



Scottish Information
Commissioner

Decision 019/2005 – Mr Patterson and the Scottish Executive

*Request for information relating to the handling of an objection lodged
against the transfer of housing stock to the Glasgow Housing Association*

Applicant: Mr Patterson
Authority: The Scottish Executive
Case No: 200501229
Decision Date: 10 August 2005

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 019/2005 – Mr Patterson and the Scottish Executive

Request for information relating to the handling of an objection lodged against the transfer of housing stock to the Glasgow Housing Association – failure of authority to recognise the request fully as one made under the Freedom of Information (Scotland) Act 2002 – ambiguity surrounding the specific nature of the information request - requested information not held by the authority.

Facts

Mr Patterson submitted an information request the Scottish Executive (the Executive). In his request, he sought information relating to the handling of an objection he had submitted in relation to the transfer of Glasgow City Council's housing stock to the Glasgow Housing Association. Mr Patterson disputed the Executive's interpretation of his request, suggesting that the request was intended to seek access to all information relating to the transfer of housing stock, as opposed to information relating to the handling of his objection.

Outcome

The Commissioner found that the Executive failed to fully comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in its handling of Mr Patterson's request for information, in that it failed to issue appropriate notices in accordance with sections 17 and 19 of FOISA. In addition, the Executive failed to conduct a full review in line with section 21 of FOISA.

The Commissioner found however that the Executive had interpreted Mr Patterson's information request appropriately, and that it held no additional information which might respond to the request.

The Commissioner decided that no remedial steps required to be taken by the Scottish Executive in this case.



Appeal

Should either the Executive or Mr Patterson 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 notice.

Background

1. Mr Patterson submitted an information request to the Scottish Executive (the Executive) on 24 February 2005. The request was as follows:

“To date no MSP has acknowledged receipt of my objection lodged 12 March 02 to Scottish Executive and Scottish Ministers, Victoria Quay, Edinburgh, regarding objection to the proposal para 3, schedule 9 of Scotland Act 2001.

To date I have not been advised who considered my objection. I am seeking comprehensive information re. journey/process of my objection lodged. Please provide all decisions re. this matter.”

2. The reference to the “Scotland Act 2001” refers to the Housing (Scotland) Act 2001. Paragraph 3, Schedule 9 of that Act gives tenants the right to object to a proposed transfer to the Scottish Ministers.
3. Following receipt of Mr Patterson’s information request, the Executive spoke with Mr Patterson on two occasions in order to explain the process for dealing with objections made under the Housing (Scotland) Act 2001. These conversations were followed by a letter, dated 2 March 2005, which outlined this process in writing. This letter stated that individual objections were considered by officials but that they were not forwarded to Ministers or individual MSPs.
4. On 12 March, Mr Patterson submitted a request for review of the Executive’s handling of his information request.



5. On 30 March, the Executive responded to this request by referring to the explanation given by it in its letter of 2 March. The Executive also stated that it held no further information which could be provided in response to Mr Patterson's request and advised Mr Patterson that his complaint should be considered by the Scottish Public Services Ombudsman (SPSO), rather than under FOISA. A copy of a leaflet detailing the process of making a complaint to the SPSO was included in this correspondence.
6. On 19 April I received an application for decision from Mr Patterson in relation to this case and the case was allocated to an Investigating Officer within my Office.

The Investigation

7. A significant proportion of the time devoted to the investigation of this case was spent on the validation of Mr Patterson's request. Mr Patterson's request had been transferred to the Executive from Glasgow City Council and my Office wished to ensure that it had been transferred in accordance with the Code of Practice on the Discharge of Functions by Public Authorities under FOISA (the "Section 60 Code"). I am satisfied that the case was transferred in accordance with the Section 60 Code.
8. In addition, my Office wished to clarify with Mr Patterson the extent of his information request and why he was dissatisfied with the way in which his request (and request for review) had been dealt with by the Executive. As a result, although the application was received on 19 April, it was not validated until 9 June.
9. On 10 June, my Office contacted the Executive to confirm that Mr Patterson's application for decision had been validated and to seek comments on the case. The Executive responded on 27 June 2005.
10. One of the issues raised with the Executive was the extent of Mr Patterson's request for information. While Mr Patterson was of the opinion that his request had been for all information relating to the housing transfer, the Executive believed that Mr Patterson's request was only for details of the way his own objection had been dealt with.
11. Mr Patterson had advised my Office that during telephone conversations with the Executive he had made it clear that he wanted information relating to the entire stock transfer and that, consequently, the Executive knew that his request went wider than his own objection. The Executive advised my Office that at no stage during these conversations did Mr Patterson suggest that he was seeking information relating to the entire transfer process.



12. The Executive also advised that there was no separate record kept of procedures relating to the handling of the objections received, or of the consideration given to particular objections and that as a result it held no recorded information relating to the handling of Mr Patterson's objection.
13. Finally, the Executive contended that Mr Patterson's request constituted a complaint about procedures, as opposed to a request under FOISA on the basis that the wording of Mr Patterson's correspondence indicated that he was unhappy about the procedures followed with regard to his objection. The Executive cited various other communications with Mr Patterson in support of this assessment, including correspondence sent to his MSP which stated that he felt he had been misled at the time of lodging his objection in that he was not informed that it would not be seen by Ministers.

The Commissioner's Analysis and Findings

14. Before addressing the nature of Mr Patterson's request of 16 February 2005, I would first like to comment on the Executive's view that Mr Patterson's request constituted a complaint about procedure, as opposed to a request under FOISA. While it may have been clear from communications with Mr Patterson that the underlying issue which prompted his information request was an ongoing dissatisfaction with the way in which his objection to the stock transfer was processed by the Executive, this should not have been considered as grounds for failing to deal in full with Mr Patterson's request for information under the terms of FOISA. Mr Patterson's correspondence of 16 February fulfilled all the criteria of an information request set out in section 8(1) of FOISA and should, therefore, have been dealt with accordingly. As a result of not recognising the request as a request under FOISA, the Executive committed technical breaches of sections 17, section 19 and section 21 of FOISA by failing to inform Mr Patterson that it did not hold the information requested, provide him with details of the procedure for making a complaint, or carry out a review of its handling of his information request.
15. That said, I acknowledge that the information and comment provided to Mr Patterson by the Executive appears to have been supplied in an attempt to explain the processes involved and assist Mr Patterson in resolving his grievances.



16. I will now address Mr Patterson's information request. Mr Patterson has contended in his communications with my Office that in submitting his request for information to the Executive he was seeking all information held by the Executive relating to the entire process of the transfer of stock to Glasgow Housing Association. In particular, he has asserted that the inclusion of the text, "*Please provide all decisions re. this matter*" constitutes a request for all information relating to the stock transfer, as opposed to information solely relating to the handling of his objection.
17. However, I am of the opinion that, based on the wording of Mr Patterson's request, it was reasonable for the Executive to interpret that request as being for information relating only to the journey or process of his own objection.
18. I note Mr Patterson's assertions that the full nature of his request was clarified during his telephone conversations with the Executive of February 2005. However, I have found no evidence during the course of this investigation to support Mr Patterson's assertion that this interpretation of his request was communicated to the Executive. Had this interpretation been clearly communicated, it would be reasonable to expect that there would be some reference to it in the subsequent communications between the Executive and Mr Patterson, particularly given that it would fundamentally change the nature of Mr Patterson's information request. However I note that none of the subsequent correspondence between the parties explicitly refers to the request as being anything other than a request relating to the consideration of objections lodged to the transfer.
19. With this in mind, I find that Mr Patterson's request for information was interpreted appropriately by the Executive. I am also satisfied, from the information provided by the Executive to my Office, that no additional information is held by the Executive which relates to the handling of Mr Patterson's objection.
20. I would repeat the advice previously provided to Mr Patterson from my Office that should he wish to access additional information relating to the stock transfer then he should submit a new information request to the Executive. Any such request must be carefully set out, in order to ensure that the information requested is clearly defined and can, if necessary, be provided within the upper cost limit set out in FOISA's Fees Regulations.



Decision

I find that the Executive failed to comply with Part 1 of FOISA in its handling of Mr Patterson's information request by failing to issue a refusal notice to Mr Patterson in line with sections 17 and 19 and by failing to review the way in which it dealt with his request in line with section 21 of FOISA. However, I do not require the Executive to take any remedial steps to comply with these breaches in terms of section 49(6)(b) of FOISA.

I also find that the Executive interpreted Mr Patterson's information request appropriately and am satisfied that no additional information is held by the Executive which might respond to this request.

In view of this, no further action is required to be taken by the Executive in relation to Mr Patterson's request.

Kevin Dunion

Scottish Information Commissioner

10 August 2005