

Decision Notice



Decision 109/2008 Unison Highland Branch and Highland Council

Job gradings and comparators

Reference No: 200800300

Decision Date: 16 September 2008

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Munro Ross of Unison Highland Branch (Unison) requested information from Highland Council (the Council) regarding the grading of certain jobs in the Exchequer function of the Finance Service. The Council's response explained how the gradings were determined, but did not release any further information. Following a review, the Council re-iterated and expanded upon its previous explanation of the grading process, but indicated in terms of section 17 of the Freedom of Information (Scotland) Act 2002 (FOISA) that it did not hold any further information that could be supplied. Unison remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Unison's request for information in accordance with Part 1 of FOISA. The Commissioner found that the Council had acted in accordance with Part 1 of FOISA by notifying Unison in terms of section 17 of FOISA that it did not hold the requested information. However, the Commissioner found that the Council had breached Part 1 and particularly the requirements of section 21(1) of FOISA by failing to respond to Unison's request for review within the specified timescales.

The Commissioner did not require the Council to take any action on this occasion.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement), 17(1) (Notice that information is not held) and 21(1) (Review by Scottish public authority)

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

Background

1. On 5 September 2007, Mr Munro Ross of Unison emailed the Council requesting the following information:

Details of how the gradings for the undernoted posts were arrived at and what posts in other services (if any) were used as comparisons. This should comprise details of how any assessment of job descriptions was carried out and what consideration was given to the



relative placing on the current salary structure. If any job evaluation scheme was used then the breakdown of the scores of both these posts and the comparators should be given.

- Team Leaders
 - Assistant Team Leaders
 - Senior Exchequer Assistants
 - Exchequer Assistants
 - Operations posts (all)
2. The Council responded on 20 September 2007. It stated that the new posts were determined in accordance with the Council's current procedures for establishing grades pending the introduction of the new pay structure. It went on to explain that the grades were assessed by its Personnel Department, in consultation with the Finance Service, on the basis of the job descriptions for the new posts, and the grades were then submitted to the Resources Committee for approval.
 3. On 9 October 2007, Unison wrote to the Council requesting a review of its decision as Unison did not consider that the Council had provided the information requested.
 4. The Council notified Unison of the outcome of its review some time later, on 19 February 2008, stating that there was no further information that could be supplied. The Council reiterated its previous explanation of the process of grading the posts, and additionally stated that consideration was given to other posts in the Finance Service. It also explained a job evaluation scheme was not used, and so there was no breakdown of scores to be disclosed. The Council consequently advised Unison, in terms of section 17 of FOISA, that no further information was held in relation to its information request.
 5. On 2 March 2008, Unison emailed the Commissioner, stating that it was dissatisfied with the outcome of the Council's review and applying for a decision in terms of section 47(1) of FOISA.
 6. The application was validated by establishing that Unison had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. The investigating officer contacted Unison on 9 April 2008 to clarify that Unison's information request should be read as relating solely to the grading of posts in the Exchequer function of the Finance Service. Unison confirmed on 15 April 2008 that this was the case.



8. On 9 April 2008, the Council was notified in writing that an application had been received from Unison. The Council was provided with an opportunity to comment on the application (as required by section 49(3)(a) of FOISA) and was asked to respond to specific questions. In particular, the Council was asked to describe the processes used in determining the job gradings and to provide samples of documents created in the process. The Council was also asked to provide copies (if they existed) of various types of documents that could be used in a job evaluation process.
9. The Council responded on 25 April 2008. It provided background information on the organisational changes that had been undertaken by the Council following changes to ward structure in 2007. The changes within the Exchequer function that were of interest to Unison form part of this Council-wide restructuring.
10. The Council explained that Directors and Senior Managers were responsible for recommending changes to the relevant committees in consultation with Personnel. It noted that there was no formal procedure for how this was done. It provided copies of two published reports to the Resources Committee, which were made regarding the reorganisation of the Finance Service and the Exchequer Section of that Service. It explained that the process of agreeing the recommendations was that the Head of Exchequer drafted the report on that Section, and discussed the grades and job descriptions with the Head of Personnel. The Council stated that these two officials had confirmed that there were no documents in existence in relation to agreeing the grades or job descriptions of the new posts.
11. The Council also explained that this restructuring process, and the job grading it prompted, was separate from the council-wide job evaluation project that had been ongoing for a number of years.
12. Following a request from the investigating officer, the Council subsequently sent a copy of its letter of 25 April, along with the enclosures, to Unison.
13. The investigating officer then contacted Unison asking it whether it accepted the Council's description of the grading process. Unison was also asked, in the light of the Council's comments, to indicate what additional types of information it would expect to be held about this process.
14. Unison's response confirmed that it had received the information supplied by the Council, but stated that nothing in it explained how the grades for the relevant posts were arrived at. It went on to state that Unison believed that the Council must have some assessment to determine the grades they did. It asked, if it was not the job evaluation scheme, then how were they decided?
15. The investigating officer emailed the Council on 12 June 2008 seeking further information on the creation of the two published reports, and searches undertaken to identify relevant information. The investigating officer raised questions about the following types of information:



- any recommendations and associated correspondence made by the Directors and Senior Managers;
 - any notes of the discussion between the Head of Exchequer and Head of Personnel;
 - any background information used in the creation of the reports;
 - any correspondence between officials regarding the grading of these posts; and
 - any legal advice concerning the grading of the posts.
16. The Council responded on 10 July 2008, providing responses to each of the specific questions raised and again stating that no relevant recorded information was held by it apart from the reports already released.

Commissioner's analysis and findings

17. In coming to a decision on this matter, the Commissioner has considered all of the submissions that have been presented by both Unison and the Council and he is satisfied that no matter of relevance has been overlooked.

Consideration of Section 17 - Notice that information is not held

18. In order to determine whether the Council was correct to cite section 17(1) of FOISA, the Commissioner must establish whether the Council holds (or held at the time of Unison's request) information which would address Unison's request.
19. The Council has been asked by the investigating officer to undertake a thorough search of all its records to ascertain whether any information is held which would fall within the scope of Unison's request. These additional searches did not produce any new information, and the Commissioner is satisfied that the searches undertaken by the Council were reasonable in the circumstances.
20. While the Commissioner is surprised that this is the case, he is satisfied that no recorded information is held that would explain how the Council decided upon the grading of the posts concerned, and which would fulfil Unison's request, other than the two published reports. The Commissioner also notes that the restructuring within the Exchequer function and the associated job grading were a part of the Council's ongoing reorganisation and were not a part of a job evaluation process. He accepts, therefore, that the type of documents that might have been held in relation to job evaluation exercise are not held in this case. Having considered the Council's submissions on this point and its explanation of why it does not hold the information in question, the Commissioner is satisfied that the information is not held by the Council (and was not held by it at the time of Unison's request).
21. The Commissioner considers that the Council has taken all reasonable steps to establish whether any further information is available and has concluded that the Council was correct in informing Unison that it was unable to supply the requested information and correctly informed Unison that the information was not held by it in terms of section 17(1) of FOISA.



Technical breaches of FOISA – Section 21

22. Section 21(1) of FOISA requires a Scottish public authority to comply with a requirement for review not later than the twentieth working day after receipt by it of the requirement. The Council responded to Unison's request for review more than four months after its receipt, and so considerably outwith this timescale.
23. Therefore the Commissioner finds that the Council breached Part 1 of FOISA and section 21(1) of FOISA in this case.
24. Since the Council provided its response, albeit belatedly, the Commissioner does not require the Council to take any action in respect of this particular breach in response to this decision.

DECISION

The Commissioner finds that the Highland Council (the Council) acted partially in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Unison Highland Branch.

By notifying Unison in terms of section 17(1) of FOISA that it did not hold the requested information, the Council acted in accordance with Part 1 of FOISA.

In failing to respond to Unison's request for review within the specified timescales, the Commissioner finds that the Council breached the technical requirements of section 21(1) of FOISA.

Appeal

Should either Unison Highland Branch or the 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Investigations
16 September 2008



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

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

17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
if it held the information to which the request relates; but
 - (b) the authority does not hold that information,
it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.