walker on 21 November 2007, intimating that the request for information was refused under section 14(2) of FOISA on the grounds that it was a repeat request, in that it was substantially similar to a request of 6 July 2007, and also that having regard to the nature of the request in the context of previous correspondence, it was considered to be vexatious in the terms of section 14(1) of FOISA.
3. On 4 December 2007, Mr Walker wrote to the Council accepting that the second part of his request was repeated, but requested a review of its decision in relation to points 1) and 3). In particular, Mr Walker stated that these were not repeated and he did not accept that they were vexatious.
4. The Council responded to Mr Walker's request for review on 17 December 2007, upholding the original decision applying the exemptions contained in section 14(1) and (2) of FOISA.



5. On 18 December 2007, Mr Walker wrote to my Office, stating that he was dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Walker 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

7. On 14 January 2008, the Council was notified in writing by the investigating officer that an application had been received from Mr Walker and was asked to provide my Office with its comments on the application, as required by section 49(3)(a) of FOISA. In particular, the Council was asked to provide arguments in support of its reliance on sections 14(1) and 14(2) of FOISA, along with copies of any information withheld from Mr Walker
8. The Council responded with the information requested. I will consider its submissions further in my analysis and findings below.

The Commissioner's Analysis and Findings

9. In coming to a decision in this matter, I have considered all of the information and submissions that have been presented to me by both Mr Walker and the Council and am satisfied that no matter of relevance has been overlooked.
10. I will first of all consider whether the Council complied with Part 1 of FOISA in refusing to comply with Mr Walker's request, on the grounds that it was a repeated request and that section 14(2) therefore applied.
11. Section 14(2) states:

"Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request."



12. I therefore have to consider whether the Council complied with the request of 6 July 2007; whether the two requests were identical or substantially similar; and if so whether there was a reasonable time between the making of the request complied with and the making of the subsequent request.

Was the initial request complied with?

13. The Council supplied me with a copy of Mr Walker's request for information dated 6 July 2007, which was in three parts. For comparison purposes they are follows;
- *Will you supply me with copies of any recorded information held by Falkirk Council relating to Falkirk Council having made any decision to the effect that no Instructions, or Guidance, is required to be given to, and no Monitoring is necessary over Head teachers or Teachers with regard to applying the provisions of The Education (Scotland) Act 1860 [his date] on the grounds that Head Teachers and Teachers, by definition, would never breach the provisions of that Act?*
 - *Will you supply me with copies of any recorded information held by Falkirk Council relating to the Chief Executive Officer, or any other Executive Member, of Falkirk Council being empowered, or authorised, to determine and decide any policy and practices required to be carried out by Falkirk Council in accordance with any Acts which are the responsibility of Falkirk Council?*
 - *Will you supply me with any recorded information held by Falkirk Council relating to Executive Members being empowered or authorised to refuse, or evade, answering valid and legitimate questions from any citizen residing within the area covered by Falkirk Council?*
14. From the information provided by the Council, I am content that it complied with this request from Mr Walker, in that it responded on 25 July 2007 stating that the Council held no information in respect of points one and three and provided Mr Walker with a copy of its "Scheme of Delegation to Committees, Sub-Committees and Officers" in relation to point two.
15. It will be borne in mind that Mr Wilson accepted that point 2) in his request of 16 October 2007 repeated the first point in his 6 July 2007 request, and that consequently his request for review in relation to the later request was in respect of points 1) and 3) only. The question for me in considering section 14(2), therefore, is whether points 1) and 3) in the 16 October request can be regarded as identical or substantially similar to points two and three in the 6 July request and, if so, whether a reasonable period of time had passed between the making of the first request and making of the second.



Was the second request identical or substantially similar to the first?

16. The Council argued that the requests of 6 July and 16 October 2007, while not in exactly the same terms, were similar enough to bring them within section 14(2) of FOISA. It considered the request of 6 July 2007 and its subsequent response of 25 July to be of broad application in that they would apply to any statute and not just the Education (Scotland) Act 1980. It went on to argue that the terms of the 6 July request were broad enough to cover the slightly more specific terms of the 16 October request, decision making and delegation being covered in the Scheme of Delegation provided in response to the earlier request, while the reference to debating in the later request was either tied into delegation and decision making or was the same point as the alleged failure to answer legitimate questions raised in the earlier request.
17. The Council submitted that the answer to the 16 October request was essentially in the earlier response of 25 July, the Scheme of Delegation being the only document which might fall within the later request. That may well be true (and it may well be relevant), but it does not necessarily follow that the two requests were the same or substantially similar, or were necessarily seeking the same or substantially similar information.
18. I have considered whether the relevant parts of the two requests, although phrased in different terms, might be regarded as identical or substantially similar. Given the breadth of the 6 July request, I accept that 16 October request related to matters falling wholly within the scope of that earlier request. Mr Walker received a clear and unequivocal response to the earlier request, which had nothing to do with the scale of the request. From that response, I think it would have been reasonable to deduce that a narrower request within the same parameters would produce the same outcome as the earlier, broader request. He did not seek to challenge that earlier outcome through the processes of requiring a review and then applying to me for a decision, as laid down in Part 1 of FOISA. In all the circumstances, I consider that it was reasonable for the Council to conclude that the request of 16 October 2007 was substantially similar to the request of 6 July 2007. I must now consider whether a reasonable period of time passed between the making of the request complied with and the making of the subsequent request.



Had a reasonable period of time passed?

19. The Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (commonly known as "the Section 60") provides some guidance on repeated requests (paragraph 25):

"...[FOISA] also provides that an authority, which has already complied with a request for information from a person, can refuse to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request. If the information has changed between applications, this unlikely to be viewed as a repeated request... What constitutes a "reasonable period of time" will depend on the circumstances of the case..."

20. In this case the Council has confirmed that the information has not changed between the requests and while there is no definition of a "reasonable period of time" for these purposes, I am content that a period of just over three months (6 July to 16 October 2007) cannot be regarded as reasonable in this case. In the circumstances, therefore, I consider that the Council correctly applied the terms of section 14(2) of FOISA to Mr Walker's request.
21. Since I have determined that section 14(2) of FOISA applies in this case, I do am not required and do not intend to consider the application of section 14(1).

Decision

I find that Falkirk Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by David Walker.



Appeal

Should either Mr Walker or Falkirk 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.

Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

Margaret Keyse
Head of Investigations
28 February 2008



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.

14 Vexatious or repeated requests

(...)

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.