

**Decision 207/2006 – Ms X and Scottish Borders
Council**

*Information relating to work related sick leave in Scottish Borders
Council*

**Applicant: Ms X
Authority: Scottish Borders Council
Case No: 200502191
Decision Date: 15 November 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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St Andrews
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KY16 9DS

Decision 207/2006 – Ms X and Scottish Borders Council

Information relating to work related sick leave in Scottish Borders Council – failure to respond to the request in line with the Freedom of Information (Scotland) Act 2002 – whether the information requested is held

Relevant Statutory Provisions

The Freedom of Information (Scotland) Act 2002 sections 16(1) (Refusal of request); 17(1) (Notice that information is not held); 19 (Content of certain notices); 21(1) (Requirement for review).

For the full text of these sections see the Appendix to this decision. The appendix forms part of this decision.

Facts

Ms X requested details of any action the Health and Safety Section of Scottish Borders Council (the Council) had taken as a result of a number of absences due to work related sick leave within the Architects' Section of the Council.

In its response to Ms X's request the Council did not specify whether it held the information which she had requested, or whether it wished the information. Ms X emailed the Council again requesting that it provide her with the information. It responded stipulating that its Health and Safety Section had taken no action as a result of incidences of work related sick leave within its Architects' Section.

Ms X was dissatisfied with the response received and wrote to the Scottish Information Commissioner asking him to investigate whether the Council responded to her request in line with the provisions of FOISA. Following investigation the Commissioner found that the Council did not hold the information requested.

Background

1. On 13 May 2005 Ms X emailed the Council and asked whether any action had been taken by its Health and Safety Section relating to incidences of work related sick leave which had taken place within its Architects' Section.
2. An employee of the Council responded stating that as they did not know whether action had been taken because they were not aware of the situation in that section.
3. On 1 June 2005 Ms X again emailed the Council requesting that it provide her with the information requested.
4. The Council responded on 4 July 2005 stating that there had been no action taken by its Health and Safety Section as a result of work related sick leave within the its Architects' Section.
5. As she was dissatisfied with its response Ms X wrote to me on 4 July 2005 and asked me to decide whether the Council had complied with FOISA in responding to her request.
6. The case was allocated to an investigating officer and Ms X's appeal validated by establishing that she had made a valid request for information to a Scottish public authority and had appealed to me only after asking the authority to review its response to her request.

The Investigation

7. A letter was sent to the Council on 10 August 2005 giving notice that appeal had been received and an investigation into the matter had begun, as required by section 49(3)(a) of FOISA. The Council was asked to comment on the issues raised by Ms X's case and to provide supporting documentation for the purposes of the investigation.
8. There followed protracted correspondence with the authority concerning the scope of the request for information and whether the information was held by the Council.
9. As part of this correspondence The Council provided me with information about its procedures for records management and copies of the relevant sections of its personnel policies and guidelines.

10. In particular the Council sent copies of its Accidents and Incidents at Work Policy, its notification of sickness absence form, its Employee Handbook, its Absence Management Policy and Guidelines, and relevant entries from its Health and Safety database.

The Commissioner's Analysis and Findings

11. Section 17(1) of FOISA requires that an authority must give notice to an applicant if it does not hold the information which has been requested.
12. Ms X asked what action the Health and Safety Section of the Council had taken as a result of absences caused by work related illness within its Architects' Section. In this case, from the context of Ms X's request, I am taking work related illness to mean stress or depression which an employee has claimed to be caused by their working environment.
13. In its comments to me on Ms X's application, the Council asserted that it did not hold any recorded information relating to her request.
14. In my investigation I firstly looked to determine whether the Council held a record of work related sickness absences within its Architects' Section. I went on to find out whether, if such records were held, they were passed to its Health and Safety Section for action. Finally, I examined the records of the Health and Safety Section of the Council to determine whether it held any records of action taken as a result of work related sickness absence within the Council's Architects' Section.
15. Having examined the records held by the Council, I am satisfied that where an employee is absent due to work related illness, a record is made of the cause of illness. Therefore, where an employee has been absent due to stress or depression a record is made of that fact.
16. Where an absence from work has been recorded as having been caused by certain kinds of accident causing physical injury, occurrence of disease or dangerous incident within the workplace, a record is passed to its Health and Safety Section who decide what (if any) action should be taken in order to prevent such an accident or incident from happening in the future. I have noted, however, that records of work related illness arising from work related illness stress and/or depression do not require to be passed to the Health and Safety Section of the Council for action. In addition, I am satisfied from my investigation that no such records are in fact held by the Health and Safety section.

17. As no record of work related illnesses are passed to or held by its Health and Safety Section for action, it follows that the Council does not hold any record of action that Section has taken following receipt of such a record. I am satisfied that the Council does not hold any recorded information which falls within the scope of Ms X's request.

Decision

I am satisfied that Scottish Borders Council does not (and did not at the time of the request) hold any information falling within the scope of Ms X's request for information and therefore was entitled to apply section 17 of the Freedom of Information (Scotland) Act 2002 to the request.

Appeal

Should either Scottish Borders Council or Ms X wish to appeal against this decision there is an appeal to the Court of Session on a point of law only. Any such appeal should be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
15 November 2006

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.