



Scottish Information  
Commissioner

**Decision 194/2007 Mrs A Renfrew and Perth and  
Kinross Council**

*Information relating to the personal care and assistance with food  
preparation*

**Applicant: Mrs A Renfrew  
Authority: Perth and Kinross Council  
Case No: 200600880  
Decision Date: 29 October 2007**

**Kevin Dunion  
Scottish Information Commissioner**

Kinburn Castle  
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## Decision 194/2007 Mrs A Renfrew and Perth and Kinross Council

***Information relating to the provision of personal care and assistance with food preparation- failure to correctly identify information sought – Commissioner found that the Council failed to comply fully with Part 1 of FOISA.***

### Relevant Statutory Provisions and Other Sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 15 (Duty to provide advice and assistance) and 17(1) (Notice that information is 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

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Mrs Renfrew made various requests under the Freedom of Information (Scotland) Act 2002 (FOISA) for information held by Perth and Kinross Council (the Council) relating to charges for assistance with food preparation. This decision relates to matters raised by the way in which the Council dealt with two of these requests.

In the first request, Mrs Renfrew asked for copies of a “further communication” from the Scottish Government (which was then known as the Scottish Executive, but will be referred to by its current name throughout this decision), which had been referred to in a letter to a local MSP. The Council sent Mrs Renfrew details of the conclusions of a meeting of Council officials. In her request for review, Mrs Renfrew noted that this document was not a communication from the Scottish Government, and asked the Council to supply the correct document. The Council informed Mrs Renfrew that no such further communication from the Scottish Government to the Council was held. Mrs Renfrew applied for a decision in relation to this matter.



After investigation the Commissioner found that the Council had not, in fact, received any further communication from the Scottish Government which could be the communication referred to in the letter to the local MSP. The Commissioner accepted that the information requested was not held by the Council. However, the Commissioner found that the Council had not explained the apparent discrepancy between the statement in the letter and the assertion that the information requested was not held, and that the Council had failed to comply with section 15 of FOISA in this respect.

In her second request, Mrs Renfrew asked for a copy of a letter from the Scottish Government to COSLA, which had been referred to in a letter sent by a senior Council official to a local MSP. The Council provided her with a letter of a different date, sent to a different recipient. After reviewing its response it asserted that this was indeed the letter requested. Mrs Renfrew was dissatisfied with these responses and applied for a decision by the Commissioner. In the course of the Commissioner's investigation, the Council identified the correct letter and provided this to Mrs Renfrew.

The Commissioner found that the Council had failed to deal with this part of Mrs Renfrew's request as required by Part 1 of FOISA.

On the basis of a statement in the letter to the local MSP, Mrs Renfrew also made several related requests for information relating to a Council decision. After investigation it was found that no such decision had been taken, and that the Council was therefore justified in stating that the information requested was not held.

As Mrs Renfrew has now received all the information which the Council holds, in relation to her requests, the Commissioner did not require the Council to take any further steps. The Commissioner was critical of the way in which the Council had dealt with Mrs Renfrew's requests.

## **Background**

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1. When the policy of free personal care was brought into effect through the Community Care and Health (Scotland) Act 2002 (the Act) in July 2002, initial guidance from the Scottish Government suggested that local authorities could continue to charge for assistance with food preparation. However, in September 2004, the Scottish Government wrote to all local authorities indicating that its 2002 guidance was inconsistent with Schedule 1 to the Act, and that assistance with food preparation should not be charged for.



2. In September 2005, Perth and Kinross Council made a decision to stop charging service users for assistance with food preparation. However, these users were not reimbursed for payments made between July 2002 and the point at which charging ended.
3. This case is concerned with the Council's responses to two separate requests for information relating to this issue.

### **The first request**

4. On 21 November 2005, Mrs Renfrew wrote to the Council with four information requests. Only one of these is considered in this Decision Notice, this being a request for a copy of "the further communication" from the Scottish Government to the Council, as referred to in a letter of 8 November 2005 from the Depute Director (Community Care) (referred to in this Decision Notice as "the Depute Director") to John Swinney MSP.
5. The letter of 8 November 2005 states: "As a result of further communication from the Scottish [Government] Perth & Kinross Council decided to stop charging for meals in September 2005".
6. Mrs Renfrew asked that, if the "further communication" referred to was not in writing, she should be supplied with the date of the communication and a copy of any note or internal memorandum narrating the terms of the communication.
7. The Council responded to Mrs Renfrew's request on 16 December 2005. It dealt with three of her information requests in full. In relation to the request detailed in paragraph 4 (above), the Council enclosed a copy of information which was stated to be the information requested.
8. On 5 January 2006, Mrs Renfrew asked the Council to review its response to this part of her request. She stated that she had been sent a copy note of an internal meeting held among Council officials on 23 September 2005, and pointed out that this was not a communication from the Scottish Government, as requested. She explained that the communication she sought was likely to have been sent from the Scottish Government between 12 August 2005 and 28 September 2005 (on the basis of contextual information in the letter from the Depute Director referred to in paragraph 4 above).



9. After reviewing its response to Mrs Renfrew's request, the Council wrote to her on 19 January 2006. She was told that the Depute Director had advised that the reference made in his letter to "further communication" related to an internal verbal discussion regarding the Scottish Government's guidance on Free Personal Care. A date, time, and place for this discussion were provided. The Council stated that no notes or minutes had been taken, but the action points arising from the meeting had been provided in the document supplied to Mrs Renfrew on 20 December 2005.
10. The Council took the view that the "further communication" to which Mrs Renfrew had referred did not exist, and also stated that no notes were taken at the meeting held on 23 September 2005. (I take this to indicate that the Council considered that it did not hold a "further communication" from the Scottish Government in recorded format.) The Council therefore informed Mrs Renfrew, under section 17(1)(b) of FOISA, that the information requested was not held.

### **The second request**

11. On 28 February 2006, Mrs Renfrew wrote to the Council with further requests for information. First, she asked for a copy of a letter dated 8/12/2005 which had been sent from the Scottish Government to COSLA. (The date format used by Mrs Renfrew has been reproduced here as it is relevant to the way in which her request was dealt with.) She advised that the letter dated 8/12/2005 was referred to in a letter dated 16 February 2006 from the Depute Director to John Swinney MSP.
12. Mrs Renfrew quoted part of the contents of the letter of 8/12/2005, which states:  
  
"...this Authority has made a decision not to reimburse charges previously levied for meal preparation".



13. She then made a number of information requests in relation to this statement, seeking:
  - a) a note of the date of the decision;
  - b) information about the type of meeting in which the decision was taken, e.g. a meeting of the full Council; a Council Committee; or a meeting of Council officers;
  - c) copies of all documents, papers, letters and reports used at the meeting in which the decision was taken;
  - d) the rational basis underlying the decision; and
  - e) a copy of any record of the proceedings of the meeting and the decision reached at the meeting.
14. The Council replied on 31 March 2006, enclosing a letter which it assumed to be the letter of 8/12/2005 which Mrs Renfrew had asked for. This was dated 12 August 2005 and had been sent from the Scottish Government to Local Authority Directors of Social Work.
15. The Council also advised her that the decision not to reimburse charges previously levied for meal preparation had been taken by Senior Officers of the Council rather than a Committee, and that there had been no single meeting in which the decision was reached. The Council stated that it did not hold the information she had asked for in relation to the decision not to reimburse charges previously levied for meal preparation, and cited section 17(1)(b) of FOISA.
16. Mrs Renfrew requested a review of the Council's response on 6 April 2006. She complained that the letter supplied to her was not the letter she had asked for. She also asked for the names and positions of the Senior Officers referred to in the Council's response.
17. On 28 April 2006, the Council notified Mrs Renfrew of the outcome of its review of her request. It maintained that the letter previously supplied to her was the letter which she had requested, despite its being dated 12 August 2005 and not 8 December 2005. The Council claimed that, in the letter of 16 February 2006 from the Depute Director to John Swinney MSP, the date of the letter from the Scottish Government to COSLA should have read 12/8/2005 rather than 8/12/2005. The Council attributed this mistake to the auto-dating facility within Microsoft Word.



18. The Council confirmed that no further information was held in relation to Mrs Renfrew's other requests, apart from that already provided. The Council also confirmed that the reference to "Senior Officers" in its letter of 31 March 2006 was in fact a reference to the Depute Director alone.
19. Mrs Renfrew was not satisfied with the Council's review response and applied to me for a decision on the matter on 3 May 2006, in terms of section 47(1) of FOISA. She complained that the copy letter sent to her did not correspond to the date of the letter referred to in the letter to John Swinney; that it was addressed to a different party; and it did not contain the wording referred to in the letter to John Swinney. She stated that the letter provided to her was clearly the wrong letter, and that it appeared to her that not much care had been taken with the review process. She asked for me to arrange to have the correct letter sent to her.
20. Mrs Renfrew also noted that the Council considered it did not "hold" most of the information she had asked for, and accepted this response in terms of information held on file or on computer. However, she believed that the Depute Director must be aware of the information she sought, and asked whether the word "held" could include information of which a Council officer has knowledge, even though such information may not be held in written form.
21. Mrs Renfrew's application was validated by establishing that she 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 case was then allocated to an investigating officer.
22. On 19 May 2006 the Council was advised that an investigation would be carried out and was asked to comment on the matters Mrs Renfrew had raised in her application for a decision. The Council was also asked to provide certain additional information to allow these matters to be investigated.
23. At this point it is relevant to note that on 14 June 2006 the Council wrote to Mrs Renfrew acknowledging that there had been a mistake in both its initial response to her request and again when the response was reviewed. The Council had by then obtained a copy of the letter she sought, which was enclosed.

#### ***Application for a decision in relation to the first request***

24. On 23 June 2006, Mrs Renfrew submitted a second application for a decision, in relation to her first request (21 November 2005, described in paragraph 4 above).



25. Mrs Renfrew described the correspondence she had had with the Council regarding the “further communication” which was the subject of her request. She did not find that the action points provided to her were sufficient response to her request, and explained that she was trying to ascertain the details of the communication that caused the Council to change its position regarding meal preparation charges. She found that the information supplied by the Council was contradictory, in relation to both of her requests.
26. Mrs Renfrew was not satisfied that the Council was taking its responsibilities under FOISA seriously, or being open and forthcoming in its supply of information. She also complained that the Council was not sufficiently robust in its review process.
27. Both Mrs Renfrew and the Council were advised that the ongoing investigation would be widened to include the issues she had raised in respect of the “further communication” from the Scottish Government that prompted the decision to cease charging for food preparation.
28. The Council was asked (29 June 2006) to supply information and comments to allow this aspect of Mrs Renfrew’s application to be investigated. This information was received on 20 July 2006.

## **The Investigation**

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29. In relation to Mrs Renfrew’s first request, (the “further communication”), the investigation focused on three issues:
  - the guidance available to the Council from the Scottish Government on charging for food preparation;
  - the steps taken by the Council to determine the status of the “further communication” from the Scottish Government referred to in a letter to John Swinney MSP; and
  - the steps taken by the Council to review its handling of Mrs Renfrew’s request.





30. In relation to Mrs Renfrew's second request (the letter dated 8 December 2005 and associated information), the investigation focused on the following issues:
- the steps undertaken to identify the relevant letter requested by Mrs Renfrew;
  - the steps taken to review the way in which this part of her request had been handled, and in particular, steps taken to check whether the correct letter had been supplied; and
  - whether the Council held any records relating to the decision referred to in the relevant letter, regarding charges for food preparation.

### **The Commissioner's Analysis and Findings**

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31. 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 Mrs Renfrew and the Council and I am satisfied that no matter of relevance has been overlooked.

#### ***The request for information about a "further communication" from the Scottish Government***

32. Mrs Renfrew has asked me to consider the way in which the Council dealt with her request and then reviewed its response to her request.
33. Mrs Renfrew provided me with a copy of a letter of 8 November 2005 (mistakenly dated 8 October 2005) from the Council to John Swinney which includes the statement:

"As a result of further communication from the Scottish [Government] Perth & Kinross Council decided to stop charging for meals in September 2005."

34. I agree with Mrs Renfrew that it is evident from this letter that the "further communication" referred to was not the document sent to her, which listed action points from an internal discussion within the Council. (This point has been acknowledged by the Council in correspondence with my Office.) Instead, it clearly refers to one or more communications from the Scottish Government during the period after the Scottish Government wrote to local authorities on 12 August 2005 but before the date on which the Council decided to stop charging for meals (22 September 2005).



35. As noted previously, in its review response the Council advised that the term “further communication” referred to a verbal discussion of the Scottish Government’s guidance on Free Personal Care and that the action points provided to Mrs Renfrew show the outcome of the discussion, which was not otherwise minuted or noted.
36. The Council did not address the issue of whether any communication, verbal or otherwise, was received from the Scottish Government during the period 12 August to 22 September 2005: the wording of the Depute Director’s letter to John Swinney MSP would make it a reasonable assumption that there had been some communication from the Scottish Government.
37. The Council has now informed me that the reference to “further communication” was incorrect, and that the Depute Director has indicated that he should have referred to internal discussions regarding Scottish Government guidance.
38. The investigating officer contacted the Scottish Government to ask for copies of any communication with the Council on the subject of Free Personal Care, during the period 13 August to 22 September 2005. The Scottish Government provided a copy of an email sent to the Council on 26 August 2005. This email simply reminds the Council that a response was due to the letter dated 12 August 2005.
39. The Council was asked about this email, and, after carrying out a further search, confirmed that a copy of the email had been found in the manual files of an employee who had since left the Council. The Council acknowledged that this showed its initial search procedures may not have been adequate, but advised that the email is routine in nature and would not have had any bearing on the Council's decision on 22 September 2005 to stop charging for meal preparation. The Council did not consider that the email was the "further communication from the Scottish [Government]" referred to in the Deputy Director's letter to John Swinney.
40. As noted in paragraph 25 above, Mrs Renfrew has explained that she was trying to ascertain the details of the communication that caused the Council to change its position regarding meal preparation charges. I accept that the email identified in the course my investigation was not such a communication.
41. I therefore find that, despite the wording of the Depute Director’s letter to John Swinney MSP, the Council did not receive any “further communication” in written form from the Scottish Government between 13 August and 22 September 2005, which would have affected the Council’s position on charging and which, by implication, would therefore have been the “further communication” which Mrs Renfrew wished to see. The Council was therefore correct to state that the information requested by Mrs Renfrew was not held, in terms of section 17(1) of FOISA.



42. Section 15 of FOISA requires Scottish public authorities to provide reasonable advice and assistance to a person who has made (or proposes to make) a request for information to it. I find that the Council did not adequately explain to Mrs Renfrew why she had been provided with information which differed significantly from the information she had requested, or how this information related to the Council's decision on charging for food preparation. Nor did the Council make it completely clear that it understood the reference to a "further communication" from the Scottish Government to be incorrect, as it later advised me. In failing to adequately explain its response to Mrs Renfrew, the Council failed to comply with section 15 of FOISA.

***The request for a letter dated 8 December 2005 and associated information***

43. Mrs Renfrew has asked me to consider the way in which the Council dealt with her request and then reviewed its response.
44. I note that Mrs Renfrew provided several key identifying details in her request for the letter of 8 December 2005, specifying the date, sender, and addressee, and providing the Council with an excerpt from the letter. The Council provided her with a letter which matched only one of those criteria. I find it difficult to understand why the Council considered this letter to be the information requested by Mrs Renfrew.
45. It is disturbing to see that this mistake was not identified during the review of the Council's response. The reviewers seem to have accepted the explanation that the auto-dating facility within Microsoft Word had led to the date being transposed from the usual day/month/year format to the American style of month/day/year. No consideration appears to have been given to the fact that the letter in question was sent to a different addressee and did not contain the excerpt quoted by Mrs Renfrew.
46. It is evident that the Council failed to deal with Mrs Renfrew's request with the requisite care and attention to detail, either in preparing its initial response or at the review stage. Mrs Renfrew had provided with Council with more than enough information to identify the letter she had asked for and, equally, to allow the Council to establish that the letter it provided to her was not the one she had requested. Although I make allowance for human error, I find that, in the circumstances, the Council should either have provided her with the letter she had asked for, or should have advised her that it was no longer held (if this was the case). If the letter was held but considered to be exempt from disclosure, the Council should have specified the exemption in question and why it applied.



47. When Mrs Renfrew was finally provided with a copy of the letter of 8 December 2005 (which the Council had obtained from the Scottish Government), the Council acknowledged that it was beyond doubt that a copy had been held within the Council at some point, and acknowledged that a copy was known to have been held as recently as 16 February 2006, some two weeks before Mrs Renfrew made her request. This seems to indicate that any searches carried out while preparing a response to her request were inadequate. If the letter in question had indeed been held by the Council at the time of Mrs Renfrew's request, she was entitled to receive a copy unless the information was exempt from disclosure by virtue of any provision of Part 2 of FOISA.
48. As Mrs Renfrew has now received a copy of the letter, I will not require the Council to take any further steps in relation to this matter. However, I would advise the Council that, on the evidence presented to me in connection with this case, it would be prudent to take steps to improve its records management so that the Council is less dependent on the knowledge of individual officials and can rely upon properly managed records when responding to information requests.
49. In its submission to me the Council has acknowledged that the matter of the letter which could not be found is "unsatisfactory", but I am concerned to see that the Council still regards the explanation provided to Mrs Renfrew regarding the change of dates as "plausible" and "well within the Council's duty to advise and assist an applicant". It has been shown that the letter provided to Mrs Renfrew was not the correct letter. It is unacceptable for the Council to assert that it was assisting Mrs Renfrew by attempting to convince her otherwise.
50. In summary, I find that the Council partially failed to comply with Part 1 of FOISA when responding to Mrs Renfrew's request of 28 February 2006, by failing either to provide the letter requested in line with the requirements of section 1(1), or to explain why it should be withheld by virtue of any of the provisions of Part 2, or to explain that it was not to be provided in line with any other provision contained in Part 1 of FOISA (for example because it was not held in terms of section 17(1)).

***Other information requests contained in the letter of 28 February 2006.***

51. Although the Council has now supplied a copy of the letter requested on 28 February 2006, I must also consider the Council's response to the other information requests made by Mrs Renfrew at the same time (see paragraph 13 above).



52. Mrs Renfrew asked for various items of information relating to the Council's decision not to reimburse charges previously levied for meal preparation. In its review response dated 28 April 2006, the Council advised under section 17(1)(b) of FOISA that no information was held.
53. The Council has argued that no decision had been taken regarding reimbursement of food preparation charges when Mrs Renfrew made her request, and therefore there could be no information held in relation to such a decision. I note that a letter sent from the Depute Director to John Swinney MSP on 16 February 2006 states:
- “...I would confirm that this Authority has made a decision not to reimburse charges previously levied for meal preparation”.
- I understand that Mrs Renfrew's information requests of 28 February 2006 relate to this unequivocal statement.
54. However, the Council has subsequently indicated that the statement quoted by Mrs Renfrew may not, in fact, be an accurate representation of the Council's position on the issue. In its submission to me the Council explained that “it would appear that the Council has not made a decision regarding reimbursement, but continues to review the situation.” The statement that a decision had been made is described as an “incorrect phrase” and attributed to human error.
55. The Council has explained that a decision to reimburse would only be taken by Council Committee, and that a decision on the matter has not been taken. In support of this statement, the Council has pointed to the minute of the Council's Free Personal Care Working Group dated 9 June 2006 which reads: “It was agreed that there should be no change in our present position regarding meal preparation”.
56. On the basis of the Council's submission and the evidence provided during my investigation, I have accepted that, despite a statement to the contrary from a senior official to an elected representative, the Council had not taken any formal decision on the issue of reimbursing meal preparation charges at the time when Mrs Renfrew made her information request. I therefore accept that, in terms of section 17(1) of FOISA, the information requested by Mrs Renfrew in relation to such a decision was not held.



## Decision

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I find that Perth and Kinross Council partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests from Mrs Renfrew. In failing to provide reasonable advice and assistance to allow Mrs Renfrew to fully understand its response to her request of 21 November 2005, Perth and Kinross Council failed to comply with section 15 of FOISA.

Given that a full explanation is now available through this Decision Notice, I do not require Perth and Kinross Council to take any action in response to this failure.

I find that, in responding to Mrs Renfrew's request of 28 February 2006, the Council partially failed to comply with Part 1 of FOISA, by failing either to provide the letter requested in line with the requirements of section 1(1), or to explain why it should be withheld by virtue of any of the provisions of Part 2, or to explain that it was not to be provided in line with any other provision contained in Part 1 of FOISA (for example because it was not held in terms of section 17(1)).

I find that the Council complied with Part 1 of FOISA in advising Mrs Renfrew that the remaining information requested on 28 February 2006 was not held, in terms of section 17(1) of FOISA.

I do not require the Council to take any action in response to this decision.

## Appeal

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Should either Mrs Renfrew or Perth and Kinross 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**  
**29 October 2007**



## Appendix

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### Relevant statutory provisions

#### Freedom of Information (Scotland) Act 2002

##### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

##### 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.