

Decision Notice



Decision 122/2010 Mr Kevin McIntyre and Clackmannanshire Council

Job evaluation

Reference No: 201000410
Decision Date: 14 July 2010

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Scottish Information Commissioner

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Summary

Mr Kevin McIntyre requested from Clackmannanshire Council (the Council) job evaluation information relating to his post. The Council responded by disclosing some information and withholding the remainder. Following a review, Mr McIntyre remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the Council disclosed additional information, the Commissioner found that the Council had failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) when responding to Mr McIntyre's information request.

The Commissioner found that the Council incorrectly notified Mr McIntyre (in terms of section 17 of FOISA) that it did not hold the information sought by one part of his request. He also found that the Council breached the requirements section 1(1) of FOSIA by failing to identify and supply all relevant (and non-exempt) information that fell within the scope of Mr McIntyre's request. In the circumstances, the Commissioner also concluded that the Council had failed to comply with the duty under section 15 to provide reasonable advice and assistance to Mr McIntyre, and with the technical requirements of sections 16 and 19 of FOISA.

However, the Commissioner was satisfied that, by the end of the investigation, the Council had identified all of the information it held within the scope of Mr McIntyre's request, and that reasonable searches had been undertaken by the Council to identify this. The Commissioner therefore does not require the Council to take any action in response to this decision.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 15 (Duty to provide advice and assistance); 16(1)(c) and (d) (Refusal of request); 17(1) (Notice that information is not held) and 19 (Content of certain notices)

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. Given the subject matter of the request under consideration in this decision, it may be helpful at the outset to provide some background information about the Council's Job Evaluation (JE) process. This system is designed to implement the single status agreement reached between unions and local government employers, which required that all local authorities produce a new pay and grading system with all jobs assessed using the same evaluation system
2. The Council's JE process has been ongoing since 2007. Within this process, data collected via a job evaluation questionnaire is used to populate a Job Overview Document (JOD). The JOD specifies the nature of the job in relation to 13 job factors. Each job factor is scored according to the complexity associated with a particular role. Once scores for individual factors have been calculated, a total score can be generated for a particular role. Grading and pay is then allocated on the basis of where the total job factor score lies in a pre-defined range.
3. On 7 December 2009, Mr McIntyre emailed the Council, his employer, requesting the following information:
 1. A copy of the current edition of the JE Scheme.
 2. A copy of the criteria used to match JE scores to pay scales including the upper and lower scores for each pay band.
 3. The JE factor levels for all posts within the Council's Business Improvement and Technology Service (to include grade placements)
 - 4a. A copy of the JE Questionnaire that was used to create the job overview for the post of ICT Customer Services Officer along with the job overview and/or other documents created using this form.
 - 4b. A copy of the job overview or other documents agreed to by Mr McIntyre's line manager to be used for the job overview and factors, indicating what changes were made and why.
 - 4c. A copy of the job overview or other documents that were not agreed to by Mr McIntyre's line manager to be used to create the job overview and factors, indicating what changes were made and why.
4. The Council responded on 11 January 2010. It advised Mr McIntyre that under section 25 of FOISA (Information otherwise accessible) it was not required to provide information in response to a request if it is already accessible to him. The Council advised him in response to each part of his request that:
 1. & 2. this information was available on the Council's intranet.
 3. some of the requested information was available on the Council's intranet and the remainder would soon be placed on the intranet.



- 4a. this request was being dealt with as a subject access request under the Data Protection Act 1998 and would be responded to within 40 working days.
 - 4b. this was the job overview document already issued to Mr McIntyre within an employee pack.
 - 4c. reference was made to the response provided to part 4b.
5. On 12 January 2010, Mr McIntyre emailed the Council requesting a review of its decision in relation to parts 4a, 4b and 4c of his request. In particular, Mr McIntyre commented that he did not consider the information to be his own personal data and required the information to be provided under FOISA. Mr McIntyre also drew the Council's attention to the fact that it had not provided a full response to his request.
6. The Council notified Mr McIntyre of the outcome of its review on 18 February 2010. In its general comments, the Council noted that the job evaluation process was complex, and that the software used in this did not retain historic data changes. It noted that this system held core data about each post, and could be used to generate a range of reports. However, the Council stated that no reports were run and saved in relation to Mr McIntyre's post. In addition, the Council apologised for its failure to make clear in its initial response that it was relying upon exemptions in sections 25, 27 (Information intended for future publication) and in section 38 (Personal information) of FOISA to withhold some of the information requested in its initial response. It also apologised for its delay in responding to Mr McIntyre's request for review.
7. The Council provided the following detailed responses in relation to parts 4a, 4b and 4c of Mr McIntyre's request:
- 4a. The Council indicated that some information contained within the JE questionnaire would be personal data, but the information therein would predominantly relate to a post rather than an individual. It accepted that it would have been possible to supply this information in terms of FOISA rather than the DPA.

However, the Council noted that, where they existed, the questionnaires had been disclosed but there was none held specifically for Mr McIntyre's post.

In response to Mr McIntyre's request for any document created using the questionnaire, the Council explained that the information provided in the questionnaire allowed data manipulation and processing to produce a variety of reports (which were listed as including JOD, Combined Levels Listing, Factor Level Score Breakdown, Factor Points Listing, Factor Level Listing and Question Trace). The Council also noted that details of the Question Trace process had been generally made available but stated that no individual reports had been run and saved for Mr McIntyre's post as a single entity, and no related documents were created outwith the system and saved for Mr McIntyre's post. Consequently the Council stated in terms of section 17 of FOISA that it did not hold this information.
 - 4b. With respect to this request, the Council advised that the only documents that could be created were those detailed in its comments regarding question 4a. It explained that under the JE scheme line managers were required to verify the information provided by



jobholders to ensure that it was factually accurate. The Council explained that as part of the verification process managers were provided with a copy of the JOD created from the questionnaire and the current job description (if available) and were requested to complete a feedback form on the content of the JOD for submission to and discussion with job analysts. It was noted that any changes to the JODs were made by the Job Analysts only. The Council went on to comment that as the review of Mr McIntyre's post had taken place, additional information relating to this process could be provided to him.

- 4c. The Council noted Mr McIntyre's comments that, since he had requested copies of any documents in which changes were made by people other than his line manager, this had not been answered by its response to part 4b. In response to this point, the Council reiterated that only job analysts made changes to the JODs. It explained that these documents were not created as a result of a single event and that once the line manager had completed his review a consistency checking exercise would be undertaken by the JE team to ensure inconsistencies across the organisation were addressed and any evidence of equality bias identified. The Council advised Mr McIntyre that this meant that not all of the changes requested by managers will have been given effect.
8. On 22 February 2010, Mr McIntyre emailed 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. He indicated that, since receiving the review response detailed above, he had received copies of three documents that were claimed not to be held for his post. He also queried the claim that no historical information was available within the software system, and noted that the additional information referred to in the Council's response had not been provided to him.
9. The application was validated by establishing that Mr McIntyre 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.

Investigation

10. On 1 March 2010, the Council was notified in writing that an application had been received from Mr McIntyre and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
11. Following his application to the Commissioner, Mr McIntyre continued to correspond with the Council in relation to his request. This correspondence resulted in the Council disclosing additional information to Mr McIntyre, including further information and explanations of the JE process undertaken by the Council as it related to his request.



12. The investigating officer contacted the Council on 9 April 2010, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to provide background information on the Council's JE process, copies of all the information that fell within the scope of Mr McIntyre's request and an explanation of its reasons for relying on any provisions of FOISA it considered applicable to the information requested.
13. The Council's response dated 28 April 2010 to the investigating officer was also copied to Mr McIntyre. In this response the Council asserted that it had now provided Mr McIntyre with all the information it held in relation to his request. The Council also provided background information in relation to its JE process and copies of the following documents that it considered fell within the scope of Mr McIntyre's request:
 - Spreadsheet extract from the consistency spreadsheet for the ICT Customer Services Officer role
 - Handwritten notes from a meeting between an analyst and Head of Service
 - 7 JODs dated between May 2007 and July 2009
 - Manager feedback form
 - 2 factor level scores breakdown; October 2007 and July 2009
 - Payroll data sheet
 - Notes of a meeting held between Mr McIntyre and the Council on 27 April 2010
14. The investigating officer contacted Mr McIntyre to enquire whether, as a result of the Council's correspondence with him and the additional disclosures of information (including that of 28 April 2010), he considered that he had been provided with all information held by the Council that fell within the scope of his requests. Mr McIntyre's response indicated that he considered that he still had not received relevant information regarding the consistency checking exercise that was performed with respect to his post.
15. Mr McIntyre raised his query regarding the consistency checking of his post with the Council. In discussion with the investigating officer, the Council commented that it considered that this was a new request by Mr McIntyre and that it fell outwith the scope of his original request. However, the Council confirmed that it had provided Mr McIntyre with all the information it held in relation to his post and no further information was held.
16. The Council again copied its response to the investigating officer to Mr McIntyre. In further correspondence with the investigating officer, he accepted that it was unlikely that additional information should be held in relation to the consistency checking of his post, but indicated that the Council should be able to offer further explanation. Mr McIntyre requested that the Commissioner come to a decision as to whether the Council held further information and in particular in relation to the consistency checking of his post.



Commissioner's analysis and findings

17. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr McIntyre and the Council and is satisfied that no matter of relevance has been overlooked.

Scope of decision

18. Mr McIntyre's application to the Commissioner, was in relation to parts 4a, b and c of his request; consequently the Commissioner's decision will concentrate on these parts of Mr McIntyre's request solely.
19. During the investigation, the Council commented that it considered Mr McIntyre's request for any information in relation to the consistency checking of his post was a new request and outwith the scope of his request.
20. Having considered this point, the Commissioner is of the opinion that information on this consistency checking process would fall within the scope of part 4c of Mr McIntyre's request as it relates to changes made to the factor scoring for his post that did not involve him or his manager. Consequently the Commissioner will include the consideration of this point in the decision.

Section 17 – Notice that information is not held

21. Section 17(1) of FOISA requires that where a Scottish public authority receives a request for recorded information that it does not hold, then it must give the applicant a notice in writing to that effect. The Council advised Mr McIntyre in its review response that it did not hold certain information sought by part 4a of his request.
22. In order to determine whether the Council dealt with Mr McIntyre's request correctly, the Commissioner must be satisfied whether the Council was correct to cite section 17 in its review response and whether it held any information which would fall within the scope of part 4a of Mr McIntyre's request.
23. As noted above the Council disclosed additional information to Mr McIntyre subsequent to its review response. Among these documents was a job factor score sheet that had been produced in relation to an old version of a JOD.
24. The Council's review response of 12 January 2010 specifically states that it does not hold a Factor Level Score Breakdown in relation to Mr McIntyre's post. Having considered the job factor score sheet disclosed by the Council to Mr McIntyre, the Commissioner considers that these are one and the same type of document and consequently the Council did hold information that fell within the scope of part 4a of Mr McIntyre's request.
25. The Commissioner therefore concludes that the Council was incorrect to cite section 17(1) of FOISA in response to part 4a of Mr McIntyre's request in its review response.



Section 1(1) of FOISA – General entitlement

26. Section 1(1) of FOISA creates a general entitlement of access to information held by a Scottish public authority (subject to the application of any exemptions in Part 2 of FOISA, and any other provisions within Part 1 which mean that the right of access does not apply in that case).
27. In order to comply with section 1(1), an authority must therefore take steps to identify all information falling within the scope of a request, and provide it to the applicant, unless it is considered to be exempt from disclosure under Part 2 of FOISA or otherwise subject to one or more of the provisions set out in Part 1 of FOISA.
28. In this case, the Council's review response did not state that it was withholding any information or cite any exemptions in Part 2 of FOISA in relation to any parts of Mr McIntyre's request.
29. However, as has been detailed above, the Council disclosed further information which it considered fell within the scope of Mr McIntyre's request subsequent to its review response. Having considered the additional information disclosed, the Commissioner is of the opinion that this information falls within the scope of parts 4a, b and c of Mr McIntyre's request.
30. Although additional information was disclosed subsequent to the Council's review response, Mr McIntyre has requested that the Commissioner considers whether the Council holds additional information (not disclosed by the end of the investigation) in relation to the consistency checking of his post which falls within the scope of part 4c of his request.
31. Mr McIntyre highlighted that the consistency checking of his post had resulted in the scoring for his post being reduced, with an impact on the grading for this post. He noted that he was advised by the Council that it held no information in relation to the consistency checking exercise for his post apart from the final reduced rating of his post (which he had been provided with). He noted, however, that information about consistency checking was held for other posts within the Council and so he considered that further information was held that would provide an explanation as to why the rating for his job was changed.
32. The Commissioner notes that the Council disclosed two documents that related to the consistency checking of Mr McIntyre's post within in its submissions to the investigating officer (and copied to Mr McIntyre) on 28 April 2010.
33. In response to the investigating officer's questions, the Council provided background information about the application of the JE scheme in relation to Mr McIntyre's post, as a result of which its job profile was merged with that of another post. The Council explained that the job analysts worked as a single team making changes to JODs, which resulted in changes to ratings, but this was not documented. The Council maintained that it did not hold any further information that fell within the scope of Mr McIntyre's request.



34. The Council advised the investigating officer of the locations where the requested information could be held, confirmed that these had been searched and advised the Commissioner of the search terms utilised. The Council also went on to explain that the software used for the JE process is designed as a working tool and therefore it does not retain historical data, so consequently not every action is documented.
35. Having considered the searches undertaken by the Council and the information that the searches have identified (and which has now been disclosed to Mr McIntyre), along with the explanation of the job evaluation process, and in particular how the consistency checking process was undertaken, the Commissioner is satisfied on balance of probabilities that the Council does not hold the specific information Mr McIntyre has sought in relation to this process.
36. The role of the Commissioner in issuing a Decision is to consider whether a public authority has complied with Part 1 of FOISA. It is not the role of the Commissioner to assess the extent or suitability of records held by a public authority, but to ensure that the authority deals appropriately with a request relative to the recorded information held by it.
37. That said, and in line with his comments in a number of previous decisions regarding job evaluation processes, the Commissioner is surprised at the limitations of the information held by the Council, and in this particular case that no specific information is held that would demonstrate how or why the scoring of Mr McIntyre's post was reduced within the consistency checking process. However, the Commissioner is satisfied that the Council took all reasonable steps to identify the information sought and accepts that no further information pertinent to Mr McIntyre's request is held.
38. However, from the responses provided to the investigating officer (and Mr McIntyre) and the volume of information disclosed subsequent to the Council's review response it is apparent to the Commissioner that the Council did not conduct adequate searches when first dealing with Mr McIntyre's information request and therefore failed to identify all the information which fell within the scope of the request.
39. By failing to provide all of the information it held in relation to Mr McIntyre's request at the date of its review response, the Commissioner concludes that the Council failed to comply with section 1(1) of FOISA. The Commissioner is satisfied that this breach has now been rectified.

Section 15 of FOISA - Duty to provide advice and assistance

40. In his application to the Commissioner, and during the investigation, Mr McIntyre expressed dissatisfaction with the way in which the Council dealt with his information request, specifically in relation to the "piecemeal manner" in which information was disclosed. Mr McIntyre commented that it had taken the Council five months (from the date of his original request to the additional disclosure of information by the Council on 28 April 2010) for the information he sought to be disclosed.



41. Under section 15 of FOISA, a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Where the authority has complied with the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA (commonly known as "the Section 60 Code") in providing advice and assistance in any particular case, it is taken to have complied with this duty for the purposes of that case.
42. As noted above, the Council and Mr McIntyre engaged in discussions during the investigation and additional information that fell within the scope of Mr McIntyre's request (including some which had previously been said not to be held) was disclosed to him. In addition, the Council provided Mr McIntyre with an explanation of how the job evaluation process was undertaken in the Council, the people involved and the documentation produced. During this process, it became clear that the responses previously provided to Mr McIntyre had given a misleading impression about the extent of information that was held about the evaluation of his post.
43. In its communications with the investigating officer, the Council apologised that it had not provided the requested information to Mr McIntyre sooner. However, the Council did not comment further regarding the delay in the proper identification and provision of the requested information and, in the Commissioner's opinion, the Council has not provided a satisfactory explanation for its earlier failure to provide an accurate response to this request.
44. It is the Commissioner's view that, by providing inaccurate information in response to Mr McIntyre's request and request for review, the Council did not fulfil its obligations under section 15 of FOISA.
45. The Commissioner recognises that, during the investigation, the Council disclosed all relevant information that was held, along with further background information that helped Mr McIntyre to understand the process followed and the records that were generated in relation to his post. However, he considers that the assistance provided by the Council (along with the information supplied) within the investigation process could reasonably have been provided when it first responded to Mr McIntyre's request dated 7 December 2009.
46. In conclusion, the Commissioner considers that in this case, the Council failed in its duty to provide reasonable advice and assistance to Mr McIntyre in terms of section 15 of FOISA.

Section 16 - Refusal of a request

47. Section 16 of FOISA sets out what information an applicant must be told if a public authority intends to refuse to disclose information in response to an information request. In terms of section 16(1)(c) and (d), a public authority must specify the exemption it is relying on to withhold the information and, if not otherwise apparent, why the exemption applies.
48. The Commissioner notes that the Council's refusal notice dated 11 January 2010 to Mr McIntyre was short and cursory. The Council did not provide Mr McIntyre with a refusal notice specifying in response to each part of Mr McIntyre's request which exemption(s) under Part 2 of FOISA that it was relying on and its reasons for relying on these exemptions.



49. In response to parts 4a and 4b of Mr McIntyre's request, the Council advised him that it would be treating this part of his request as a subject access request under the DPA solely. As the Commissioner has commented in previous decisions, if an authority is refusing to respond to a request for the applicant's personal information and dealing with it under the DPA, then a refusal notice must still be issued under FOISA.
50. In the Council's review response to Mr McIntyre on 18 February 2010, the Council noted the above omissions and provided a review response inline with FOISA.
51. The Commissioner has concluded that the Council failed to comply with sections 16(1)(c) and (d) of FOISA in responding to Mr McIntyre's request. As the Council rectified this omission on review, the Commissioner does not require the Council to take any action in relation to this breach.

Section 19 – Content of certain notices

52. Section 19 of FOISA states that a refusal notice under sections 9(1) or 16(1), (4) or (5) (including a 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).
53. The Commissioner notes that the Council's refusal letter dated 11 January 2010 did not include any of these particulars. For this reason, the Commissioner has concluded that the Council also failed to comply with the requirements of section 19 (a) and (b) of FOISA.



DECISION

The Commissioner finds that Clackmannanshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Kevin McIntyre.

The Commissioner found that the Council incorrectly notified Mr McIntyre in terms of section 17(1) of FOISA that certain information sought in part 4a of his request was not held. By failing to identify and supply the information which fell within the scope of Mr McIntyre's request, the Council failed to comply with section 1(1) of FOISA. However, the Commissioner is satisfied that the Council identified and provided Mr McIntyre with all the information which fell within the scope of his request by the end of the investigation.

The Commissioner also finds that the Council failed to provide Mr McIntyre with advice and assistance that would reasonably have been expected, in relation to his information request. In failing to provide such advice and assistance, the Council failed to comply fully with section 15 of FOISA. The Council also failed to comply with the requirements of sections 16 and 19 of FOISA in providing a response to Mr McIntyre.

The Commissioner does not require the Council to take any actions with regards to these failures.

Appeal

Should either Mr Kevin McIntyre or Clackmannanshire 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
14 July 2010



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.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-

...

- (c) specifies the exemption in question; and
- (d) states (if not otherwise apparent) why the exemption applies.

...

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.

...

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).

...