

Decision Notice



Decision 007/2009 Mr Ian McCracken and Glasgow City Council

Information on Workforce Pay and Benefits Review

Reference No: 200800323

Decision Date: 28 January 2009

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Ian McCracken requested from Glasgow City Council (the Council) information relating to the Council's Workforce Pay and Benefits Review (the WPBR). The Council responded by providing Mr McCracken with some information but advised him that the majority of the information requested was either not held by it or was considered exempt from disclosure under Part 2 of FOISA. Following a review, Mr McCracken remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Mr McCracken's request for information in accordance with Part 1 of FOISA by failing to advise him that it did not hold the information contained in one of his requests. He did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Appendix 1 forms part of this decision.

Background

1. On 2 July 2007, Mr McCracken emailed the Council requesting a range of information concerning the Council's WPBR. This encompassed 13 requests. Eight of these requests are not under consideration in this decision. The five that are under consideration (1, 3, 6, 7 and 8) are reproduced in Appendix 2 of this decision, along with their original numbering. These requests seek a range of information relating to the consideration of the post of school librarian within the WPBR process.
2. The Council responded on 19 July 2007. In its response, the Council provided Mr McCracken with information which covered some of his specific queries. The Council advised Mr McCracken that, in relation to request 6, the information was considered exempt from disclosure in terms of section 30(c) of FOISA. With respect to requests 1, 3, 7 and 8, the Council notified Mr McCracken that it did not hold the information.



3. On 9 August 2007, Mr McCracken wrote to the Council requesting a review of its decision. Mr McCracken set out a number of points which he wished the Council to address as part of its review. Mr McCracken requested that the Council conduct a review of its response to 10 of his 13 requests, including the five that are under consideration in this decision.
4. The Council notified Mr McCracken of the outcome of its review on 11 September 2007. The Council upheld its previous decision that the information sought under requests 1, 3, 6, 7 and 8 was either exempt from disclosure (6), or not held by it (1, 3, 7 and 8).
5. On 5 March 2008, Mr McCracken wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying for a decision in terms of section 47(1) of FOISA. Mr McCracken advised the Commissioner that his application was in respect of his requests numbered 1, 3, 6, 7 and 8.
6. The application was validated by establishing that Mr McCracken 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.

Investigation

7. On 28 March 2008, the Council was notified in writing that an application had been received from Mr McCracken and was asked to provide the Commissioner with any information withheld from him.
8. In response to this request, the Council advised the Commissioner that it no longer wished to rely on the exemption in section 30(c) of FOISA in respect of request number 6. The Council stated that, after liaising with the department concerned, it had established that no records of the relevant review panel meeting were held, and no information was compiled for the purpose of being put forward to appeal parties concerning librarians. As a result, the Council stated that no information had actually been withheld. Instead, the Council now claimed that it held no information in relation to each of the information requests under consideration in this case.
9. The case was then allocated to an investigating officer, who contacted the Council on 12 May 2008, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain what steps and specific searches it had undertaken in order to establish that it did not hold the information requested by Mr McCracken.
10. The Council responded on 2 June 2008, confirming that it held no documentation in relation to the information requested and explaining the steps it had taken to ascertain that this was the case.



11. The investigating officer subsequently contacted Mr McCracken advising him that the Council had revised its position and now considered that it did not hold any information in relation to the requests under consideration. Mr McCracken was invited to make further submissions regarding the Council's amended position.
12. Mr McCracken subsequently made additional representations regarding the Council's response which the Commissioner has taken into account in reaching his decision.
13. During the investigation, further communication was entered into with the Council regarding the breadth of the searches that it had carried out to determine whether any relevant information was held which would address Mr McCracken's request. The Council's responses are considered in more detail in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr McCracken and the Council and is satisfied that no matter of relevance has been overlooked.

Whether the information requested by Mr McCracken is held by the Council

15. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held.
16. In its responses of 19 July and 11 September 2007, the Council advised Mr McCracken that it did not hold the information contained in his requests 1, 3, 7 and 8. The Council subsequently advised the Commissioner that it did not hold the information contained in request number 6.
17. In order to determine whether the Council was correct to advise Mr McCracken that it does not hold the requested information, the Commissioner must establish whether the Council holds (or held at the time of Mr McCracken's request) information which would address his requests.
18. In its submissions to the Commissioner, the Council provided details of the nature and extent of manual searches which were undertaken. This included searches of personal paper files and relevant folders from the WPBR. The Council also contacted an attendee at the review panel who is no longer employed by the Council to ascertain if that individual had submitted any paperwork during the review process. The Council stated that these searches had retrieved no information.
19. The Council also provided details of the electronic searches it had conducted, including the keywords used to identify relevant electronic records. The Council confirmed that it had searched within its drive containing officers' personal storage areas and another drive which was the Education Department's shared area to which every member of staff has access. It stated that no information was sourced from these areas which would answer Mr McCracken's queries.



20. The Council also explained that it had attempted to carry out a search of the Education Exchange Server in order to search all Council Officers' emails within the system. The Council advised that, during this process, it had discovered that the servers had recently been upgraded and that the new software did not allow access to individual user emails due to encryption of data. Having sought advice from an external engineer, the Council had been advised that further software would have to be purchased to undertake these searches. Additionally, this would require the Council obtaining professional advice to source, test and install the software before these searches could begin. The Council concluded that it is therefore unable to carry out any searches of all emails in the system without purchasing further software.
21. The Council also stated that the only member of staff involved in the allocation and review of librarians' posts who remained within the Council had been asked whether any of the requested information was held by them on a computer to which Council staff would not normally have access, e.g. a home computer. The member of staff confirmed that they did not.
22. With respect to request 6, the Council also stated that there was no record kept of the destruction of any notes taken during the review process. The Council stated that the members of the review panel took personal notes at each interview. The Council explained that after an interview of this type, a decision would be made and the outcome drafted and handed to administration staff to type the document on which the review outcome was recorded. The Council confirmed that this document has already been provided to Mr McCracken and that anything other than this final outcome would have then been shredded.
23. The Council has also confirmed that there was no retention policy created in relation to notes from these interviews. The Council has confirmed with staff working within the Education Department at the time the reviews were carried out, that it was the usual practice for administration staff to shred any notes taken by the allocators after the appropriate forms had been completed.
24. In his representations to the Commissioner, Mr McCracken submitted that the position outlined by the Council was completely contrary to the stated principles of the WPBR scheme. Mr McCracken provided quotes from the scheme which highlighted the Council's intention to achieve consistency and objectivity and also indicated that the Council had been monitoring the process across all services including checking and challenging the results independently. Mr McCracken also referred to the WPBR Implementation Support-Governance section which stated that the HR teams in each service were responsible for monitoring and advising on record keeping in their service.
25. Mr McCracken also submitted that the Council has repeatedly stated that the WPBR has been carried out in a fair, consistent and systematic way. He noted that the Council's Chief Executive had referred to the Council adopting a rigorous and pragmatic approach to ensure fairness and consistency. Mr McCracken considered it impossible to reconcile this with the response received from the Council and that appropriate information must have been available to review panel members to avoid panels arriving at arbitrary decisions and not acting in the fair and consistent manner enshrined in the WPBR process.



26. Following receipt of the Council's initial submissions, and particularly in light of the matters raised in paragraph 20 above, the investigating officer asked the Council to arrange for key personnel involved with the WPBR to undertake searches of their own in-boxes. In response, the Council stated that all information in relation to the WPBR has now been archived and only one Officer within Education Services has access to the documentation. The Council subsequently clarified that the archived information referred to included all emails relating to the WPBR. The Council stated that it had already carried out a search of its central archive and therefore considered a search of individual mailboxes to be unnecessary.
27. The Council also reiterated its position that no notes were taken during the final allocation process. The Council noted that the final allocation was made by two allocators supported by the Directorate member with responsibility for the area in question. The Council stated that it was this group's expert knowledge, informed by the previous input of line managers, that formed the basis for the decision.
28. Following further discussions with the Council, particularly in relation to a related application to the Commissioner, the Council's Internal Audit team carried out further searches to determine whether any other recorded information was held which would fall within the scope of Mr McCracken's request.
29. Having carried out further searches of both paper and electronic files, the Internal Audit team identified further information. The Commissioner considered that one of these documents would fall within the scope of Mr McCracken's request number 7. Following further correspondence with the investigating officer, the Council subsequently released this document to Mr McCracken.
30. Having considered the submissions made by the Council and Mr McCracken, and following the additional searches and enquiries undertaken by the Council, the Commissioner is satisfied that the Council has carried out thorough and reasonable searches for any relevant records that would address Mr McCracken's request. The Commissioner is satisfied that the additional document located during the Council's additional searches has now been provided to Mr McCracken and that the Council does not (and did not at the time of the request) hold any other information which would fall within the scope of that requested by Mr McCracken.
31. The Commissioner has therefore concluded that the Council was correct in informing Mr McCracken that it did not hold the information contained in his requests 1, 3 and 8. However, in failing to inform Mr McCracken that it did not hold the information contained in request 6, the Commissioner finds that the Council failed to comply with the requirements of section 17(1) of FOISA. The Commissioner also finds that, in failing to identify one document which fell within the scope of request 7, the Council incorrectly responded to that request by giving notice in terms of section 17(1).



32. The Commissioner notes that his remit in carrying out this investigation extends solely to the consideration of whether the Council holds the relevant information requested by Mr McCracken. He cannot comment on whether a public authority should have recorded any or more information about a particular event or process. Consequently, in this instance, he cannot comment on whether the Council ought to hold any (or further) recorded information or on whether it has failed to adhere to any stated principles.

DECISION

The Commissioner finds that Glasgow City Council partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr McCracken.

The Commissioner finds that by correctly advising Mr McCracken that it did not hold certain of the information requested by him, the Council complied with Part 1 of FOISA, and particularly section 17(1).

However, by failing to inform Mr McCracken that it did not hold the information contained in request 6 and by failing to identify one document which fell within the scope of request 7, the Council failed to comply with the requirements of section 17(1) and consequently breached part 1 of FOISA.

The Commissioner does not require the Council to take any action in response to this failure.

Appeal

Should either Mr McCracken 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
28 January 2009



Appendix 1

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.

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.



Appendix 2

Details of information requests considered within this Decision Notice

1. All notes and minutes taken at original allocators' meetings and the meetings where allocators consulted with staff to determine what was thought to be the nature and duties of school librarians.
3. Details of which types of material evidence that were considered by allocators in arriving at their allocations for school librarians.
6. Notes or minutes taken during and after the formal review panel which took place on 17 May 2007 and all information compiled with the purpose of being put forward to appeal panels concerning school librarians.
7. Explanation of key terms and distinctions, including exactly which parts of school librarians' duties were included and excluded when assigning allocations concerning relationships, impact and knowledge.
8. Definitions of the terms "choices" and "decisions" in the context set out by the review panel considering school librarians' review; along with details of who established these definitions and when these definitions were established.