

Decision Notice



Decision 141/2008 Mrs Mary Smith and West Lothian Council

Membership of Committee

Reference No: 200801110

Decision Date: 06 November 2008

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Summary

Mrs Smith requested from West Lothian Council (the Council) the names and posts of members of the Committee which had approved the Council's Fair Treatment at Work Policy. The Council responded by releasing the names of the Councillors present at the relevant meeting of the Policy, Partnership and Resources Committee. Mrs Smith was also advised that minutes could be viewed on the West Lothian Council website. Following a review, Mrs Smith remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mrs Smith's request for information in accordance with Part 1 of FOISA, by providing her with the information she had requested and reasonable advice and assistance to facilitate a further request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 15 (Duty to provide advice and assistance).

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 30 April 2008, Mrs Smith made the following information request to the Council:

"I understand on the 11th April 2001 the Fair Treatment at Work Policy, Procedure and Code of Practice were approved by the Council's Policy, Partnership and Resources Committee. Please can you supply me with all the names of the members who made up this committee and their posts within both the committee and the council."
2. The Council responded on 2 May 2008 advising that the date of the relevant approval meeting by the Policy, Partnership and Resources Committee was in fact 11 December 2001. Names of Councillors present at the meeting of 11 December 2001 were provided, with an indication that one of those present was at the time Leader of the Council and Convener of the Committee. A web link to the full minute was included, with advice that all of the other Council meeting minutes could be viewed on the Council's website.



3. On 13 May 2008, Mrs Smith wrote to the Council requesting a review of its decision.
4. The Council notified Mrs Smith of the outcome of its review on 2 June 2008. The review letter summarised the original response and upheld the Council's original decision, concluding that Mrs Smith had been provided with the information she had requested.
5. On 24 July 2008, Mrs Smith wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. In particular, she noted that the names she was seeking were names of the Council's managers rather than names of Councillors.
6. The application was validated by establishing that Mrs Smith 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. On 11 September 2008 the Council was notified in writing that an application had been received from Mrs Smith and invited to provide its comments on the application (as required by section 49(3)(a) of FOISA) and to respond to specific questions.
8. With its submission to the Commissioner (which will be considered in the Commissioner's analysis and findings below), the Council included copies of its most recent correspondence with Mrs Smith. In a letter dated 2 September 2008, the Council released additional information by listing the names and posts of senior officers involved in the development of this policy, following another information request made by Mrs Smith. It should be noted that in this decision the Commissioner's remit is limited to consideration of Mrs Smith's request of 30 April 2008.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mrs Smith and the Council and is satisfied that no matter of relevance has been overlooked.
10. Mrs Smith's application raised four areas of concern, three of which are detailed below. The fourth area of concern related to Mrs Smith's second request and therefore falls outwith the scope of this investigation. The areas of concern that the Commissioner will consider are:
 - Was the Council correct in its interpretation of Mrs Smith's request whereby it released the names of Councillors rather than those of senior managers?



- Did the Council provide reasonable advice and assistance to Mrs Smith at the earliest opportunity in pursuit of its obligation under section 15 of FOISA?
 - Has Mrs Smith been provided with all the information she requested?
11. The submissions from both the Council and the applicant will be considered in line with each of these areas of concern.

Interpretation of Mrs Smith's request and application of section 15 of FOISA

12. Section 56 of the Local Government (Scotland) Act 1973 provides that, subject to some exceptions, a local authority (such as the Council) may arrange for the discharge of any of its functions by a committee of the authority, a sub-committee, an officer of the authority or by any other local authority in Scotland. When this and other local government legislation refers to "members" of a local authority it is referring to elected councillors of that authority, who by law form the majority of members of its committees and sub-committees. Officers of a local authority cannot also be members of that authority or (with certain very limited exceptions) of its committees or sub-committees.
13. Bearing in mind the exact wording of Mrs Smith's request, which is provided in paragraph 1 above, the issue which the Commissioner must decide is whether the Council's interpretation of the request was correct.
14. Within the Council's correspondence with Mrs Smith, there is reference to the interpretation of the request being discussed by telephone, following Mrs Smith's receipt of the Council's initial response and prior to the review decision being issued. In its review letter, the Council referred to a telephone conversation between Mrs Smith and the officer who had responded to the initial request. The Council stated that during this telephone call it had explained to Mrs Smith that any decision as to whether to proceed with policy development was a strategic decision dealt with by senior management and facilitated by numerous officers. From this, it appears that Mrs Smith may have understood those senior managers to have a direct role in decision making on these policies. Certainly, she appears to have been unhappy with the explanation she was given and to have understood she made it clear that the names she was seeking were those of the relevant senior managers.
15. However, the Council also stated in the review letter that it had advised Mrs Smith in the same telephone conversation that any decision on whether or not to adopt the policy itself was a decision that only elected members could make. The request was for the names of "the *members* who made up this committee and their posts within both the committee and the council". On this basis, the Council provided only the names of, and offices held by, the Councillors sitting on its Policy, Partnership and Resources Committee at the time the policy was approved. The Council did not provide names of Council officers involved in the development of the policy, nor did it apply any exemption in relation to the names of these officers.



16. A web link to the full minute of the meeting was provided by the Council in its initial response to the applicant. During the course of the investigation, the investigating officer discovered that this link did not work. The syntax of the link included an IP address for the Council's internal computer network but this particular IP address cannot be reached when attempting to connect from outside the Council's computer network. It would not be easy for the officer concerned to see this technical difficulty when using a Council owned computer but it highlights the need for care to differentiate between a link that is only viable on the Council's own intranet and one which is available to the public via the wider internet.
17. Mrs Smith also pointed out that the minutes available online did not contain the names and posts of the Council managers who had attended the meetings in question. The Commissioner understands that practice in recording the attendance of officers at committee meetings varies among local authorities. It does not appear to be the practice of the Council to record such attendances.
18. During the investigation, the Council was asked to confirm how it had interpreted "member" in this request. The Council confirmed that it interpreted it to be "an Elected Member of West Lothian Council" and confirmed that its interpretation excluded officers of the Council. It also indicated that it had recently released the names and posts of the relevant senior officers to Mrs Smith as a result of another request, confirming to her that together these officers and the various trade unions would have contributed to the development of the policy and its promotion to committee for approval.
19. In this case, the Council does not appear to have considered it necessary to seek clarification from the outset on the wording of this request. It is possible that a lay person might understand membership of a local authority's committees to include officers. The Commissioner notes that the media, for example, are not always clear as to the respective roles of officers and politicians in local government policy-making, and consequently members of the public may have difficulty distinguishing between these roles.
20. That said, the Commissioner does not consider the Council to have acted unreasonably in interpreting a request framed in the terms of Mrs Smith's in the way that it did. Whatever might be understood about the membership of local authority committees, the fact remains that except in very limited circumstances they comprise elected members of the relevant council, who are the relevant decision makers when matters are referred to that committee. Even if Mrs Smith understood senior officers to be involved in the decision making processes of the Committee in question, it does not follow that a reasonable interpretation of her request should have been taken to include those officers in addition to the Councillors who actually made up the Committee.
21. The Commissioner does not accept that the Council should have realised on receipt of the request that Mrs Smith was looking for something other than the names of the relevant Councillors and their positions within that particular Committee and the Council. On a plain interpretation of the request, that was what she would appear to have been seeking. It may have transpired later that she was seeking the names of certain managers, but the Commissioner does not consider that this should have been apparent from the request, or for that matter from the face of the request for review.



22. Before the Council's review had been completed, Mrs Smith made a telephone call (referred to in paragraph 14 above) from which it should have become apparent to the Council that she was interested in more than the names of the Councillors who made up the Committee. The Commissioner does not, however, consider the terms of that telephone call to have required the Council to put a new interpretation on the original request. Without a further request in more explicit terms, it could not be clear to the Council what information it was expected to provide in respect of its senior officers. At this point, though, it did fall to the Council (with a view to facilitating that further request and thereby discharging its duty to provide Mrs Smith with reasonable advice and assistance in line with section 15(1) of FOISA) to make clear to Mrs Smith the respective roles of officers and councillors in the development and approval of policy.
23. This is what it appears to have done, and the Commissioner is satisfied that in doing so the Council discharged its duty under section 15 of FOISA. He must go on to consider whether Mrs Smith was provided with all the information the Council held falling within the scope of her request.

Has Mrs Smith been provided with all the information falling within the scope of her request?

24. In response to Mrs Smith's request, the Council provided her with the names of the Councillors present at the meeting of 11 December 2001 which approved the policy in question.
25. The names and posts released in response to the initial request were those of the 16 Councillors who were present at the Committee meeting of 11 December 2001 and who approved the relevant policy. From the Council's submissions and examination of the minutes of the meeting in question, the Commissioner is satisfied that this is all the relevant information held by the Council. The Commissioner is therefore satisfied that the Council provided Mrs Smith with the information it held in response to her request.

DECISION

The Commissioner finds that West Lothian Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs Mary Smith, by providing her with the information she had requested (in accordance with section 1(1) of FOISA) and reasonable advice and assistance for the purposes of making a further request (in accordance with section 15 of FOISA).



Appeal

Should either Mrs Mary Smith or West Lothian 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.

Kevin Dunion
Scottish Information Commissioner
06 November 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.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).