

**Decision 012/2006 – Ms X and Glasgow City Council**

*Request for details of a former employee's employment record*

**Applicant: Ms X**  
**Authority: Glasgow City Council**  
**Case No: 200502043**  
**Decision Date: 30 January 2005**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS

## **Decision 012/2006 – Ms X and Glasgow City Council**

### ***Request for details of a former employee's employment record – whether information is held – section 17- Content of certain notices – section 19***

#### **Facts**

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Ms X e mailed Glasgow City Council requesting information about a former employee. Glasgow City Council responded to Ms X, stating that her request for information would be dealt with under the Data Protection Act 1998, consequently refusing to disclose the information under the Freedom of Information (Scotland) Act 2002.

Ms X e mailed Glasgow City Council requesting that it review its decision. It responded to Ms X, requesting that she specify the information she was seeking. Ms X then advised of the exact information which she required. Glasgow City Council again responded to Ms X, stating that it did not hold the information. Ms X was dissatisfied with the Council's response and applied to the Scottish Information Commissioner to decide whether it had complied with the Freedom of Information (Scotland) Act 2002 in handling her request.

#### **Outcome**

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The Commissioner found that Glasgow City Council had failed to comply with the requirements of Part 1 of the Freedom of Information (Scotland) Act 2002 in that it had failed to advise Ms X under section 19 of that Act of her rights to ask for a review of its decision and apply to the Commissioner for a decision. However, the applicant was not prejudiced in the exercise of her rights by this failure.

The Commissioner was satisfied that Glasgow City Council did not hold the information which Ms X requested.

The Commissioner did not require Glasgow City Council to take any action as a result of this decision.

## Appeal

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Should either Ms X or Glasgow City 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 of receipt of this notice.

## Background

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1. Ms X e mailed Glasgow City Council (the Council) on 25 April 2005, requesting all information which it held relating to a former employee.
2. The Council responded to Ms X's request on 13 May 2005, stating that the request would be dealt with under the Data Protection Act 1998 (the DPA) rather than the Freedom of Information (Scotland) Act 2002 (FOISA), being a request for personal data. It went on to state that the information requested by Ms X would only be released should the employee request it in person, or if Ms X was acting as a representative of that employee.
3. This was taken by Ms X to be a notice of refusal to disclose information, and so she e mailed the Council again on 17 May 2005 requesting that the Council review its decision.
4. The Council responded on 3 June 2005, asking Ms X to clarify the nature of the information which she had requested.
5. Ms X responded on 6 June 2005, advising that she required in particular any information held in relation to complaints (formal or informal) made against the employee by third parties, confirmation of the employee's capability for the post, their dates of employment, post title, and reason for leaving.
6. On 9 June 2005, the Council responded to Ms X, stating that it did not hold the information in question.
7. Ms X applied to the Commissioner for decision on this basis on 16 June 2005. The case was allocated to an investigating officer.

## The Investigation

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8. Ms X's appeal was validated by establishing that she had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its response to her request.
9. A letter was sent to the Council on 28 September 2005, giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was asked to comment on the issues that Ms X had raised and on the application as a whole. As Ms X had not included a copy of the response to her request for review, the Council was asked to comment in particular on whether it had responded to the request for review. The Council was also asked for its comments on whether it held the information requested, given that Ms X had indicated that the employee in question had been employed by the Council approximately 15 years previously. Finally, the Council was asked to provide copies of any information relevant to Ms X's request.
10. The Council responded giving its comments on the case. It acknowledged that the responses given to Ms X had not complied with the technical requirements of the FOISA in describing her rights of review and appeal.
11. The Council stated that it had responded to Ms X's request for review by e mail on 9 June 2005, and provided a copy of the document. It went on to state that it was unable to locate the information requested by Ms X, as its policy on the retention of personnel files was to destroy all such documents 6 years after the employee had left the Council. It provided copies of the relevant internal guidance to support this.
12. Finally, the Council raised the question of the validity of Ms X's application. It suggested that, as it had asked for clarification of Ms X's request on 3 June 2005, Ms X's response was, in effect, a new request for information. As a result the process set out by FOISA for requesting information from a Scottish public authority had not been concluded when Ms X applied to the Commissioner for decision. I will examine this matter in detail in my analysis.

## The Commissioner's Analysis and Findings

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### Was Ms X's application valid?

13. As I have set out in paragraph 11, the Council questioned whether where an applicant makes a request for review, and is then asked by the authority to clarify the information which they have requested, this is in fact a new request for information made by the applicant.
14. Section 1(3) of FOISA states that where an authority has received a request for information and if it requires further information in order to identify and locate the requested information, and has told the applicant so, it is not required to provide the information until it has received clarification. The statutory 20 days for response to the request runs from the date of receiving clarification from the applicant and to that extent the clarified request becomes a new request for the purposes of section 1.
15. The Council has suggested that Ms X made a new request for information in her e mail providing clarification. In her initial request, Ms X requested all information held relating to the employee. I am satisfied that she then made a valid requirement for review of the Council's decision to withhold that information. In her response to the Council's request for clarification at that point, she stated that she was seeking information held in relation to complaints (formal or informal) made against the employee by third parties, confirmation of the employee's capability for the post, their dates of employment, post title, and reason for leaving. In other words, the request was refined but not fundamentally changed in character.

16. Although there is nothing in Part 1 of FOISA to prevent an authority from seeking clarification from the applicant at any point during the process of handling a request, section 1(3) only applies to the initial processing of the application under section 1. This is because it relates to further information required by the authority to process the request. Information of this kind should not be required by the authority when a review is sought by the applicant, particularly where (as here) the authority has responded to the initial request: the authority must be deemed to have determined what it required to make its initial response before giving it. While I accept that an applicant might, in making a requirement for review, change the character of the original request for information so fundamentally that it became, in effect, a new request for information (in which case the authority should treat it as such and advise the applicant accordingly), I am not persuaded that was the case here. I note that Council gave Ms X no indication that it was dealing with her requirement for a review (which, as I have indicated above, I am satisfied was valid) other than in accordance with section 21 of FOISA and see no reason why I should treat its overall response to that requirement in any other way now.
17. Having considered the arguments set out above I am satisfied that Ms X has fulfilled the requirements of Part 1 of FOISA in order to make a valid application to me.

#### **Content of certain notices**

18. I find that the Council failed to comply with the requirements of Part 1 of FOISA in that it failed to advise Ms X of her rights under section 19 to ask for a review of its decision and subsequently to apply to the Commissioner for a decision. The Council was required to include this information in any notice served on Ms X for the purposes of section 17 (i.e. notice that the information was not held). Despite this, Ms X did ask for a review and made an application to the Commissioner and so was not prejudiced in the exercise of her rights by this failure.

#### **Whether the information requested is held**

19. In its submission, the Council stated that its guidance on the retention of personnel files (provided as part of the Council's submissions) indicated that employment records should be retained for 6 years after termination of employment with the Council. On that basis, assuming the employee in question had in fact worked for the Council or its statutory predecessor (which the Council has been unable to confirm), all records pertaining to him should have been destroyed in line with Council guidelines 6 years after the termination of his employment. In any event, the Council has conducted a search of its records (which I am satisfied was adequate in the circumstances) and has found no files relating to the employee in question.

20. Ms X specified that the employee was employed by the Council approximately 15 years ago, and with reference to the guidance on personnel files provided, I am satisfied that the information requested by the applicant is not held by the Council.

## **Decision**

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I find that Glasgow City Council failed to comply with the requirements of Part 1 of the Freedom of Information (Scotland) Act 2002 in that it failed to advise Ms X under section 19 of that Act of her rights to ask for a review of its decision and apply to the Commissioner for a decision. However, the applicant was not prejudiced in the exercise of her rights by this failure.

I am satisfied that Glasgow City Council does not hold the information which Ms X requested.

I do not require Glasgow City Council to take any action as a result of this decision.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**30 January 2005**