



Scottish Information
Commissioner

**Decision 146/2006 – Mr David Keown and West
Dunbartonshire Council**

*Request for information relating to a complaint made by the
applicant*

**Applicant: Mr David Keown
Authority: West Dunbartonshire Council
Case No: 200502091
Decision Date: 14 August 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 1xx/2006 – Mr Keown and West Dunbartonshire Council

Request for inter departmental correspondence relating to a complaint made by the applicant – section 17 – information not held – Section 19 – content of certain notices

Facts

Mr Keown emailed West Dunbartonshire Council (the Council) requesting copies of correspondence between its Anti Social Behaviour Team (the ASIST team) and its Legal and Administration Department relating to him and his wife.

The Council responded to Mr Keown stating that it held no information which related to his request. The applicant was dissatisfied with the Council's response and requested that it review the way in which it responded to his request for information. The Council responded again, repeating that it held no information relating to Mr Keown's request. Mr Keown remained dissatisfied and applied to the Scottish Information Commissioner for decision.

Outcome

The Commissioner found that the Council complied with section 1(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mr Keown's request, by stating that it held no information falling within the scope of the request.

However, he found that the Council failed to provide Mr Keown with information about his right to a review and his right to appeal to the Commissioner as required by section 19 of FOISA.

The Commissioner did not require the Council to take any steps to remedy this breach.



Appeal

Should either the Council or Mr Keown 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 6 June 2005, Mr Keown wrote to the Council requesting all of the correspondence which it held between the Legal and Administration Department and the ASIST team relating to him and his wife.
2. In its response to Mr Keown of 13 June 2005, the Council stated that it did not hold any recorded information relating to his request.
3. Mr Keown was not satisfied that the Council did not hold the information which he requested, and emailed it on the same day requesting that it review its decision.
4. The Council carried out a review of the way in which it had handled Mr Keown's request, and wrote to him on 21 June 2005 with the results of that review. It had found that it held no further information in relation to Mr Keown's request, and therefore upheld its initial response.
5. Mr Keown remained dissatisfied and on 24 June 2005 applied to me for a decision, as he argued the Council did not provide him with all of the information which he had requested.
6. The case was allocated to an investigating officer.

Investigation

7. Mr Keown'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.



8. The investigating officer wrote to the Council on 30 June 2005 for its comments on the application, as required by section 49(3)(a) of FOISA, and for any other information which it held in relation to this case. The Council responded on 18 July 2006, providing comment on the search methods it had used to locate the information which the applicant had requested. It also confirmed that it did not hold any further information relating to the applicant's request.
9. Further correspondence took place between the investigating officer and the Council on issues raised by the applicant in relation to his request.

The Commissioner's Analysis and Findings

Section 19 of the Freedom of Information (Scotland) Act 2002 (FOISA)

10. Section 19 of FOISA states that a refusal notice from a Scottish public authority should advise the requestor of their rights to request a review under section 20(1) of FOISA, and to apply to the Scottish Information Commissioner under section 47(1) of FOISA.
11. I find that the Council failed to comply with the requirements of Part 1 of FOISA in that it failed to advise Mr Keown of his right to ask for a review of the decision or about his right to apply to me for a decision, as required by section 19(b) of FOISA in its initial response of 13 June 2005. Despite this, Mr Keown did ask for a review and made an application to me and so was not prejudiced by this failure. I therefore will not require the Council to take any action as regards this technical breach of FOISA.

Was further information held by the Council in relation to Mr Keown's request?

12. Mr Keown asked for all of the correspondence between the Legal and Administration Department and the ASIST team which the Council held relating to a complaint which he had made about his neighbour.
13. On receiving Mr Keown's initial request for information the Council contacted both the ASIST team and the litigation section of the Legal and Administration Department of the Council by email, requesting any correspondence relevant to the request. Both sections responded that no such documentation existed.



14. On receipt of Mr Keown's request for review, the Council contacted the Solicitor within the Legal and Administration Department whose role was to provide the ASIST team with legal advice. He confirmed that he had provided no advice to the ASIST team relating to Mr Keown. The Council also contacted the ASIST team again; who again confirmed that it had not taken part in any correspondence with the legal department of the Council in relation to Mr Keown.
15. In its submissions to me, the Council outlined the methods it used to search for the information requested. The Legal and Administration Department of the Council provided me with evidence that it had searched the email and paper records of the solicitor who liaises with the ASIST team, which showed that no documents relating to Mr Keown's request were identified.
16. The Council also provided evidence in its submissions that the ASIST team searched its database, email records, case computer records, and paper files for cases, including all case summaries and associated paperwork.
17. To support its submissions, the Council also provided the investigating officer with copies of the ASIST team's correspondence with the applicant and background information relating to Mr Keown's complaint made to the ASIST team. Having examined these records, there is no evidence to suggest that the ASIST team entered into correspondence with the Legal and Administration department of the Council following Mr Keown's complaint.
18. The Council also provided details of the ASIST team database, describing what information was held within it. The Council clarified that, should legal advice have been sought or received by the ASIST team in relation to Mr Keown's complaints, a record of this would have been stored in the database. The Council have provided sufficient evidence to me to show that no such record has been located.
19. Given the nature of Mr Keown's request, I am satisfied that the Council has conducted a search of all of the areas in which information relating to his request could reasonably be expected to be held.
20. Having investigated the way in which the Council searched for information, I conclude that it conducted a full search of its records in response to Mr Keown's request, encompassing all places in which it might be reasonable to expect material of this kind to be found. I have found no evidence to support the existence of further correspondence between the Legal and Administration Department and the ASIST team of the Council. I am satisfied that the Council has provided sufficient confirmation that the information is not held.



Decision

I find that the West Dunbartonshire Council (the Council) complied with section 1(1) of the Freedom of Information (Scotland) Act 2002 in responding to Mr Keown's request for information, by stating that it held no information falling within the scope of the request.

However, I find that the Council failed to provide Mr Keown with information about his right to a review and his right to appeal to the Commissioner as required by section 19 of the Freedom of Information (Scotland) Act 2002.

I do not require the Council to take any steps to remedy this breach.

Kevin Dunion
Scottish Information Commissioner
14 August 2006