



Scottish Information
Commissioner

Decision 129/2006 Mr J Di Rollo and City of Edinburgh Council
<i>Emails to and from former Deputy Director of Education</i>

Applicant: Mr Joe Di Rollo
Authority: City of Edinburgh Council
Case No: 200503246
Decision Date: 28 June 2006

Kevin Dunion
Scottish Information Commissioner

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Decision 129/2006 – Mr Joe Di Rollo and City of Edinburgh Council

Request for emails – information provided under FOISA - failure to respond to the request for review within the 20 working day timescale set out in section 10(1) of FOISA

Facts

Mr Di Rollo (the applicant) requested emails sent and received by a then Deputy Director of the Council. The City of Edinburgh Council (the Council) provided information. Mr Di Rollo was dissatisfied and believed that the Council had not performed a reasonable search or provided him with all the information which it held and which was covered by his request.

Outcome

The Commissioner found that the Council did not comply with section 1(1) of FOISA by providing all the information it held relevant to Mr Di Rollo's request, in response to either his initial request or his request for review.

The Commissioner found that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to respond to Mr Di Rollo's request for information within 20 working days as required by section 10(1) of FOISA.

As the Commissioner was satisfied with the steps taken by the Council during his investigation to locate the information requested, he did not require the Council to take any action as a result of his decision.



Appeal

Should either the City of Edinburgh Council or Mr Di Rollo wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

1. On 26 September 2005, Mr Di Rollo requested by e-mail from the City of Edinburgh Council (the Council) all e-mails (dated from 1 September 2003 to 26 September 2005) sent and received by its former Deputy Director of Education to and from nine named individuals; that Deputy Director's expenses over a specified period; all correspondence from August to October 2003 from the Head Teacher of St Peter's Primary School to a named safety officer of the Council; and all correspondence concerning Mr Di Rollo and a vote of confidence motion of St Peter's School Board.
2. The Council emailed (31 October 2005) Mr Di Rollo and apologised for its delay.
3. Mr Di Rollo e-mailed the Council (21 November 2005) stating that he had not received the information he had requested. He stated that he was treating this as a refusal to supply the information and requested a review of this refusal.
4. The Council responded by letter (30 November 2005) supplying a copy of one email (sent by the former Deputy Director of Education on 29 August 2005). It supplied totals of the out-of-pocket expenses and stated that no correspondence existed between the Head Teacher of St Peter's Primary School and the named safety officer. The Council supplied correspondence concerning Mr Di Rollo and the vote of no confidence.
5. The Council then responded (5 December 2005) by e-mail to Mr Di Rollo's request for review (of 21 November 2005). The Council treated Mr Di Rollo's email as a request for review of its letter of 30 November 2005 and stated that it had supplied all the information it held. Mr Rollo sought confirmation of this email, and the Council replied again (5 December 2005) stating that it had supplied all the information it held for his request.



6. On 5 December 2005 Mr Di Rollo applied to the Scottish Information Commissioner for a decision as to whether the Council had dealt with his information request in accordance with Part 1 of FOISA. He requested an investigation of the Council's handling of his request, believing additional information to be available which had not been released to him.
7. The case was allocated to an investigating officer.

The Investigation

8. Mr Di Rollo's appeal was validated by establishing that he had made a valid information request to a Scottish public authority and had appealed to me only after asking the public authority to review its response to his request.
9. My Office then contacted the Council for its comments on the application and for further information in relation to this case, as required by section 49(3) of FOISA. The Council responded on 16 January 2006, providing:
 - The methods used to ascertain the extent of the requested emails
 - The status of the then Deputy Director of Education's Council e-mail account and the feasibility of recovering any e-mail correspondence
 - Code of Conduct in Use of Electronic Communications policy
 - Best Practice on use of email documentation
 - The information (email, minutes and expenses) supplied to Mr Di Rollo
 - Correspondence with Mr Di RolloFurther information in relation to searches was supplied in response to further enquiries (this is discussed under "Analysis and Findings" below).
10. Mr Di Rollo had sought the following information:
 - Request 1 - All e-mails (1 September 2003 to 26 September 2005) sent by (or received from), the Deputy Director of Education to, or from, nine named individuals.
 - Request 2 - the Deputy Director of Education's out of pocket expenses for a specified period.
 - Request 3 - All correspondence (August 2003 – October 2003) between St Peter's Primary School's Head Teacher and a named Council safety officer.



- Request 4 - All correspondence concerning Mr Di Rollo and a vote of no confidence motion of St Peter's School Board

Submissions from the Council

11. The Council stated that it had retrieved one sent email (dated 29 August 2005) in relation to Mr Di Rollo's request. It supplied this email to Mr Di Rollo on 30 November 2005. It stated to my office that it had no Council-wide email retention policy. It had best practice guidelines for Council employees on the use of e-mail. It stated that the then Deputy Director of Education's mail box was deleted on 1 April 2005.
12. The Council explained that email was not stored centrally, but downloaded to individual laptops and desktops. Centrally the Council holds a record for 2 months of the headers of all emails sent through its system, but not the content. For this reason, it stated that it could not identify any further emails that may be relevant to Mr Di Rollo's request.
13. Further in relation to Request 1, the Council contacted the 9 named persons (including the St Peter's Primary School Board) to find if they held email correspondence with the former Deputy Director of Education. All indicated that they did not hold any emails.
14. In relation to Request 2, the Council supplied a breakdown of Deputy Director of Education's out of pocket expenses (broken down as mileage, parking and other travel claims) which Mr Di Rollo accepted, although he stated that he would have preferred more detail.
15. In respect of Request 3, the Council stated that it held no correspondence between St Peter's School's Head Teacher and a named safety officer. The Council had contacted both persons who stated that they had no record of correspondence.
16. In respect of Request 4 (correspondence concerning Mr Di Rollo and a vote of no confidence motion) the Council stated that it had supplied all the information it held. This included:
 - Minute of Meeting of St Peter's Primary School Board held on 6 May 2004 (approved at meeting 10 June 2004)
 - Minute of Meeting of St Peter's Primary School Board held 11 November 2004 (approved at meeting 20 January 2005)
 - Item 15 – Internal Board Matter *in camera* on vote of no confidence - of St Peter's Primary School Board held 11 November 2004
17. The Council stated that it had supplied all the information which it held that was covered by Mr Di Rollo's request.



18. The Council explained that it was currently developing a records retention policy to comply with the Freedom of Information (Scotland) Act 2002 Code of Practice on Records Management ('the Section 61 Code').

Submissions for the applicant

19. Mr Di Rollo explained that the correspondence to and from the then Deputy Director of Education, which he sought, was from a time when the new school PPP contract was being re-negotiated. Mr Di Rollo stated that there must be more information held by the Council than had been provided to him. He said that he was aware of email exchanges involving the former Deputy Director of Education and the individuals named in his request.
20. He explained that it was in the public interest that the actions of the former Deputy Director of Education in relation to St Peter's Primary School Board meetings were made public, in particular since there had been a subsequent disciplinary investigation. Mr Di Rollo supplied copies of emails which he had and which he said the Council had not supplied him with, and which he contended the Council should have provided.

The Commissioner's Analysis and Findings

21. Edinburgh City Council supplied to my office a copy of its Code of Conduct in Use of Electronic Communications and its Best Practice Guidelines for use of e-mail. Both documents deal with employees' use of email and internet and do not constitute a retention policy. The Best Practice Guidelines for use of e-mail state that employees should 'archive and file emails into relevant project files on your PC hard disk or the server where others can access'. This is not a retention policy.



22. Edinburgh City Council chose to provide Mr Di Rollo with information relating to himself under FOISA rather than under the DPA. It should be noted that the exemption in section 38(1)(a) is an absolute one and there is no need to consider either the data protection principles or the public interest. Its purpose is to ensure that personal data is, on the whole, accessible to the individuals whom it concerns only and not to the world at large. FOISA exists to promote public access to information and consequently must contain provisions to exempt information which relates to the private lives of particular individuals and is properly the preserve of those individuals alone. That kind of information should (subject to certain exemptions) still be accessible to those individuals and their representatives under the DPA. As such the Council should have provided this information – the applicant’s personal data – under the DPA rather than FOISA.
23. I shall now consider whether the searches carried out for information relating to Mr Di Rollo’s request were adequate and thorough.
24. The initial response to Mr Di Rollo’s request was handled by staff in the Families and Education department. This was understood to have been the only department involved in the events to which Mr Di Rollo’s request related. I accept that this was the most reasonable place for the Council to search.
25. The Council explained that the Deputy Director of Education’s email account in the Children and Families Division had been deleted in April 2005. From that point he continued to have an email account in the Council with a corporate mailbox created using an edinburgh.gov.uk address. The only computer used by the former Deputy Director of Education was a laptop. The Council informed my Office that on his dismissal the contents of the laptop were transferred to CD for the purpose of investigation. The contents of the CD were given to the Director of Corporate Services for investigation and it was from this CD that the Council checked to find any emails that were covered by the request.
26. The Director of Corporate Services was supplied with the current content of that (corporate) mailbox for the former Deputy Director of Education on CD on 1 September 2005. This CD contained all external incoming email to the account from 29 August 2005 to 31 August 2005, all internal and outbound mail for the same period and the current mailbox contents as of 1 September 2005. This was all the content that was available (i.e. only 3 days). A further CD was supplied with the contents of the mailbox on 7 September. The account was then disabled. The CD only recorded email that was currently on the central email system. Emails downloaded to the Deputy Director of Education’s own machine and filed there were not included since they were not accessible. The Council stated that this was the only data that could be reviewed in order to address the request from Mr Di Rollo. Mr Di Rollo asked for all emails received from or sent to a series of addresses. The two CDs mentioned above were reviewed to identify what was held in this respect. The



Council stated that as far as it was aware, there were no other emails in existence for the former Deputy Director of Education. The laptop had been returned to the Council's IT supplier (BT) and redeployed. The Council states that the laptop would no longer contain any information relevant to Mr Di Rollo's information request.

27. In his information request of 26 September 2005 Mr Di Rollo specified quite clearly what he required. He named several individuals whose communications with the Deputy Director of Education, during a specified time period, he wished to access. The Council explained that it had approached all named individuals to assess whether they held any communication that was covered by Mr Di Rollo's request. I accept that this was a reasonable course of conduct. This search did not produce any further information.
28. The Council's IT Department explained to my office that it had searched the headers of the emails sent for the 2 months previous to the request to see if any would have been relevant to the request. It stated that none were found that, on the basis of the heading, sender or recipient, would be relevant to the request. However, without access to the content of these emails the Council cannot identify any further emails that may have been relevant to the request. The Council indicated that any of the emails that related to the requests would have been deleted, if held, in April 2005. The Council stated that it did not regard it as good records management to print email and store them and indicated that it did not hold such printed emails that would fall within the scope of the requests.
29. My investigating officer asked the Council to conduct a further search. The Council was asked if it held any files, especially in the Families and Education Division, with titles which would suggest a link with Mr Di Rollo's request: for example, a file entitled "St Peter's". It was suggested that there might be printed emails in such files which would be relevant to Requests 1 and 3, and additionally that Request 4 should have led to a search of such files for 'any correspondence'. On further investigation the Council located material in a file entitled "St Peter's" and supplied Mr Di Rollo with this information. This information consisted of minutes and emails (including some sent by, received by or copied to, the former Deputy Education Director). Mr Di Rollo, on receiving this information, said that he had exchanged a number of emails with the Deputy Director of Education which were still not included in the file supplied to him, and he believed that the Council still held information relevant to his requests.



30. I have looked at the emails which Mr Di Rollo provided as evidence that the Council had not fully answered his request (on the grounds that he expected the Council to have copies of these emails but that they had not been provided to him in his request). My investigating officer provided details of these emails to the Council. Of the information subsequently located and sent to Mr Di Rollo (on 12 June 2006), none of the emails provided to my office were located by the Council. Most of the emails provided by Mr Di Rollo would have fallen within request 1 and 4 and, if held, should have been provided. The information provided to Mr Di Rollo on 12 June 2006 contained emails of a similar type, subject and from a similar date as those provided by Mr Di Rollo.
31. Mr Di Rollo also drew attention to his Request 3 and emphasised that he had not received any information on this request. My investigating officer contacted the Council and asked them to detail what searches had been conducted. The Council had stated that it held no information on the basis of having contacted the two named correspondents and asking if they held information. It was drawn to the Council's attention that the request had been for 'all correspondence' and the Council was asked to confirm that the Council employee had conducted a comprehensive search of his files for any correspondence. The Council confirmed that the named safety officer had conducted a search of his electronic and printed files and that they held no information which was correspondence (between the specific dates) with the Head of St Peter's Primary School.
32. Despite the fact that little correspondence was initially produced, the Council's initial search for information relating to Mr Di Rollo's was reasonable in respect of Requests 1 and 2. I would, however, have expected the Council to have extended its search to a file that was named "St Peter's", particularly in respect of Requests 3 and 4, and provided to Mr Di Rollo the information it subsequently provided (12 June 2006) during the investigation. I am satisfied that a full and adequate search has now been carried out of the relevant files held by the Council in relation to Mr Di Rollo's requests. The fact that Mr Di Rollo is aware of other emails sent to and received from the former Deputy Director of Education (including those he provided to this office) does not mean that the Council still holds these emails, either as electronic copies or printed emails.
33. The Council has advised that it is creating a records retention policy and procedure at Council-wide and Departmental levels. In doing this, I suggest that it takes full account of the guidance provided in the Freedom of Information (Scotland) Act 2002 Code of Practice on Records Management ('the section 61 Code of Practice'). However, I accept that in this case the information concerned might not have formed part of a record or record set relating to a core function of the Council, and therefore that even if a records retention schedule had existed it might not have documented the retention period and disposal arrangements for information of this kind.



34. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from the receipt of the request to comply with a request for information. The Council did not respond to Mr Di Rollo's request for information within this timescale (in fact, it took significantly longer to do so) and accordingly breached section 10(1) of FOISA in this respect.

Decision

I find that the Council did not comply with section 1(1) of FOISA by providing all the information it held relevant to Mr Di Rollo's request, in response to either his initial request or his request for review.

I find that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to respond to Mr Di Rollo's request for information within 20 working days as required by section 10(1).

As I am satisfied with the steps taken by the Council during this investigation to locate the information requested, I do not require the Council to take any further action as a result of his decision.

Kevin Dunion
Scottish Information Commissioner
28 June 2006