



Scottish Information
Commissioner

**Decision Number 156/2006 Mr P and Dumfries and
Galloway Council**

*Request for information relating to the applicant's Council Tax
arrears*

**Applicant: Mr P
Authority: Dumfries and Galloway Council
Case No: 200600022
Decision Date: 21 August 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 156/2006 Mr P and Dumfries and Galloway Council

Request for information relating to the applicant's Council Tax arrears – procedural breaches of the Freedom of Information (Scotland) Act 2002 by Dumfries and Galloway Council

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement), 10(1) (Time for compliance) and 21 (Review by Scottish public authority)

Decision of the Scottish Information Commissioner 047/2005

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

Facts

Mr P submitted 5 requests to Dumfries and Galloway Council (the Council). The first 3 of these requests related to complaints made by Mr P to the Council. Requests numbers 4 and 5 related to Council Tax arrears incurred by Mr P.

The Council responded to Mr P requesting that he clarify the first 3 requests. However the Council did not provide him with any information relating to the 4th and 5th requests within 20 working days.

Mr P was dissatisfied and requested that the Council review its response on the basis that he had not received a full response to any of his 5 requests.

The Council carried out a review and provided Mr P with a response in respect of all 5 requests. Mr P remained dissatisfied and applied to the Scottish Information Commissioner.

Following an investigation the Commissioner found that the Council had breached certain requirements of Part 1 of FOISA, but as Mr P's rights under FOISA were not prejudiced by these breaches he did not require the Council to take any action as a result.



Background

1. On 25 August 2005, Mr P emailed the Council and requested:
 - a) List of all complaints made against an employee of the Council (request number 1)
 - b) Proof the employee passed each timeously to the relevant Council employee to investigate (request number 2)
 - c) Evidence that the relevant Council employee received each one of them and action taken, including advice of disposal to Mr P (request number 3)
 - d) Copy of evidence the Council employee had stated they had seen Mr P's Council Tax records had been corrected and issuance of corrected demands and issuance of corrected demand notices and withdrawal of incorrect warrants issued based on inaccurate records (or acceptance that the employee lied to pervert justice and disciplinary action to follow) (request number 4)
 - e) Evidence of action taken to refund sums collected in error at 4 above, referring the Council to payments collected by sheriff officers that year and applied to inaccurate debt including penalties at 4 above (request number 5)
2. The Council responded on 15 September 2005, requesting that Mr P clarify his request for information specifically in relation to requests numbers 1, 2 and 3.
3. Mr P emailed the Council again on 10 November 2005, noting that he had not received a substantive response to any of his 5 requests and requesting that it review its actions in respect of all of them.
4. The Council acknowledged receipt of Mr P's request for review on 11 November 2005 and intimated that a review would be carried out and a response sent to him.
5. The Council again wrote to Mr P on 23 November 2005, asking for clarification in respect of his first 3 requests and setting out that it had already provided him with information, in correspondence prior to the information request under consideration, which related to requests numbers 4 and 5.
6. Mr P responded to the Council on 26 November 2005, clarifying requests numbers 1, 2 and 3, and disputing that the Council had provided him with information relating to request numbers 4 and 5.



7. The Council responded to Mr P's request for review by letter on 8 December 2005. It stated that Mr P would receive a response to requests numbers 1, 2 and 3 during the following week. In respect of questions 4 and 5, the Council again stated that it had provided Mr P with information relating to those requests in a letter to him dated 27 June 2005. Furthermore, the Council stated that this matter had been addressed in my decision number 047/2005. It enclosed copies of these for ease of reference
8. There followed considerable correspondence between Mr P and the Council relating to all 5 of Mr P's requests for information.
9. Mr P applied to the Commissioner expressing dissatisfaction with the way in which all 5 requests for information were handled by the Council.

The investigation

10. Following protracted correspondence with both Mr P and the Council relating to the validity of Mr P's application, it was accepted as a valid application to the Commissioner in respect of requests numbers 4 and 5 only. The investigating officer formally contacted the Council on 24 April 2006 in terms of section 49(3)(a) of FOISA, asking it to comment on its handling of these 2 requests and the matters raised by the Mr P in relation to them.
11. A response was received from the Council on 8 May 2006. It outlined the chronology of Mr P's requests for information and their handling by the Council and clarified a number of apparent typographical errors in Mr P's correspondence with the Council. The Council repeated its assertion that it had already provided Mr P with all of the information which he had requested through previous correspondence. It stated that the matter had been the subject of my decision 047/2005, which found that the Council had responded to Mr P as fully as possible in relation to information about his dispute over the payment of Council Tax arrears, and that the Council had provided him with all of the relevant information which it held. However the Council did not consider section 14 of FOISA (which relates to repeated requests for information) to apply in this instance.
12. The Council also included copies of previous and subsequent correspondence with Mr P in its response which demonstrated that it had provided him with all of the information which he required.
13. The Council also intimated that it believed it had complied with all of the technical requirements of FOISA in relation to Mr P's requests.



The Commissioner's Analysis and Findings

14. Due to the nature and volume of Mr P's communications with the Council relating to this matter, the process of identifying the key issues of Mr P's application has been challenging. However, the matters are in themselves relatively simple: whether the Council has responded to Mr P's request in compliance with the technical requirements of Part 1 of FOISA, and whether it has provided Mr P with the information which he has requested.

The Council's response to Mr P's request

15. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request to comply with a request for information.
16. Although in its response to the applicant's email of 25 August 2005 the Council asked that Mr P clarify requests 1, 2 and 3, it did not ask that he do so in relation to requests 4 and 5, and thereafter did not correspond with Mr P in relation to those requests until after his request for review of 10 November 2005. While I understand that the Council considered that it should not respond to any of the applicant's requests until clarification had been received, Mr P made 5 separate requests for information, each of which should have been dealt with separately according to the provisions of FOISA.
17. The Council therefore did not respond to request numbers 4 and 5 within the timescale specified in section 10(1) of FOISA. I find that the Council did not deal with Mr P's requests for information in accordance with the requirements of Part 1 of FOISA in that it failed to comply with section 10(1).

The Council's response to Mr P's request for review

18. Mr P requested that the Council review its response by email on 10 November 2005. The Council acknowledged this request on 11 November 2006.
19. The Council provided a response to Mr P's request for review on 8 December 2005. In its response, the Council reiterated that it had asked Mr P to clarify his request for information, and that he would receive a response to the request within 20 working days of the Council receiving that clarification.
20. In respect of request numbers 4 and 5, the Council informed Mr P that it had already sent him a letter (dated 27 June 2005) which provided him with all of the information which he had requested. It also pointed out that the information requested had been the subject of a previous decision by me (decision 47/2005) which had found that he had been given all of the information requested.



21. The Council also set out the Review Panel's finding that it had complied with the timescales set out by section 10(1)(a) of FOISA in responding to Mr P's requests for information. Finally, the Council provided Mr P with details of his right of appeal to me should he remain dissatisfied with its response to him.
22. Having considered the Council's response to Mr P's request for a review, I am satisfied that it met all of the relevant requirements of section 21 of FOISA, in particular those contained in subsections (1), (4), (5) and (10). Accordingly, the Council dealt with Mr P's request for a review in accordance with Part 1 of FOISA.

Whether the Council has provided Mr P with the information which he requested

23. Mr P requested:
 - a) Copy of evidence the Council employee had stated she had seen Mr P's Council Tax records and issuance of corrected demands and issuance of corrected demand notices and withdrawal of incorrect warrants issued based on inaccurate records (or acceptance that the employee lied to pervert justice and disciplinary action to follow) (request number 4)
 - b) Evidence of action taken to refund sums corrected in error at 4 above, and referring the Council to payments collected by sheriff officers that year and applied to inaccurate debt including penalties at 4 above (request number 5)
24. Mr P has made several requests to the Council for information relating to a dispute over payment of his Council Tax since FOISA has been in force. The majority of these requests are closely interlinked and it is difficult to determine their meaning without viewing them in the context of previous and subsequent requests made.
25. As part of his long standing dispute with the Council Mr P is understood to have been awarded a rebate in relation to his Council Tax arrears. He has been in correspondence with a Council employee regarding this. During the correspondence, Mr P alleges that the employee assured him that she had seen evidence to suggest that money had been refunded to him, and that any warrants issued relating to incorrect records of Mr P's arrears had been withdrawn. In this request, Mr P has requested the evidence that the employee claimed to have seen.
26. The Council is understood to have made a refund of Council Tax to Mr P, as it had allegedly incorrectly calculated his Council Tax arrears. Mr P, in his final request, is asking to see evidence that these refunds were issued to him.
27. Section 1(1) of FOISA states that a person who requests information from a Scottish public authority is entitled to be given it by that Council.



28. The Council did not provide any information to Mr P in response to any of his requests for information or for review. On the other hand it has never, either in response to these requests or in correspondence with my Office, suggested that the information in question is not held or should be withheld for any reason, or that there is any reason for refusing to reveal whether the information exists or is held. Indeed, it is clear that information is held by the Council which falls within the scope of Mr P's request. In all the circumstances, I must find that the Council did not comply with section 1(1) of FOISA in responding to Mr P's request, in that it did not provide him with the information which it held in relation to Mr P's request.
29. However, having looked at extensive correspondence between the Council and Mr P, in particular letters sent by the Council to Mr P on 27 June 2005, and 20 December 2005, I am satisfied that the Council has provided Mr P with all of the information which it holds relating to his request on different occasions.
30. I am aware that Mr P has made a total of over 550 requests to the Council on this and related matters, and of the subsequent logistical difficulties in responding to those. Having taken this into account I am satisfied, despite it having breached certain requirements of FOISA in this instance, that the Council has done everything reasonable, both before and after receiving these particular requests, to provide Mr P with the information he required.

Decision

I find that Dumfries and Galloway Council (the Council) breached section 1(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mr P's requests for information in that it did not provide him with information in response to his request.

I also find that the Council did not respond to Mr P's request for information in accordance with Part 1 of FOISA in that it did not respond to those requests within the timescale specified in section 10(1).

However, as Mr P's rights were not prejudiced by this omission and the Council had provided him with all of the information which he requested both before and after the requests were made I do not require the Council to take any action as a result of my decision



Appeal

Should either Mr P or Dumfries & Galloway Council wish to appeal the 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.

Kevin Dunion
Scottish Information Commissioner
21 August 2006

APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002:

1 General entitlement

- (1) A person who request information from a Scottish public authority which holds is it entitled to be given it by the authority.

10 Time for compliance

- (1) ... a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after –
- (a) ... the receipt by the authority of the request.

21 Review by Scottish public authority



- (1) ... a Scottish public authority receiving a requirement for review must ... comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
- (4) The authority may, as respects the request for information to which the requirement relates-
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. Reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.”
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.”