

# Decision Notice



Decision 114/2009 Mr T and Fife Council

Pupil record related requests

Reference No: 200900805, 200901169, 200901171, 200901450

Decision Date: 28 September 2009

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**Kevin Dunion**

Scottish Information Commissioner

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



## Summary

Mr T made a number of requests to Fife Council (the Council) for information relative to records held in relation to pupils at Madras College. The Council provided some of the information requested, failed to respond in other respects, or responded by indicating that the information was not held. Following reviews, Mr T remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which certain information was provided to Mr T, the Commissioner found that the Council had failed to deal with Mr T's requests for information in accordance with Part 1 of FOISA, by claiming that certain information was not held and in a number of technical respects. Given that the Council provided Mr T with any information held, he did not require the Council to take any action on this occasion in response to Mr T's applications.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1) (Time for compliance); 17(1) and (2) (Notice that information is not held); 19 (Content of certain notices) and 21(1), (4), (5) and (10) (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

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1. Mr T was in correspondence with Madras College, which is part of Fife Council's Education Service, in relation to various matters surrounding the recording of personal details of pupils at Madras College and how the school records were transferred from the feeder primary schools. During the course of this correspondence Mr T made a number of requests for information.

## First request



2. On 31 March 2009, Mr T emailed the Council requesting the following information:  
*Under the FOI rules I am requesting that you forward to me copies of all correspondence to feeder schools in your cluster with regard to PPR [Personal Progress Record] to contents of the PPR I am also seeking a copy of the minutes for the all meetings with feeder school heads.*
3. On 1 April 2009, Mr T sent a further email to the Council, with a further information request as follows;  
*What comment or consultation documents were issued to other authorities (in particular but not exclusively the childrens panel) and user groups for input to the decision to remove the information from a PPR. Please provide copies of correspondence and emails indicating their approval or concerns. Clearly this will include if applicable the ed authorities authorisation and acceptance of the practice.*
4. On 13 April, 2009, the Council responded to the effect that it had taken legal advice on Mr T's request and been informed that it was too vague in its present form in that no time period was stated. The Council asked for the dates between which the information requested could be collected.
5. On 14 April 2009, Mr T clarified that at some time an instruction or request had been given or made to all feeder schools of Madras College, to limit, disregard or otherwise remove information from the PPRs of children prior to or during the transition process to secondary school. He confirmed he required to know the date this process started. He understood that this process had been introduced during the tenure of the current head teacher of Madras College and confirmed that this was the initial timeframe of his request. He also advised, however, that if there were communications made on this particular subject (removal of PPR information) prior to the period of the present head, and the implementation of the process was under a prior incumbent, then he required the same information for that period.
6. At this time Mr T also requested a copy of the minutes of a meeting in January 2009 between Madras College and the heads of the primary schools whose pupils subsequently went to Madras College.
7. The Council responded on 21 April 2009, providing Mr T with copies of the minutes he had requested on 14 April 2009. In relation to his first request, he was informed that no information was held. Mr T was not informed of his right to request a review or to make a subsequent application to the Commissioner.
8. On 27 April 2009 (at 13:25 hours) Mr T emailed the Council requesting a review of its decision. In particular Mr T drew the Council's attention to his understanding that a member of Council staff had previously alluded to a letter which confirmed to feeder schools the agreement to start a process of information removal from children's PPR.
9. On 27 April 2009 (13:32 hours), the Council responded to Mr T's request for review by indicating that the writer was unaware of any such letter.



10. At 15:13 hours on the same date, Mr T further emailed the Council stating that he believed notification must have been given to the feeder schools to remove the information at or during transition to the College. He drew the Council's attention to the minutes of a meeting which mentioned that home contact information and bullying information should be retained. He repeated his request that he be provided with the information that authorised or instructed the process.
11. At 15:24 hours on 27 April 2009, the Council responded to the effect that no further information on the subject could be found and stated that the matter was considered to be closed.
12. Also at 15:24 hours, Mr T sent a further email confirming that he wished his previous email to be considered as a request for a review.
13. The Council responded at 15:25 hours and again at 15:30 hours, advising that the comment to which Mr T had referred did not relate to PPRs and repeating that the matter was closed. Mr T was not informed of his right to apply to the Commissioner for a decision.
14. On 28 April 2009, Mr T wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.

## Second request

15. On 31 March 2009, Mr T emailed the Council requesting the following information:  
*Under the FOI rules I wish to be supplied with a copy of the standard PLP [Personal Learning Planning] form for each of the feeder schools in the Madras cluster.*
16. On 6 April 2009, the Council responded to Mr T's request informing him that each school tailored the PLP documents to suit the local need. Mr T was provided with several copies by way of example and was informed that if he wished copies for all schools in North East Fife, more time would be required to collate them since the schools were on holiday until 20 April 2009. Mr T was not informed of his right to request a review or to make a subsequent application to the Commissioner.
17. Mr T was also in correspondence with the school regarding various other matters and in a letter of 22 May 2009, he was further informed, having discussed the matter by telephone, that  
*I think we agreed that this [copies of all PLP forms for schools in North East Fife] was no longer necessary since it would involve a high volume of information in various formats to no particular purpose. I did supply you with a sample of school PLP arrangements for your information. The use of FOI legislation is not necessary on this matter since these forms are freely available at all individual schools.*



18. On 28 May 2009, Mr T again emailed the Council, confirming that his request was quite clear in that he required the details of the PLP for schools in the Madras cluster (and not all Schools in North East Fife), that the response the Council had made was incomplete and that the information was not available to the general public.
19. On 3 July 2009, the Council further responded to the effect that it would arrange for copies of the various styles of PLPs in use to be sent to him.
20. On 9 July 2009, Mr T requested a review and in particular submitted that a response stating it would provide copies sometime in the future was not a suitable response in terms of FOISA.
21. On 10 August 2009, the Council responded to Mr T's request for review and accepted that his request had not been dealt with in compliance with FOISA and that the Council's internal process had not been followed. The Council confirmed that there was a new internal system and that awareness training for staff within Education Services was to be rolled out. The Council made no reference, however, to the supply of the information requested by Mr T.
22. Mr T telephoned the Council and was informed verbally that the PLP information he requested would be collated and provided to him by 21 August 2009, once the schools had reopened after the holidays.
23. On 11 August 2009, Mr T wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.

### Third request

24. On 3 June 2009, Mr T emailed the Council requesting the following information;  
  
*Please can you provide a copy of the Councils standard Care and Welfare form (current) and any other derivation or revision of this form that are currently in use or have been used within the Care and Welfare context since 2001.*  
  
*Please also provide any of the councils procedural documentation, process documentation and any operational guidance, or notes or instruction given to guidance staff, teachers and teaching assistants as to the appropriate use of and handling of these forms.*
25. On 7 July 2009, Mr T wrote to the Council requesting a review as he had not received a response to his request.
26. The Council responded on 10 August 2009, apologising for the failure to deal with his original request and stating that it was understood the information he had requested had been provided to him on 22 July 2009.
27. On 11 August 2009, Mr T wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review in that he had not received the information on 22 July 2009, as indicated above, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



28. Mr T confirmed later confirmed that he had received the requested information on 11 August 2009.

**Fourth Request:**

29. On 16 June 2009 (00:07 hours), Mr T emailed the Council requesting the following information:

*Under the FOI rules please supply a copy of the cluster meeting minutes for the 9th June 2009 and the date of the next meeting.*

30. The Council responded on 16 June 2009 (08:18 hours), informing Mr T that the date of the next meeting had still to be determined and that the minutes of the meeting held on 9 June 2009 would not be available until they had been approved at the following meeting. Mr T was also informed that this would not happen within the next 20 working days. Mr T was not informed of his right to request a review or to make a subsequent application to the Commissioner.
31. At 13:48 hours on the same date, Mr T emailed the Council requesting a review of its decision. In particular he informed the Council that it was evident at the time of the request (16 June 2009) that the minutes for the meeting of 9 June 2009 existed and could be provided in an unapproved form.
32. At 13:57 hours on 16 June 2009, the Council responded as follows;
- Where is your evidence? These minutes do not yet exist even in an unapproved form. I do not anticipate them being available within 20 working days.*
33. Mr T further responded on the same date, to the effect that it would be reasonable to expect that the minutes were taken in note form at the meeting and reminded the Council that his original request and request for review ought to be dealt with in a manner appropriate under the terms of FOISA.
34. At 15:02 hours on 16 June 2009, the Council responded that neither of the joint chairs took notes at the meeting and that the matter was now considered closed. Again, Mr T was not advised of his rights to make an application to the Commissioner.
35. On 22 June 2009, Mr T wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
36. There then followed correspondence which resulted in all four requests being validated by establishing that Mr T had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests.





## Investigation

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37. On 21 July 2009, the Council was notified in writing that an application had been received from Mr T in relation to the first and fourth requests, given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. The Council was asked to explain why (as appeared to be the case) the response to Mr T did not conform to the requirements of FOISA in that at no time did Mr T appear to have been informed of his rights to request a review and subsequently to apply to the Commissioner for a decision, in accordance with sections 19 and 21(10). In the case of the fourth request, the Council was also asked to comment on its refusal notice's apparent lack of compliance with section 16 of FOISA.
38. The Council was also asked to confirm the searches carried out in an effort to ascertain what information was held by the Council and, if any information was held, to provide succinct reasoning as to why that information was exempt in terms of FOISA, including where appropriate the Council's consideration of the public interest test.
39. The Council responded on 13 August 2009, accepting that its failures to comply with sections 19 and 21(10) of FOISA had been due to lack of knowledge by the staff involved of the procedures that had to be followed. The Council apologised for this and further explained that an awareness programme was due to take place for all education employees commencing 17 August 2009.
40. In relation to the first request, the Council accepted that no clear checks had been carried out in response to the request to ascertain what information was held: this lack of compliance had been identified to the staff involved. The Council went on to provide submissions as to the subsequent searches carried out in relation to the request, confirming that it held no further information.
41. Subsequent correspondence between the investigating officer and the Council, however, resulted in the identification of information relative to PPRs, which was then provided to Mr T.
42. In relation to the fourth request, the Council stated that there was no clear reason as to why the minutes of the meeting, which were held at the time of the request, had not been given to Mr T. It subsequently provided Mr T with a copy of the minutes requested.
43. On 1 and 2 September 2009 respectively, the Council was notified in writing that an application had been received from Mr T in relation to the second and third requests, was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and was asked to respond to specific questions.
44. The Council responded accepting that the correct procedures had not been followed when dealing with Mr T's request, referring again to the programme of awareness training it had in place.



45. During the investigation, Mr T confirmed that he had received all of the information he required in relation to the above four requests.
46. The Council's submissions will be considered more fully in the Commissioner's analysis and findings below.

## **Commissioner's analysis and findings**

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47. In coming to a decision on this matter, the Commissioner has considered all the correspondence and the submissions made to him by both Mr T and the Council and is satisfied that no matter of relevance has been overlooked.
48. Mr T provided the Commissioner with copies of numerous emails exchanged with the Council in relation to aspects not concerning the above requests. The Commissioner can only comment, however, on correspondence relating to requests for recorded information as summarised above.
49. Mr T's requests for information and subsequent correspondence raised a number of technical issues surrounding the ways in which the Council handled the requests in terms of FOISA. Before considering these, the Commissioner will first of all consider the steps taken by the Council in the course of dealing with Mr T's requests to establish what relevant information it held. It will be noted (see paragraph 45 above) that Mr T confirmed he was satisfied he had received all of this information by the end of the investigation.
50. As outlined above, in relation to Mr T's first and fourth requests for information, the Council intimated that it held no information, in effect responding in terms of section 17(1) of FOISA.
51. In order to determine whether the Council was correct to respond to Mr T's requests by stating that the information requested was not held, the Commissioner must establish whether the Council held the information requested at the time it received the requests.
52. As outlined at paragraph 41 above, the Council accepted in the course of the investigation that a letter relating to PPRs (first request) was indeed held by the Council at the time the request was received. This information was provided to Mr T.
53. In relation to the fourth request, during the investigation the Council accepted that the information requested was in fact held at the time of the request and that there was no reason why the information had been refused. The Council also accepted that proper checks had not been carried out to locate the information requested at the time of the request. During the investigation, the Council identified where the information was held and provided it to Mr T.





54. Therefore, while satisfied in the circumstances that adequate searches had been carried out for the information covered by the first and fourth requests by the conclusion of the investigation, the Commissioner cannot accept that the Council was correct to respond to these requests in terms of section 17(1) of FOISA. In doing so, it failed to respond to the requests in terms of section 1(1) of FOISA.

#### **Technical breaches of FOISA – sections 10, 19 and 21(4) and (10)**

55. 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, subject to certain exceptions which are not relevant in this case. The Council, having received Mr T's third request on 3 June 2009, failed to respond within this timescale and only did so once Mr T sought a review of its handling of his request.
56. In relation to the second request, whilst providing some examples of the PLP's requested, the Council initially responded to the effect that more time would be required to collate them since the schools were on holiday until 20 April 2009. The second response (3 July 2009) was to the effect that it would be arranged for copies of the various styles of PLP's in use to be sent to him. It was not until during the investigation that the Council finally provided Mr T with the information requested.
57. Since the information requested was not supplied within the 20 working days, and Mr T was not provided with any other form of response provided for by Part 1 of FOISA, the response by the Council in relation to the second request cannot be construed as having complied with the requirements of section 10(1) in that the request was not fully complied with within the timescale allowed.
58. The Commissioner therefore concludes that the Council breached Part 1 (and in particular section 10(1)) of FOISA in its handling of the second and third requests.
59. Section 21(1) of FOISA gives authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, again subject to exceptions which are not relevant in this case.
60. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it 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.



61. The Commissioner's view is that, in relation to the second request, Mr T requested a review on the grounds that the original response stating that the Council would arrange for copies to be provided was not a suitable response in terms of FOISA. Since a decision had already been reached (in that the response had stated that it would be arranged for the information to be provided) an appropriate review outcome would require to be in line with section 21(4)(a) or (b) of FOISA.
62. The Commissioner has considered the content of the review response sent to Mr T by the Council on 10 August 2009, and has noted that whilst the Council responded to the effect that the request had not been dealt with in compliance with FOISA and the Council's internal process had not been followed, it made no mention of the information requested by Mr T. Given that the information was indeed held by the Council (and released during the investigation), the Commissioner is unable to accept that this response to review of 10 August 2009 (in making no reference to the information) met the requirements of section 21(4) of FOISA.
63. In relation to the third request, the Commissioner's view is that, where no response has been made to an information request, the first two options under section 21(4) are unavailable to the authority, and so the only appropriate review outcome in such a case is for the authority to reach a decision where none has been reached before, in line with section 21(4)(c).
64. The Council responded to the request for review on 10 August 2009, apologising for the failure to deal with his original request stating that it was understood that the information he had requested had been provided to him on 22 July 2009. Since the information had not yet been supplied to Mr T (and was not until some weeks later), this response was inappropriate and did not meet the requirements of section 21(4)(c) of FOISA.
65. Section 19 of FOISA states that a refusal notice under sections 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 17(1) (information not held)) must contain particulars-
  - (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
  - (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).
66. Section 21(10) of FOISA states that a Scottish public authority's response to the applicant (under section 21(5)) following a review carried out under section 21 must contain particulars about the rights of application to the Commissioner and of appeal to the Court of Session conferred by sections 47(1) and 56 respectively.
67. In this case, it is apparent that Mr T made several requests for information to the Council and that none of the responses complied with section 19 of FOISA by informing him about his rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1) respectively.



68. In the Council's responses to Mr T's requests for review, Mr T was not (in the case of requests 1 and 4) informed of his rights of application to the Commissioner or (in respect of any of these requests) of his rights of appeal to the Court of Session, as required by section 21(10) of FOISA.
69. The Commissioner notes the Council's acceptance that the correct procedures were not followed in respect of Mr T's requests and notes the steps (in particular an awareness programme) being taken to remedy the situation. In the circumstances, the Commissioner does not require any action in respect of the breaches of Part 1 of FOISA identified in this decision. The concerns raised by this investigation may, however, be considered more comprehensively by the Commissioner by way of a practice assessment under section 43(3) of FOISA.

## DECISION

The Commissioner finds that the Council failed to comply with Part 1 of the FOISA in responding to the information requests made by Mr T. The Commissioner found that the Council failed to deal with the requests in terms of section 1(1) of FOISA in not providing Mr T with all the information it held in relation to the first and fourth requests; failed to respond to the third request within the timescales allowed by section 10(1) of FOISA; failed to carry out adequate reviews in terms of section 21 of FOISA and (with certain exceptions) failed to provide Mr T with proper notice of his rights of review and appeal, in line with the requirements of sections 19 and 21(10) of FOISA.

Given that the Council provided Mr T with any information held in the course of the investigation, he did not require the Council to take any action in response to these particular applications in relation to the failures identified.

## Appeal

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Should either Mr T or Fife 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 Enforcement**  
**28 September 2009**

Decision 114/2009  
Mr T  
and Fife Council





## Appendix

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### 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.

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##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), 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) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

##### 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.
- (2) Subsection (1) is subject to section 19.

...



## 19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

## 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.

...

- (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.