



Scottish Information
Commissioner

**Decision 157/2006 – Mr Alexander Plunkett and Dumfries and
Galloway Council**

Complaint about fees notice and handling of request

**Applicant: Mr Alexander Plunkett
Authority: Dumfries and Galloway Council
Case No: 200601033
Decision Date: 21 August 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 157/2006 Mr Alexander Plunkett and Dumfries and Galloway Council

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Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 9 (Fees); and 10(1) (Time for compliance).

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations), regulations 3 and 4.

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

Facts

Mr Plunkett asked Dumfries and Galloway Council (the Council) for statistical information relating to his previous email correspondence with the Council. The Council issued a fees notice requiring him to pay £5 for the information.

During correspondence with the Commissioner's office, Mr Plunkett explained that all his emails had been directed via one Council officer. After receiving this explanation the Council accepted that the cost of providing the information would be much less than anticipated, and provided Mr Plunkett with the information he had asked for without requiring a fee.

Mr Plunkett declined to withdraw his application to the Commissioner as he wished to pursue his complaint about the way in which his request had initially been dealt with by the Council.

The Commissioner found that the Council had failed to comply with Part 1 of FOISA by issuing the fees notice.



Background

1. On 1 April 2006, Mr Plunkett emailed an information request to Dumfries & Galloway Council (the Council). He asked for the number of email contacts the Council had received from him between 1 May 2004 and 6 January 2005 which had ended with "The Honourable Alexander Plunkett (Colonel)".
2. The Council responded to Mr Plunkett's request in a letter dated 4 May 2006, which advised Mr Plunkett that the cost of complying with his request would be £150. In accordance with the Fees Regulations the Council required Mr Plunkett to pay £5 for the provision of the information.
3. On 6 May 2006 Mr Plunkett sent an email to the Council requesting a review of its response. He queried the estimate of the time it would take to retrieve the information he had asked for.
4. On 1 June 2006 the Council informed Mr Plunkett that, after review, it had found that the cost of complying with his request was properly based on the work required to collate the information from the different sections of the Council with whom Mr Plunkett had been in correspondence. The estimate was based on costed work for a previous, similar request.
5. Mr Plunkett subsequently applied to the Scottish Information Commissioner to decide whether the Council's response had complied with FOISA. During correspondence with the Commissioner's office he explained that all his email requests during the period in question had been directed to the Council via one individual.
6. The case was allocated to an investigating officer and the application validated by establishing that Mr Plunkett had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to his request.

Investigation

7. The Commissioner notified the Council of the application made by Mr Plunkett and invited its comments in terms of section 49(3)(a) of FOISA. The Council was advised that Mr Plunkett's email correspondence had been directed to one staff member.



8. Having received this clarification, the Council accepted that the information requested by Mr Plunkett would cost less than £100 to supply, and so could be provided without incurring a fee. The Council provided Mr Plunkett with the information he had asked for in a letter dated 1 August 2006.
9. Mr Plunkett was asked whether he was content to withdraw his application to the Commissioner but declined to do so, complaining that the Council had not replied within the statutory timescale laid down in FOISA. He also stated that the Council had previously been informed that all his correspondence had been directed to one staff member and should have been aware of this when dealing with his request.
10. The Council was asked to comment on Mr Plunkett's assertion that Council staff were aware that all his correspondence had been directed to one staff member during the period in question.
11. The Council accepted that Mr Plunkett had previously been asked to direct all email correspondence to one officer. The Council explained that, because of staff changes and the passage of time, this was not known by the officers responsible for dealing with Mr Plunkett's information request.

The Commissioner's Analysis and Findings

Decision to issue a fees notice

12. The Council has accepted that the initial assessment of the cost of the work required to answer Mr Plunkett's request was wrongly calculated. I note that Mr Plunkett did not remind the Council that all his correspondence had been directed to one email address when he requested a review of the response to his request. If he had done so there is no doubt that the Council would have taken this into account during its review.
13. Once the Council had been informed of this fact, it acknowledged that the cost of providing the information would be much less than previously calculated, and took steps to supply Mr Plunkett with the information. This seems to me to be an entirely acceptable response in the circumstances, although I have to find that its response to Mr Plunkett's request (i.e. issuing a fees notice) was not justified by section 9 of FOISA (read together with the Fees Regulations) and therefore the Council did not comply with Part 1 of FOISA in respect..



Compliance with timescales

14. I am satisfied that the Council responded to Mr Plunkett's information request by issuing a fees notice within the timescale set down by section 10 of FOISA, in accordance with section 9(1) of FOISA.
15. Mr Plunkett submitted his request by email, which means that it was deemed to have been received by the Council on the same day (section 74(2)(b)). However, the 20 working day period begins on the first working day after a request for information is received (as is made clear in section 10(1)(a)). Consequently, provided that a public authority posts a notice on the twentieth working day, the notice will be considered to have been given within the relevant timescales. I note that the period in question contained two public holidays (Easter Monday and 1 May), neither of which are to be counted as working days.
16. Given that the Council issued the fees notice in good faith, there was no requirement to provide Mr Plunkett with the information he had asked for until the fee had been received (section 9(3) of FOISA). Once the Council realised that the fees notice had been wrongly calculated, it did not delay in providing Mr Plunkett with the information he sought.

Fees notice – level of charges

17. As the Council withdrew its fees notice to Mr Plunkett, I have not examined whether the charge set out in its fees notice of 4 May 2006 would have been justified if the work then anticipated to be required had actually been carried out.

Decision

I find that Dumfries & Galloway Council (the Council) failed to comply with Part I of the Freedom of Information (Scotland) Act 2002 (FOISA) by issuing a fees notice in respect of information which could be provided at a cost of less than £100. In all other respects, I am satisfied that the Council dealt with Mr Plunkett's request in accordance with the requirements of Part 1 of FOISA.

I accept that the Council has taken steps to remedy this error, and I do not require any further action in relation to this matter.



Appeal

Should either Mr Plunkett 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.

9 Fees

- (1) A Scottish public authority receiving a request which requires it to comply with section 1(1) may, within the time allowed by section 10 for so complying, give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for so complying.
- (2) Subsection (1) is subject to section 19.
- (3) If a fees notice is given to the applicant, the authority is not obliged to give the requested information unless the fee is duly paid; and for the purposes of this subsection and section 10(2) due payment is payment within the period of three months beginning with the day on which the notice is given.
- (4) Subject to subsection (7), a fee charged under subsection (1) is to be determined by the authority in accordance with regulations made by the Scottish Ministers.

10 Time for compliance

- (1)... a Scottish public authority receiving a request for 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.

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3. - (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.



(2) In estimating projected costs-

(a) no account shall be taken of costs incurred in determining-

(i) whether the authority holds the information specified in the request; or

(ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and

(b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

Fee payable

4. - (1) For the purposes of section 9(1) of the Act (fees), the fee which a Scottish public authority may charge is to be determined in accordance with paragraphs (2) to (4).

(2) Where the projected costs do not exceed £100, no fee shall be payable.

(3) Where the projected costs exceed £100 but do not exceed the prescribed amount, the fee shall not exceed 10% of the difference between the projected costs and £100.

(4) The fees notice shall set out the manner in which the fee has been calculated.