



Scottish Information
Commissioner

**Decision 046/2005 Mr Nick Stevenson and Shetland Islands
Council**

*Request for information regarding temporary staff transferred to
permanent posts*

**Applicant: Mr Nick Stevenson
Authority: Shetland Islands Council
Case No: 200502239
Decision Date: 3 November 2005**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 046/2005 – Mr Nick Stevenson and Shetland Islands Council

Request for information regarding temporary staff transferred to permanent posts – information supplied following initiation of investigation – failure of authority to deal with as FOI request – failure to provide information about right of review and right to appeal to the Commissioner section 21(0) – failure to carry out review within the terms of the Act section 21(5)

Facts

Mr Stevenson requested figures relating to the transfer of teaching staff and the transfer of instructors on temporary posts to permanent posts within Shetland Education Service. Shetland Islands Council (the Council) acknowledged receipt of this information request but failed to respond with a substantive response within the statutory timescale provided by the Freedom of Information (Scotland) Act 2002 (FOISA). Mr Stevenson sought an internal review of this decision. The Council responded to this request by providing certain information. The response did not provide information about the how the review had been carried out or provide information on Mr Stevenson's right to appeal to the Commissioner. Following Mr Stevenson's application to the Commissioner the Council provided all of the information that it held which was relevant to Mr Stevenson's request. Mr Stevenson asked the Commissioner to reach a decision on the way in which the Council had handled his request for information.

Outcome

The Commissioner found that Shetland Islands Council failed to comply with Part 1 of FOISA by failing to respond to Mr Stevenson's information request within 20 working days after receiving his request, as required by section 10(1) of FOISA. The Council also failed to comply with a number of the requirements of FOISA for carrying out a review.



Appeal

Should either Shetland Islands Council or Mr Stevenson wish to appeal against this decision, there is a right to 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 2 May 2005, Mr Stevenson sent a letter to Shetland Islands Council seeking figures concerning the transfer of teaching staff and the transfer of instructors on temporary posts to permanent posts within Shetland Education Service. He indicated that these transfers from temporary posts to permanent posts would be under the terms of paragraph 8.5 of the yellow book "Scheme of Salaries and Conditions of Service for Teaching Staff in School Education." Mr Stevenson then listed five specific questions relating to the above.
2. Shetland Islands Council acknowledged Mr Stevenson's request for information in a letter dated 11 May 2005.
3. Shetland Islands Council failed to provide a substantive response to Mr Stevenson's request within 20 working days from receipt of the request.
4. On 13 June 2005 Mr Stevenson requested a review from Shetland Islands Council indicating that he had received no response to his request for information.
5. The Council responded to Mr Stevenson's request for review on 5 July 2005.
6. The Council indicated that it was unclear whether Mr Stevenson's original request had been labelled as a FOISA request and advised that his letter of 13 June 2005 was not clearly marked as a FOISA request. Despite this, the Council advised, it was happy to respond to his enquiry.
7. The Council provided certain information relating to Mr Stevenson's request. It did not, however, provide the detailed figures requested by Mr Stevenson in his five specific questions.
8. In its letter of 5 July 2005, the Council gave no indication that it was treating Mr Stevenson's request as a request for review. The letter made no reference to Mr Stevenson's right to apply to the Commissioner for a decision.
9. Mr Stevenson contacted my office by letter on 9 July 2005 requesting an investigation into the matter. The case was allocated to an investigating officer.



10. Mr Stevenson indicated that he was dissatisfied with the information the Council had supplied and with the way in which the Council had handled his request. Specifically, he complained that:
- Following his initial request the Council did not provide a decision to let him know if the information could be provided, nor did it detail any likely costs he might incur if he wished to continue with his request
 - His request for information had not been responded to in the level of detail required
 - His request for review had not resulted in his receiving a written decision of the review
 - There was a clear intention on the part of the Council not to recognise his request for information as coming under the terms of FOISA.

Investigation

11. Mr Stevenson's appeal was validated by establishing that he had made a request to a Scottish public authority, and had appealed to me only after asking the authority to review its failure to provide a response to his request.
12. The investigating officer contacted Shetland Islands Council on 15 July 2005 giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was asked to comment on the issues raised by Mr Stevenson's case and to provide supporting documentation for the purposes of the investigation.
13. In particular, the Council was asked what steps it had taken to determine the information it held relevant to Mr Stevenson's request for information and whether further information would be provided to Mr Stevenson.
14. The Council was also asked to provide information about the way in which it had handled Mr Stevenson's request for information. In particular, it was asked about its processes for dealing with FOI requests and was asked to supply any relevant internal guidance.
15. The Council subsequently wrote to Mr Stevenson on 27 July 2005 supplying him with the figures he had sought in his original request. In its response the Council acknowledged that, on reflection, the terms of the letter of 5 July 2005 were not in the form requested by Mr Stevenson. The Council apologised for this.
16. The Council indicated that in dealing with Mr Stevenson's request for information it had used the informal practices it had applied in the past when dealing with requests from Mr Stevenson. The Council indicated that it regretted that its approach in this case had resulted in Mr Stevenson having to correspond further with the Council and had also put Mr Stevenson to the trouble of having to involve my Office.



17. Mr Stevenson indicated to my Office that he was satisfied with the information that had been supplied to him by the Council but still wished me to comment on the way in which the Council had handled his request for information.
18. He subsequently confirmed that he would like me to reach a decision on this matter.

Submissions from the Council

19. The Council responded to my letter of 15 July 2005 indicating that it wished to address the issues raised and supply the information requested. It responded in detail to my questions on 30 September 2005. It made a number of submissions and provided supporting documentation about the kind of training and guidance staff had received on freedom of information.
20. The Council advised that training has been provided to staff within the Education Service on freedom of Information (FOI) requests. A named administrator provided training to the Head Teachers within the Council. It also supplied me with copies of slides used for training provided to Senior Management and Councillors, Service Managers and Front Line Staff. It advised that each Service Area within the Council has a designated key Officer who has responsibility for dealing with FOI requests.
21. The Council reported that there had been thirteen FOI requests to the Education Service, some of which were from other departments to which the Education Service contributed information. These had all been dealt with timeously within the 20 day timescale.
22. The Council advised that FOI requests are normally dealt with in a very ordered and structured manner within the Education Service. There are named officers who record the detail of the request and log it on the Council's FOI Database system. The Council decides who is the most appropriate officer to deal with the request and the documentation is then copied to this officer. The officer collates the information requested.
23. The Council advised that the original person who had logged the request monitors the timescale and reminds the appropriate officer of the remaining time. Information may be required from a number of sources and these are gathered and a response is sent to the requester. This is then also logged on the system.
24. The Council indicated that, unfortunately, in this instance Mr Stevenson's letter of 2 May 2005 was not logged on the FOI database, although his letter was acknowledged and passed to a member of the Education Service Management Team.
25. The Council indicated that Mr Stevenson had requested information from the Education Service staff on a number of occasions.
24. The Council advised that Mr Stevenson is the local EIS Union Secretary, and Joint Secretary of the Council's Local Negotiating Forum for Teaching Staff. In this regard, there are regular weekly informal meetings between Mr Stevenson and an Education Service Quality Improvement Manager. At one these meetings to which Mr Stevenson attended the issue of the transfer of temporary staff was discussed.



26. The Council advised that it was embarrassing for the Education Service of the Shetland Islands Council that the process of logging the request was missed on both occasions when Mr Stevenson wrote on 2 May 2005 and 13 June 2005 and that his request was not responded to within the timescale. The Council considered it very unfortunate that this request was not met to Mr Stevenson's satisfaction when it had managed to respond to other requests made by Mr Stevenson in a timeous manner.
27. The Council hoped that the letter sent to Mr Stevenson would cover his request in full.
28. The Council indicated that although circumstances associated with changes of staff and lack of attention to the training provided have been accepted as factors which led to the delay in responding to Mr Stevenson's subsequent letters, it is also acknowledged that consideration of the communication arrangements between management and unions may require some adjustment in order to ensure that all requests are dealt with in the proper manner.
29. The Council concluded that lessons had been learned. It acknowledged that any breach of FOISA, whether unintentional or not, was not acceptable to the Council, and that steps had been taken to minimise the risk of this sort of breach recurring.

The Commissioner's Analysis and Findings

30. The Council did not respond to Mr Stevenson's original request for information within 20 working days and therefore was in breach of section 10(1) of FOISA which states that a Scottish public authority must comply promptly with a request for information and in any event by not later than the twentieth working day after the receipt by the authority of the request.
31. The Council subsequently responded to Mr Stevenson's request for review on 5 July 2005. The Council's letter implied that Mr Stevenson's request for information had not been treated as a request under FOISA because it had not been marked as such.
32. There was no indication that the Council was treating Mr Stevenson's letter of 13 June 2005 as a request for review. It made no mention of the process of internal review that had been followed. Rather the Council's letter of 5 July 2005 provided Mr Stevenson with some information in response to his original request.
33. Finally, the Council's letter of 5 July 2005 made no mention of Mr Stevenson's right to apply to me for a decision should he be dissatisfied with the result of the review.
34. I am satisfied that the Council did not treat Mr Stevenson's letter of 13 June 2005 as a request for review. Instead it partially responded to Mr Stevenson's request for information but it did not address the specific questions he had raised in his original letter. The letter was in fact a request for review and the Council was in breach of section 21(1) of FOISA (which requires the authority to comply with such a request promptly, and in any event not later than the twentieth working day after receipt, unless the request is withdrawn or it or the original request is/was vexatious) by failing to treat it as such.



35. Section 21(4) of FOISA states that on review the authority may:
- Confirm a decision complained of, with or without modifications as it considers appropriate;
 - Substitute for any such decision a different decision; or
 - Reach a decision, where the complaint is that no decision had been reached.
36. In failing to treat Mr Stevenson's letter of 13 June 2005 as a request for review the Council was in breach of section 21(5) of FOISA which states that the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
37. The Council was also in breach of section 21(10) of FOISA which states that a notice under subsection (5) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.
38. For the sake of clarity, all requests for information received in writing by a Scottish public authority are covered by FOISA. Therefore, regardless of the previous practice used by an authority in relation to a particular correspondent the request should be handled in conformity with FOISA.
39. Under the terms of FOISA an applicant is not required to label his/her request as a FOI request or make any reference to FOISA.
40. Where an applicant makes a number of specific requests for information the authority should respond to each one. Where the authority does not hold some or all of the information requested or where it considers that information is exempt under the terms of FOISA it should make this clear to the applicant and issue a relevant notice in conformity with the terms of FOISA.
41. Finally, Mr Stevenson complained to me that the Council had not detailed any likely costs that he might incur if he wished to continue with his request. An authority is not obliged to make a charge when supplying information under FOISA and in many cases, authorities may choose to provide information free of charge. Only where an authority chooses to charge for supplying information in line with the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 should it issue a fees notice in terms of section 9 of FOISA. In this case, the Council provided the information to Mr Stevenson free of charge.
42. The Council has provided me with detailed information about the training it has carried out on FOI and the procedures it has put in to place to deal with information requests. I am satisfied that it has recognised that changes need to take place to deal with regular correspondence with particular organisations and individuals so that requests for information are identified and dealt with according to the terms of FOISA.



Decision

I find that Shetland Islands Council (the Council) failed to comply with Mr Stevenson's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). The Council did not respond to Mr Stevenson's request within 20 working days after receiving his request as required by section 10(1) of FOISA. The Council also failed to provide all of the information it held relating to Mr Stevenson's request when it responded to Mr Stevenson's request on 5 July 2005.

The Council failed to respond to Mr Stevenson's request for review in conformity with FOISA in failing to treat it as such as required by Section 21(1) of FOISA and consequently in failing to indicate what it had done as part of its review and provide a statement of its reasons for doing so as required by section 21(5) of FOISA. Finally, the Council failed to provide information about the rights of application to the Commissioner in its response to Mr Stevenson's request for review as required by section 21(10).

I do not require the Council to take any remedial steps.

Kevin Dunion
Scottish Information Commissioner
3 November 2005