



Scottish Information
Commissioner

**Decision 050/2005 Thomas Brodie MacClue and Argyll and
Bute Council**

*Failure to provide information in relation to an application for Local
Authority Housing*

**Applicant: Thomas Brodie MacClue
Authority: Argyll and Bute Council
Case No: 200501283
Decision Date: 21 November 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 050/2005 Thomas Brodie MacClue and Argyll and Bute Council

Failure to respond to request for information and request for review - section 25(1)- Information otherwise accessible – Request for information in relation to an application for Local Authority housing – upheld by Commissioner

Facts

Mr MacClue requested information from Argyll and Bute Council (the Council) on 24 January 2005. The Council responded on 7 February 2005, providing Mr MacClue with information relating to his request. Mr MacClue contacted the Council on 14 February 2005, reiterating his requests and stating that he was dissatisfied with the response that he had received. The Council responded on 18 March 2005, repeating the information it had given in its original response of 7 February 2005. Mr MacClue subsequently sought a decision from the Scottish Information Commissioner on whether the Council had breached Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with his request.

Outcome

The Commissioner was satisfied that the Council was correct in withholding information from Mr MacClue, as the information was exempt from disclosure by virtue of section 25 of FOISA.

However, the Commissioner found that the Council had breached Part 1 FOISA in failing to issue a proper refusal notice to Mr MacClue, to carry out a review within the timescales set down by FOISA and to issue a proper review notice as required by FOISA.

Appeal

Should either the Council or Mr MacClue wish to appeal against the decision, there is a right to 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 MacClue wrote to the Council on 24 January 2005, asking 21 separate questions. These questions were wide ranging but related to an apparent refusal by the Council to provide housing for Mr MacClue (although the Council denied that housing had been refused) and, amongst other matters, questioned the Council's housing policy and approach to the Human Rights Act. Mr MacClue also asked for the name of the doctor who had assessed his application for housing.
2. The Council provided Mr MacClue with some information about his application for local authority housing on 7 February 2005.
3. Mr MacClue responded to the Council on 14 February 2005, stating his dissatisfaction with its response. This questioning of the Council can be construed as a request for review under section 20 of FOISA.
4. The Council responded to Mr MacClue in more detail on 18 March 2005.
5. Mr MacClue was unhappy with the response from the Council and submitted an application to me, which I received on 14 April 2005. The case was subsequently allocated to an Investigating Officer.

The Investigation

6. Mr MacClue asked me to investigate the manner in which the Council had dealt with all 21 of his questions. However, not all of the questions put by Mr MacClue to the Council were valid section 1 requests.
7. Section 1 of FOISA states that a person who requests information from a public authority which holds it is entitled to be given that information. Section 73 states that "information" is taken to mean information recorded in any form. I find that only 8 of the requests that Mr MacClue made could possibly be requests for recorded information, although in the majority of these cases information was unlikely to be held by the Council. The requests which are possibly valid are set out below.
 - b) Mr MacClue alleged that the Council had used the death of family members in Scotland as a reason to refuse his application for housing and asked whether this had been part of the housing policy of the Council.



- c) He also asked how long had this been a part of the Council's housing policy and
 - d) Why the Council had denied him housing in Scotland
 - k) Why the Council refused to acknowledge that his medical condition and age was a special needs case
 - q) Why the Council did not accept that his spiritual, mental and physical status was a special needs case
 - r) Whether the Council included itself in the "revised tenancy agreement"
 - s) Whether the Council accepted all the articles of the Human Rights Act
 - u) The name of the doctor who had assessed his medical situation in relation to his application for housing.
8. I am satisfied that the remaining requests made by Mr MacClue are requests for the comments and opinions of the Council and not for recorded information that it holds. Therefore the remaining requests are not valid requests for information as defined by section 1(1) of FOISA and are outwith the scope of this investigation.
9. My Office contacted the Council on 7 June 2005 to advise it which of the questions were considered to be valid section 1 requests and to ask it to comment on its response to Mr MacClue. My Office suggested that a number of questions could be responded to by the Council providing Mr MacClue with a copy of its Housing Allocation Policy.
10. In its response, Council agreed that requests (b), (c), (d), (k) and (q) made by Mr MacClue could be responded to by providing a copy of this policy. The Council also advised that this had been offered to Mr MacClue on several occasions, but Mr MacClue had never taken up this offer
11. The Council also gave full answers to requests (r) and (s) within its comments and indicated that it was happy for this letter to be passed to Mr MacClue. The letter containing the information was subsequently passed to Mr MacClue.
12. Finally, the Council noted that it believed it had that it had provided Mr MacClue with the remainder of the information in response to a request for information made under section 7 of the Data Protection Act 1998 by Mr MacClue on 18 April 2005.
13. My Office contacted Mr MacClue to ask whether he would agree to settle this case if a copy of the Housing Allocation Policy was provided to him. On 13 June 2005, Mr MacClue advised me that he would not accept a copy of the Housing Allocation Policy as an acceptable response to his requests.



14. Mr MacClue continued to correspond at length with both my Office and the Council, repeatedly stating his dissatisfaction with the progress of the investigation and the Council's responses to him.
15. On 20 October 2005, the Council sent a final letter to Mr MacClue, again setting out that it had answered his requests to the best of its ability, and reiterating that his application for local authority housing had not been rejected. It also provided Mr MacClue with the name and address of the medical officer who had assessed his case.

The Commissioner's Analysis and Findings

16. I have reached the conclusion that in this case the Council has breached a number of the technical requirements of Part 1 of FOISA in responding to Mr MacClue's request, although the Council has provided Mr MacClue with a great deal of information both before and during the investigations.

The Council's responses to Mr MacClue

17. Mr MacClue wrote to the Council on 24 January 2005, requesting several pieces of information and asking it to comment on his situation. The Council responded to Mr MacClue on 7 February 2005. Although the response confirmed that Mr MacClue's application for local authority housing had not been rejected as he claimed, it did not acknowledge his further requests for information.
18. On receipt of a valid request for information, a public authority has three main options: release the information to the applicant; issue a formal notice to the applicant stating that the authority does not hold the information or issue a formal refusal notice to the applicant. I consider that the Council's letter of 7 February 2005 can only be treated as a refusal notice. Sections 16 and 19 of FOISA clearly set out the information which must be included in a refusal notice in order for that notice to be valid. The notice must:
 - disclose that the public authority holds the information;
 - specify the exemption that applies to the information;
 - state why the exemption applies (including consideration of the public interest test, where relevant);
 - provide information about the applicant's right to request that the authority conduct a review of their decision, and
 - give information about the applicant's right to apply for a decision from the Commissioner.



19. Having considered the particulars of this case, I am satisfied that the Council failed to meet its obligations under FOISA in its initial response to Mr MacClue.
20. Mr MacClue wrote to the Council again on 14 February 2005, stating that he was dissatisfied with the response he had received from the Council. This letter can be construed to be a request for review as required by section 20 of FOISA.
21. Section 21 of FOISA requires an authority to carry out a review in response to an applicant's request to do so. Following the review, the authority must issue a written notice to the applicant, which must include details about the requester's right of application to me for decision and about the right to appeal against my decisions to the Court of Session.
22. Although the Council did respond to Mr MacClue in its letter of 18 March 2005, no review of the way in which it handled the initial request for information appears to have been carried out. Additionally, in its response to Mr MacClue, it did not include details of Mr MacClue's rights of appeal. Therefore I find that the Council failed to meet its obligations under FOISA in the manner in which it responded to Mr MacClue's request for review.

The section 25 exemption

23. In its comments on the application, the Council stated that the information referred in Mr MacClue's requests (b), (c), (d), (k) and (q) is available in the Council's housing allocation policy. It went on to state that the housing allocations policy is available both on line and by post and that Mr MacClue has refused a copy of this document despite having been offered it on several occasions.
24. Section 25(1) of FOISA states that information which an applicant can reasonably obtain other than by requesting it under section (1)(1) is exempt information. In this case, I consider that the information referred to by Mr MacClue in requests (b), (c), (e), (k) and (q) is reasonably obtainable by accessing the Council's housing allocation policy through its publication scheme. Therefore the information requested is exempt from release and the Council was correct in withholding it from Mr MacClue.

The remaining questions

25. Mr MacClue requested that he be provided with the name of the doctor who had carried out his medical assessment in relation to his application for housing. The Council did not acknowledge this request in its original response to Mr MacClue.



26. In addition to making a request for review on 14 February 2005, Mr MacClue asked for all information that the Council held about him. The Council treated this as a subject access request under section 7 of the Data Protection Act 1998.
27. The Council responded to Mr MacClue's subject access request on 18 April 2005, providing Mr MacClue with the personal information which it held about him. The Council believes that this included the name and address of the doctor who had assessed his medical situation in relation to his application for housing, although it has no proof that this is the case. The Council also wrote to Mr MacClue on 20 October 2005 providing him with the name and address of the doctor who had carried out his medical assessment. In view of the fact the Council has provided this information to Mr MacClue during the course of the investigation I consider the matter to have been concluded.
28. Questions (r) and (s) were also responded to during the investigation and I therefore also consider those matters to have been concluded.

Conclusion

29. The Council has offered to provide Mr MacClue with a copy of its Housing Allocation Policy on several occasions. During the investigation, the Council wrote to Mr MacClue responding to the points which he had made and to his subject access request made under the Data Protection Act 1998. Additionally, the Council agreed to allow Mr MacClue sight of the comments it made in response to my investigation. Although he has been provided with all of the information that he has requested by these means, Mr MacClue continues to assert that the Council has not responded to his requests adequately. It is unfortunate that Mr MacClue does not accept that the information he seeks has been provided to him as far as possible.

Decision

I find that Argyll and Bute Council (the Council) was correct to withhold information from Mr MacClue as the information was exempt from disclosure under section 25 of the Freedom of Information (Scotland) Act 2002 (FOISA).

However, I find that the Council failed to comply with some of the technical aspects of FOISA in the manner in which it dealt with Mr MacClue's request.



It did not respond to Mr MacClue's initial request for information in the manner required by section 16(1) of FOISA. It did not inform Mr MacClue of his right to request a review of the Council's decision, or of his right to apply to me as required by section 19 of FOISA. Further to this, it did not respond to Mr MacClue's request that it review its response to his request for information in the manner required by sections 21(5) and 21(10) of FOISA.

I am satisfied that the Council has now responded as fully as can reasonably be expected to Mr MacClue's request for information, and so do not require any further remedial steps to be taken in response to this decision.

Kevin Dunion
Scottish Information Commissioner
21 November 2005