



Scottish Information
Commissioner

Decision 038/2005 Macroberts and Renfrewshire Council

Requests for information relating to Glasgow Airport

Applicant: Macroberts

Authority: Renfrewshire Council

**Case Nos: 200500922, 200500923, 200500924,
200500925, 200500926, 200500927**

Decision Date: 14 October 2005

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 038/2005 – Macroberts and Renfrewshire Council

Requests for information relating to Glasgow Airport – emails sent to Council – Council had no record of receipt – whether valid section 1 request – whether information received - whether valid application to the Commissioner – decided valid section 1 request and valid application to the Commissioner

Facts

On 1 January 2005 Macroberts, a firm of solicitors, sent 6 emails to Renfrewshire Council. Each email contained a separate request for information. Macroberts received no response to these emails and on 3 February 2005 it sought a review in respect of each information request. Renfrewshire Council indicated that it had never received the six emails sent on 1 January 2005. Renfrewshire Council did not respond to the emails from Macroberts of 3 February 2005 within 20 working days. On 10 February 2005 Macroberts applied to the Commissioner for a decision in respect of each information request.

Before these applications could be accepted as valid by the Commissioner it was necessary to determine that the email requests of 1 January 2005 had been received by Renfrewshire Council under the terms of the Freedom of Information (Scotland) Act 2002 (FOISA). The Commissioner decided that the requests were valid. In the interim Macroberts received information from Renfrewshire Council in response to each of its information requests. Macroberts asked the Commissioner to comment on the procedural aspects of these requests.

Outcome

Renfrewshire Council failed to comply with Part 1 of FOISA by failing to respond to Macroberts within 20 working days after receiving its requests. Renfrewshire Council also failed to respond to the requests for review from Macroberts within the timescales set out in section 21(1) of FOISA.



The Commissioner decided that no remedial steps require to be taken by Renfrewshire Council.

Appeal

Should either Renfrewshire Council or Macroberts wish to appeal against this 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. On 1 January 2005 Macroberts sent 6 emails to Renfrewshire Council (the Council) each containing an information request relating to Glasgow Airport.
2. Macroberts received no response to these emails within 20 working days and on 3 February 2005 it re-sent the 6 emails to the Council requesting an internal review in relation to each request.
3. The Council responded to Macroberts on 8 February 2005 indicating that it had not received any emails from Macroberts on 1 January 2005. The Council sought advice from my Office on whether it was obliged to treat the requests from Macroberts of 3 February 2005 as requests for review even though they had no record of receiving the emails sent on 1 January 2005.
4. The Council advised my Office that it had made every effort to trace the email sent from Macroberts and stated "but it did not get here, probably because of difficulties we were experiencing with our system."
5. After seeking advice from me my Office advised the Council that where an email (or letter) has been sent to a Scottish public authority, the authority should make every reasonable attempt to trace the communication. If no record of it ever having been received by the authority can be found, a subsequent request for information would simply be treated as a new request. The authority would have 20 working days to reply to the request. My Office advised that since the Council had ascertained that it did not receive the original request there would be no need for a formal review to be carried out.



6. The Council advised Macroberts that it would be treating the emails of 3 February 2005 as the original requests for information. Macroberts did not accept this position.
7. Macroberts received no substantive response to its requests for information of 3 February 2005 within 20 working days. On 10 March 2005 Macroberts applied to my Office for a decision in relation to each information request and the case was allocated to an Investigating Officer.

Investigation

8. I am permitted to investigate a matter under section 47(1) of FOISA only when the application to me is valid. To be valid, an applicant must have made a request for review to the authority under section 20 of FOISA and either received no response within 20 working days or be dissatisfied with the result of this review.
9. The validity of the requests for a review made by Macroberts depended on whether the original requests for information sent to the Council were received by the Council. I could not investigate these applications, therefore, until I had ascertained what had happened to the emails sent on 1 January 2005.
10. Macroberts indicated in its letter of application and in an email to the Council dated 9 February 2005 that information it had subsequently obtained suggested that the emails may have been deleted or blocked by an “over-zealous” email filter. Macroberts indicated to me that this comment was made by a member of staff at the Council in relation to another FOI request.
11. My Office initially contacted the Council on 16 March 2005 indicating that applications had been received from Macroberts. I advised the Council that initially I needed to ascertain whether that the requests of 1 January 2005 from Macroberts had been received by the Council. In a subsequent letter of 1 April 2005 I asked the Council to provide me with information about the following:
 - The checks the Council had made to ascertain whether the emails had been received
 - Details of any problems the Council had experienced with its email system/servers since 1 January 2005
 - Information about the Council’s email filter system; what triggered the system and whether filtered emails were deleted/bounced back/held



- The process followed in cases where emails were held back in the filter system
 - Any records of emails held/deleted/bounced back by the filter system
 - Details of any other FOI email requests that had apparently not been received by the Council from January 2005.
12. I also asked Renfrewshire Council whether it had supplied any information in response to the requests from Macroberts.
13. On receipt of my email of 16 March 2005 the Council realised that it had received only one request for review from Macroberts. The Council therefore contacted Macroberts on 18 March 2005 asking it to re-send further copies of the emails to enable the Council to consider all of the requests for information.

Submissions from Renfrewshire Council

14. The Council provided a detailed response to my letter of 1 April 2005. Rather than providing responses to each of the questions the Council provided general background information about the email filter system and then addressed the situation at the time of the email requests from Macroberts.
15. The Council advised that one of the layers of security that protects its internal email servers from the internet is the Simple Mail Transfer Protocol (SMTP) gateway. This gateway handles all incoming and outgoing e-mails and performs a series of checks on them to ensure that they are suitable for release.
16. The Council advised that there are a range of filters within this product that check for the following; viruses, offensive language, multimedia files, executable and script, excessive size and number of attachments, Spam or Junk Mail and unauthorised sender or recipient. Different filters process the emails in different ways. If an email is blocked, held or deleted for any reason, the system will automatically reply to the sender stating what has happened and why.
17. The Council advised that the server was upgraded at the start of December 2004. However since the new Spam filter was now "untrained" it was over-sensitive. That is, it was incorrectly blocking too many legitimate emails. On 22 December 2004 the Council ran training on the Spam filter to make it more accurate. This appeared to run successfully.
18. The Council advised that when staff returned to work on 10 January 2005 there were over 8000 messages held in the Spam filter. Upon further investigation, it was found that the Spam filter was no longer processing emails correctly. It was blocking over 95% of all incoming e-mails.



19. Staff in Infrastructure Services were required to process manually over 8000 emails on Monday 10 January. The Council could not guarantee that 100% of these emails were processed correctly and it advised that a very small number might have been deleted in error.
20. The Council indicated that it had no access to the logs created over the Christmas and New Year period and therefore there was no way to track any messages sent or received during this time. In addition to these problems the corruption of the Spam filter meant that it was not informing the sender that their messages had been blocked. Therefore the senders were unaware of the problems.
21. The Council advised that the emails sent by Macroberts on 1 January 2005 were never received by the internal email system. It indicated that this would suggest that if the Council systems did receive the emails they were blocked by the SMTP gateway. Unfortunately, the Council advised that there were no logs available on the SMTP gateway to verify receipt.
22. The Council also provided information on the emails re-sent by Macroberts on 3 February 2005 with accompanying requests for review. The Council advised that these mails were opened by a member of staff on 7 February 2005. Unfortunately, five of the mails were ignored on the assumption that they were a multiple re-send of the same email.
23. The Council indicated that the repeated sending of the same email to one of the Council's main in-boxes was not unusual and that the emails from Macroberts were all similarly headed and similar in content as regards layout and form of words.
24. The first of the six emails had been forwarded on 7 February 2005 to the Archivist for processing in the usual manner. This was in turn forwarded to the Freedom of Information Officer in the Department of Planning and Transport on the same day. The request for review was noted by the Council which began an enquiry into what had happened to the original copy of the email sent on 1 January 2005.
25. The Council advised that at that point the Senior Administrative Services Officer advised that he had checked both his and the Corporate Services Department mail in-boxes and neither had received any mails from Macroberts between 1 January and 7 February 2005.
26. An urgent Helpdesk call was then made to the IT Department via email to search for the email sent on 1 January 2005. The IT Department detailed the problems experienced with the software that handled the Council's emails over the Christmas and New Year period. IT staff then checked to see if the system had recorded any blocked emails from "Macroberts Flint" and advised to the effect that it had not.



27. The Council advised me that it had no evidence that it received the original six emails sent by Macroberts on 1 January 2005. It indicated that it was possible that the six emails from Macroberts were among those deleted in error. It advised, however, there was no evidence that this was indeed the case as there are no records available for the period in question.
28. When Macroberts re-sent the six emails at the Council's request on 18 March 2005, it became apparent that the Council had ignored in error five enquiries sent on 3 February 2005. Staff realised that although the first of the Macroberts' emails had been forwarded to the Archivist for reply the other five had been erroneously identified as duplicates and consequently ignored.
29. The Council advised that the procedure for the receipt of emails sent to the Corporate Services Department in-box had subsequently been altered. All electronic mail received into the Corporate Services general mailbox is now forwarded to the Department's Central Support Team where the emails are printed off and allocated in hard copy to the appropriate officer to be dealt with.
30. The Council advised that it also now has a mail tracking system that allows requests made under FOISA to be formally identified and enables the progress of enquiries to be monitored more efficiently.
31. The Council confirmed that the software for dealing the Council's email is now working correctly and that it had received no other complaints about its operation.

Submissions from the applicant

32. It was clearly important to establish whether Macroberts had also experienced any problems with its IT and email system during January 2005.
33. Macroberts supplied my Office with copies of the emails sent to the Council on 1 January 2005. These confirmed that the correct email address had been used.
34. In response to questions from my Office, Macroberts indicated that it had received no message from the Council to indicate that the emails of 1 January 2005 had not been received. Further, the emails had not been bounced back.
35. Macroberts advised that it had sent almost 200 emails on 1 January 2005 and all of them had been received and dealt with. Only the emails to Renfrewshire Council had apparently not been received. Macroberts advised that it had had no difficulty in receiving or sending emails during the time period when the emails were sent.



36. Macroberts subsequently advised that it had finally received information in response to its requests for information but stated that this was well outwith the statutory time permitted by FOISA. Macroberts asked that I address the way in which the Council had handled the requests for information and the delays that occurred.

Analysis and findings

37. As stated above, I can only consider an application when it is valid under the terms of section 47(1) of FOISA. To be valid, the applicant must have made a request for review to the authority under section 20 of the Act and either received no response within 20 working days or be dissatisfied with the result of this review. The validity of each of the requests for a review made by Macroberts depended on whether the original requests for information made by email on 1 January 2005 by Macroberts were received by the Council.
38. In determining whether the emails from Macroberts were received by the Council I have looked at the terms of FOISA.
39. Under section 74(2)(b) of FOISA “a thing transmitted by electronic means is presumed to be received on the day of transmission.”
40. The validity of the applications to me depended wholly on whether the emails had been “received” by the Council.
41. Section 74(2)(b) is a rebuttable presumption. This means that a matter is presumed to be the case unless it can be demonstrated otherwise. As applied to the current case, it would be presumed that the emails were received on 1 January 2005 unless the Council could demonstrate otherwise. Therefore it was for the Council to show that it had not received the emails sent by Macroberts on 1 January 2005.
42. The Council provided me with detailed information about its email filter system and the problems that it had experienced over the Christmas and New Year period. The Council indicated that it had problems with its spam filter system during the time when the emails were sent by Macroberts and that as a result it was obliged to process manually 8000 emails.
43. The Council advised me that it could not guarantee that 100% of these emails were processed correctly and indicated that a very small number might have been deleted in error. Unfortunately, there are no records available for the period in question.



44. I have been assured that other emails sent by Macroberts to other authorities at the same time were received.
45. As mentioned above, the effect of section 74(2)(b) is to require the Council to rebut the presumption that the emails were received on 1 January 2005. In my view, the Council's admission that a small number of emails may have been deleted in error leaves open the possibility that the emails from Macroberts were amongst these. As there are no records for the time period in question the Council has been unable to demonstrate that the emails were not received on 1 January 2005.
46. Having taken into account all information received by both parties I have therefore concluded that on the balance of probabilities the emails from Macroberts were received by the Council on 1 January 2005.
47. In reaching this decision I accept that I have not differentiated between receipt by the Council's email filter system and receipt by the Council's internal email system. This is because FOISA does not make this distinction. Section 74(2)(b) refers simply to receipt of the email. Therefore, in my view, where an email is held back by an email filter system, it will still be received by the authority for the purposes of FOISA.
48. I recognise that the Council sought advice on this matter from my Office when the dispute over the missing emails first arose. My Office advised that if the email had not been received by the Council it was not obliged to treat the subsequent request as a request for review. At that stage, however, my Office and the Council did not address the meaning of "received".
49. I also recognise that the failure of the Council to deal with the original information requests was largely as a result of a technical failure rather than human error. In terms of FOISA, however, the failure to respond to the information requests from Macroberts within 20 working days, amount to technical breaches.
50. It was unfortunate that the technical failure affecting the first set of email requests was compounded by human error when Macroberts re-sent the 6 emails on 3 February 2005 seeking requests for review. The Council has acknowledged that 5 of these 6 emails were deleted in error and were not forwarded to the appropriate person in the belief that they were duplicates of the first email.
51. Even the email request of 3 February 2005 which was not deleted and forwarded to the appropriate department was not dealt within 20 working days.



52. It is clearly unsatisfactory that Macroberts did not received substantive responses to its requests for information within the statutory time limits set out in FOISA.
53. Macroberts finally received the information requested in each email of 1 January 2005 during the course of the investigation. This was clearly well outwith the time limits set out in FOISA.
54. The Council has advised me that it has taken steps to address the problems that arose in dealing with the requests from Macroberts. It has advised that all emails received into the Corporate Services general mailbox are now forwarded to the Central Support Team where they are printed off and allocated in hard copy to the appropriate officer to be dealt with.
55. The Council has also advised that its electronic mail is now working correctly and that no other complaints have been received about its operation.

Decision

I find that Renfrewshire Council failed to comply with the requests for information from Macroberts in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). The Council did not respond to the requests within 20 working days after receiving the requests as required by section 10(1) of FOISA.

I also find that the Council failed to respond to the requests for review made by Macroberts in conformity with section 21 of FOISA in that the Council did not respond with 20 working days.

However, I do not require Renfrewshire Council to take any remedial steps.

Kevin Dunion
Scottish Information Commissioner
14 October 2005