



Scottish Information
Commissioner

**Decision 206/2007 Mr Alexander Plunkett and Dumfries and Galloway
Council**

Names of school staff and owners of specific motor vehicles

**Applicant: Mr Alexander Plunkett
Authority: Dumfries and Galloway Council
Case No: 200701048
Decision Date: 31 October 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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KY16 9DS



Decision 206/2007 Mr Alexander Plunkett and Dumfries and Galloway Council

Request for names of school staff and details of the owners of certain vehicles – information not held

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 17 (Notice that information not held).

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

Facts

Mr Alexander Plunkett requested names of school staff and the details of the owners of certain vehicles which had been parked within a Leisure Centre adjacent to the school; what disciplinary action was available and would be taken against certain staff; and at what stage his claim for compensation from Dumfries and Galloway Council (the Council) was at. The Council responded in relation to the questions of disciplinary action and compensation, and advised that information regarding the names of individuals was being withheld under the terms of sections 38(1)(b) (Personal information) and 39(1) (Health, safety and the environment) of FOISA. Following a review which upheld the Council's earlier decision in relation to the information, Mr Plunkett remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council did not hold the requested information. The Commissioner concluded that the Council had not met its obligation under section 17 of FOISA to issue a notice that the information was not held.



Background

1. Mr Plunkett has been in correspondence with Dumfries and Galloway Council since February 2007 regarding the parking of vehicles within Merrick Leisure Centre by staff and pupils of Douglas Ewart High School.(DEHS)
2. On 22 March 2007, the Council wrote to Mr Plunkett intimating that the issue of parking had been raised with appropriate managers in Education and Community Services, which is the service responsible for both DEHS and the Merrick Leisure Centre, and they in turn had highlighted Mr Plunkett's concerns with staff and pupils using the appropriate communication channels.
3. On 7 June 2007, Mr Plunkett wrote to Dumfries and Galloway requesting the following information:
 - a names of DEHS staff who parked their cars in Leisure Car Park since being advised not to by e-mail by headmaster;
 - b names of staff who park 3 cars [registration numbers supplied by Mr Plunkett] in Leisure car park after receiving written instruction from the headmaster not to do so;
 - c what disciplinary action was available against the staff who parked the 3 cars in question; what action would be taken and what further measures would now be taken to stop this abuse;
 - d what stage his claim for compensation for pain and suffering caused by car park misconduct of DG Council employees was at and when an offer would be made.
4. In relation to his request at paragraph 3b above, the applicant informed the Council that he was in possession of photographic evidence, taken as recently as 06 June 2007.
5. On 9 June 2007, Mr Plunkett further emailed the Council stating that one of the vehicles listed within request 3b above was still parked within the Leisure Centre Car Park on 7 and 8 June 2007. He confirmed the driver to be a teacher and that he had seen that teacher enter and exit the school to use the car. He asked for evidence from the school register that she was employed on these and other dates and evidence from the attendance register and class allocated timetables.
6. On 11 June 2007, Mr Plunkett again emailed the Council with the registration numbers of 3 further vehicles asking that they be included within his request as outlined at paragraph 3b above.



7. On 29 June 2007, the Council wrote to Mr Plunkett in response to his request for information, refusing to release any details in relation to requests at paragraphs 3a and b as outlined above. The Council relied on the exemption under sections 38(1)(b) (read in conjunction with section 38(2)(a)(i)) and 39(1) of FOISA.
8. In relation to the request at 3c, the Council treated the request as an enquiry as to what disciplinary action is available against staff in general terms and forwarded a copy of the Dumfries and Galloway Discipline Policy. The Council emphasised, however, that the Disciplinary Policy was not relevant to car parking and drew Mr Plunkett's attention to the letter he had been sent dated 22 March 2007 (see paragraph 2 above).
9. With regard to the request at 3d, the Council stated that this was not a request for information under FOISA and referred Mr Plunkett to a letter sent to him dated 26 June 2007, which addressed this issue.
10. On 4 July 2007, Mr Plunkett wrote to the Council requesting a review of its decision. In particular, Mr Plunkett asked that the information be released in the public interest and in the interest of natural justice. He intimated that he did not wish the information for his personal use, but to provide it in confidence to the SPSO to enable remedy of serious breaches of discipline by DEHS staff in refusing to carry out written instruction that could cause him serious trauma.
11. On 25 July 2007, the Council wrote to notify Mr Plunkett of the outcome of its review. The Council upheld the decision not to release any information, for the reasons set out above.
12. On 27 July 2007, Mr Plunkett wrote to my Office, stating that he was dissatisfied with the outcome of Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
13. The application was validated by establishing that Mr Plunkett had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.



The Investigation

14. On 29 August 2007, the investigating officer wrote to the Council, giving notice that an application had been received and that an investigation into the matter had begun, and seeking comments and specified information from the Council, all in terms of section 49(3)(a) of FOISA.
15. The Council responded on 31 August 2007 with detailed analysis of its application of the relevant exemptions and other supporting documentation.
16. During the investigation, the Council confirmed that it did not in fact hold the information requested at points 3a and b above (as supplemented in Mr Plunkett's letters of 9 and 11 June 2007), along with details of the measures taken to verify this.

The Commissioner's Analysis and Findings

17. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both the applicant and the Executive and I am satisfied that no matter of relevance has been overlooked.
18. I am also satisfied that the Council provided Mr Plunkett with reasonable and adequate responses to the requests set out at 3c and d above. There is no basis for believing that additional or different information on these matters is held by the Council and I do not in fact understand that to have been argued by the Council.
19. During the investigation, the Council confirmed that it did not in fact hold the information requested at points 3a and b above (as supplemented in Mr Plunkett's letters of 9 and 11 June 2007). Having considered the Council's submissions on this point, and sought clarification on certain matters in response to further points raised by Mr Plunkett, I am satisfied that this information is not held, and indeed was not held at the time it was requested. This should, in fact, have been identified at the time Mr Plunkett's request was being dealt with by the Council and a notice served on Mr Plunkett in terms of section 17 of FOISA.



Decision

I find that the Council does not (and did not at the time of Mr Plunkett's request) hold the information requested by Mr Plunkett. I also find that the Council did not meet its obligation under section 17 of FOISA to issue a notice that the information was not held in response to either Mr Plunkett's original request or his request for review. In this regard, the Council failed to deal with Mr Plunkett's request in accordance with Part 1 of FOISA. However, as the requested information is not and was not held by the Council, I do not require the Council to take any action as a consequence of this decision.

Appeal

Should either Mr Plunkett or Dumfries and Galloway 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.

Kevin Dunion
Scottish Information Commissioner
31 October 2007



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.