



Scottish Information
Commissioner

Decision 016/2005
Mr Campbell and Fife Council

*Request for various information relating to a housing development at
Lochwood Park, Kingseat, Dunfermline*

Applicant: Mr George Campbell
Authority: Fife Council
Case No: 200501098
Decision Date: 21 July 2005

Kevin Dunion
Scottish Information Commissioner

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Facts

Mr Campbell submitted various information requests relating to a housing development at Lochwood Park, Kingseat, Dunfermline, to Fife Council. The Council failed to respond to Mr Campbell's requests within the statutory timescales provided by the Freedom of Information (Scotland) Act 2002 (FOISA). Following Mr Campbell's application to the Commissioner, the Council provided all the information requested by the applicant. The applicant then requested that the Commissioner continue his investigation into the way in which Fife Council dealt with his request for information.

Decision

The Commissioner found that Fife Council failed to deal with the applicant's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), in that it failed to comply with a request for information made under section 1(1) within the timescales provided by sections 10(1) and 21(1) of FOISA. The Commissioner also found that the Council failed in its duty to provide advice and assistance under section 15 of FOISA and the Section 60 Code.

However, the Commissioner decided that no remedial steps require to be taken by the Fife Council.

Appeal

Should either the Council or Mr Campbell wish to appeal against my 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 Fife Council (the Council) was originally contacted by Mr Campbell on 3 January 2005. Mr Campbell's correspondence contained 15 separate requests for information relating to a housing development at Lochwood Park, Kingseat, Dunfermline. These requests included:
 - a. Why did the planning application for the development at Lochwood Park take 11 months from planning application being made to planning consent being granted?
 - b. What additions or modifications were made after the 14 days allowed for the public to view the planning application?
 - c. Why did the planning department fail to notify neighbouring properties when the planning application was amended to show finished floor levels at between 3 and 4.5 metres higher than existing properties in Greenacres?
 - d. Why did the Planning Department fail to check the ground level on plots 27 through 30 when alleged misrepresentation was found for plots 24 through 26?
- 2 The Council acknowledged Mr Campbell's information requests on 3 January 2005, and confirmed that they would be dealt with under the Freedom of Information (Scotland) Act (FOISA). In this correspondence the Council also informed Mr Campbell that the detailed information requested may take some time to compile, and informed him that it believed that it had provided him with "explanations, facts and information" at previous meetings which responded to some of his requests.
- 3 The Council also stated in its correspondence of 3 January that Mr Campbell's request for information under FOISA implied that the Council had provided Mr Campbell with false information previously, and asked him to clarify whether he believed this to be the case before it responded in full to his requests.
- 4 On 4 January Mr Campbell responded to the Council, confirming that the purpose of his information request was to seek more detailed answers than those previously provided. Mr Campbell also stated that he had included the reference to FOISA to highlight that the Council had a statutory duty to disclose the information requested.



- 5 On 8 February Mr Campbell wrote to the Chief Executive of the Council to complain that no further response had been provided to his information request of 3 January. When no response was received to this correspondence, Mr Campbell contacted the Council again on 15 February.
- 6 On 16 February Mr Campbell received a response acknowledging his email of 15 February. This response informed him that the Council would investigate the delay in responding to his initial information request.
- 7 Also on 16 February, Mr Campbell formally requested that the Council review its handling of his initial information request. Mr Campbell received an acknowledgement to this correspondence on 18 February. This acknowledgement assured Mr Campbell that the Council would respond in full within 20 working days.
- 8 On 18 March Mr Campbell submitted an application for decision to my Office, having still not received a full response to his information request.
- 9 The case was then allocated to an investigating officer.

The Investigation

- 10 I received a valid application under the terms of section 47(1) of FOISA from Mr Campbell on 21 March 2005.
- 11 On 12 April my Office contacted the Council to invite comments and seek further information relating to the case. Information sought by my Office included:
 - Details of whether Mr Campbell's information request was being processed in accordance with FOISA or the Environmental Information (Scotland) Regulations (EIRs). The EIRs govern access to environmental information held by Scottish public authorities.
 - Details of the reasons for processing the request in accordance with the respective legislation.
 - Details of whether the Council intended to supply the information in response to Mr Campbell's request. If not, details of the exemptions under FOISA, or exceptions under the EIRs, to be applied by the Council.
 - Details of why the Council failed to comply with the information requests within the statutory timescales.



- Details of any steps proposed or put in place by the Council in order to prevent any similar occurrence in future.
- 12 The Council responded to this correspondence on 29 April. In its response, the Council indicated that Mr Campbell's request was identified as one under FOISA on receipt, and was subsequently processed by the Council as a request under FOISA. The Council provided no additional information relating to why the separate requests were processed under FOISA, as opposed to the EIRs.
- 13 The Council also stated that, while some of the of the information requested by Mr Campbell would constitute a request for recorded information held by it, other questions sought either opinion or comment which was not recorded by the Council and would, therefore, not be accessible under FOISA. However, the Council indicated that it intended to respond to Mr Campbell's request of 3 January in full, providing both the information held which responded to Mr Campbell's request, along with the Council's comment and opinion in relation to the outstanding issues.
- 14 The Council also set out in detail why it failed to comply with Mr Campbell's request in accordance with the timescales under FOISA. A number of issues were presented by the Council which contributed to its failure to comply. For example:
- The Development Services department, to which the request was submitted, had been going through a major restructuring and, at the time of receipt of Mr Campbell's information requests, had no formal procedures in place for the monitoring or handling of requests under FOISA. This led to the timescales for reply expiring unnoticed.
 - A number of key staff who worked on the original planning application were no longer employed by the Council. As a result, the processing of the information requests required a detailed investigation by new staff into issues about which they had little or no direct experience.
 - Workload pressures, a shortage of staff resources, and staff absences were also cited as contributory factors in the Council's failure to respond to either the applicant's initial request, or his request for review, within the statutory timescales.



- 15 Regarding the steps taken by the Council to prevent a reoccurrence, the Council confirmed that all staff within Development Services would have the importance of complying with requests under FOISA re-emphasised to them. The Council also indicated that it would consider the preparation of work programmes to monitor the progress of all requests received under FOISA in order to ensure that they are complied with in accordance with the statutory timescales. The Council also proposed that, where necessary, departments would consult with the Council's Legal Services on receipt of requests in order to seek guidance on:
- Whether the request should be dealt with under FOISA
 - The provision of advice and assistance to the applicant
 - Whether more information should be sought from the applicant before a response can be formulated.
 - Whether any exemptions should be applied to the information.
- 16 The Council also provided a copy of a 6-page advice note on the handling of FOISA requests which was circulated to Development Services staff on the 18 February 2005.
- 17 On 4 May 2005 the Council sent a full response to Mr Campbell's information request.
- 18 In some cases when an authority provides information during the course of an investigation this may be done as part of a settlement procedure, where the applicant agrees to withdraw the related appeal to the Commissioner. However there was no such agreement in this case. On 17 May Mr Campbell informed this Office that, while he was satisfied with the information provided by the Council in response to his request, he wished to continue his application in relation to the way in which the Council dealt with his information request.
- 19 On 31 May my Office contacted the Council to inform it of the continuation of the investigation and invited the Council to submit any additional comment in relation to the steps taken to prevent a reoccurrence.
- 20 The Council submitted additional information on 15 June. This included a copy of an advice note that was issued to Development Services staff on 14 June 2005, re-enforcing the note previously issued (referred to in paragraph 15 above). The Council also confirmed that a dedicated member of staff within the department will have responsibility for logging and monitoring FOISA requests received in order to ensure that they are responded to within the correct timescales.



The Commissioner's Analysis and Findings

- 21 I would first like to comment on the Council's decision to process Mr Campbell's information request under FOISA, as opposed to the EIRs. Given the nature of the information requested by Mr Campbell, it would seem likely that at least some of the information sought may have fallen under the definition of 'environmental information' contained in the EIRs, and should therefore have been processed accordingly.
- 22 The Council does not, however, appear to have acknowledged this in their handling of Mr Campbell's request nor, indeed, in their response to the correspondence from my Office of 12 April. Given that the information sought by Mr Campbell was subsequently released in full and to Mr Campbell's satisfaction, my Office did not see the benefit in conducting a full retrospective assessment of whether each of Mr Campbell's information requests constituted a request for environmental information under the EIRs. With this in mind, I have considered the Council's handling of Mr Campbell's requests solely within the context of FOISA.
- 23 That said, however, the Council should note that information requests relating to planning matters will generally concern land and land use, as well as measures affecting or likely to affect land. Requests of this type may fall under the definition of environmental information contained in the EIRs. This does not, however, mean that all information requests relating to planning should be dealt with under the EIRs, but rather that authorities should, in the case of each information request, look at the information sought and assess whether it falls under the definition of environmental information contained in the EIRs, before ultimately assessing how the information request should be processed.
- 24 In terms of Mr Campbell's information requests, it is clear that, in its handling of these requests, the Council failed in its obligations under FOISA. Indeed, this is something which has been acknowledged by the Council in its submissions to my Office, and something which the Council has indicated it has since taken measures to address.
- 25 It is apparent from the correspondence submitted that there was a low level of awareness of FOISA within the Council's Development Services department at the time at which Mr Campbell's information request was received. Despite the fact that Mr Campbell explicitly referred to FOISA in his request (which he was under no obligation to do) the Council failed to ensure that his request was processed in accordance with the legislation.



- 26 The Council's failure to respond to both Mr Campbell's initial information request and his subsequent request for review in accordance within the FOISA timescales is a key failing on the part of the Council in their handling this request. However, before I address this, there are some additional issues related to the handling of this request on which I also wish to comment.
- 27 In its acknowledgement of 3 January, the Council stated that it had previously provided Mr Campbell with "explanations, facts and information" in response to some of his information requests at meetings which he attended. It also stated that Mr Campbell had been given access to the application files on previous occasions.
- 28 While I acknowledge that Mr Campbell's request formed part of an ongoing communication with the Development Services department in relation to the Lochwood Park Development, it must be stressed that any prior communications between Mr Campbell and the Council on this issue should have limited bearing on Mr Campbell's exercising of his rights under FOISA. While it may be the case that the Development Services department provided the applicant with "explanations facts and information" at meetings prior to 1 January 2005, in his submission of 3 January Mr Campbell was, for the first time, exercising his statutory right of access to recorded information held by the Council under FOISA. The Council should, therefore, have treated Mr Campbell's request accordingly, and sought to respond to it solely within the context of the freedom of information legislation.
- 29 The Council also indicated that Mr Campbell's request under FOISA implied that he believed he had been given false information to date. The Council stated that Mr Campbell should clarify whether this was in fact the case prior to the provision of a full response.
- 30 This request that Mr Campbell clarify his motive for submitting a request prior to receipt of a full response was clearly at odds with the Council's responsibilities under FOISA. Paragraph 5 of the 'Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities under the Freedom of Information (Scotland) Act 2002' (the 'Section 60 Code') states that, under FOISA, an applicant's reasons for requesting information are not relevant, and that "applicants should not be given the impression that they are obliged to disclose the nature of their interest, or that they will be treated differently if they do so." Paragraph 6 of the Section 60 Code goes on to state that where an authority falls short of the Code's guidance in this respect, it may have failed in its obligation under section 15 of FOISA.



- 31 In this case, the Council's correspondence of 3 January implied that the applicant's information request would not be responded to in full until such time as he contact the Council with assurances that his FOISA request was not the result of concerns over the accuracy of previous information. This act by the Council of requiring Mr Campbell to provide this clarification of his motives before a response would be prepared represents a failure of the Council's duty under both the Section 60 Code and section 15 of FOISA.
- 32 With regard to the issue of timescales, the Council's correspondence to my Office of 29 April set out why it failed to respond to Mr Campbell's information request and request for review within the timescales provided by FOISA. The reasons for this failure included a lack of formal procedures within the Development Services department for handling requests under FOISA, staff shortages, poor knowledge of the case in question and workload pressures.
- 33 While I have some sympathy with regard to the staff shortages which the Council appear to have been experiencing at the time of the request, the timescale of responding to both initial requests and requests for review within 20 working is a statutory obligation with which all Scottish public authorities must comply. The fact that the Development Services department had no basic procedures in place for responding to FOISA requests was a key failing on the part of the Council and such procedures would have allowed staff to identify, record and monitor requests, and ultimately prioritise the handling of those requests by the available staff. Scotland's public authorities have been aware of the impending implementation of FOISA since April 2002, and as a result have had a significant amount of time in which to formulate the policies, procedures, systems and training required to ensure that requests are complied with. In this respect, it appears that the Council failed to implement adequate systems for dealing with requests under FOISA within the statutory timescales, and therefore failed in its duties under sections 10(1) and 21(1) of FOISA.
- 34 I acknowledge however that the Council did, following my receipt of Mr Campbell's application for decision, release in full the information requested by Mr Campbell. I also acknowledge that in responding to the request the Council went beyond the requirements of FOISA in providing unrecorded comment and opinion, as well as recorded information held by it. It should be noted however that, following its receipt of Mr Campbell's initial information request, the Council should, under the duty to provide advice and assistance provided by section 15 of FOISA, have contacted Mr Campbell to advise him of the type of information which could be accessed under FOISA and, if necessary, helped Mr Campbell phrase his request to facilitate access to recorded information. This duty of advice and assistance under section 15 was not provided to Mr Campbell at the time of his initial request. Given these circumstances however, I welcome the Council's eventual decision to respond to Mr Campbell in full.



35 I also note that the Council recognises that its approach to this case has fallen short of what is required, and has, since the receipt of Mr Campbell's requests, introduced significant measures to ensure that FOISA requests received by the Development Services department will be responded to appropriately and timeously in future. I would, however, advise that the authority ensure that it has equivalent procedures in place to facilitate the identification and processing of requests under the EIRs, as well as those received under FOISA.

Decision

I find that the Council failed to deal with Mr Campbell's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), in that it failed to comply with a request for information made under section 1(1) within the timescales provided by sections 10(1) and 21(1) of FOISA. I also find that the Council failed in its duty to provide advice and assistance under section 15 of FOISA and the Section 60 Code.

However, I find that the Council has since taken appropriate steps to ensure that requests for information received in accordance with Part 1 of FOISA are handled appropriately.

I do not therefore require the Council to take any remedial steps to comply with these provisions in terms of section 49(6)(b) of FOISA.

Kevin Dunion
July 2005