

Decision Notice



Decision 118/2012 Mr John Gribben and Stirling Council

Copies of correspondence

Reference No: 201102248
Decision Date: 12 July 2012

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Rosemary Agnew
Scottish Information Commissioner

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Summary

Mr John Gribben (Mr Gribben) requested from Stirling Council (the Council) correspondence between specified individuals on particular topics. The Council responded by disclosing some information to him, but it located no relevant emails. In his request for review, Mr Gribben asked the Council to conduct further searches to establish whether further information was held. Following this review, he remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Council undertook further searches at the request of the investigating officer and located a significant amount of relevant correspondence which had not previously been identified. The Council disclosed additional information to Mr Gribben during the investigation, and the Commissioner was satisfied, on balance of probabilities that, by the end of the investigation, it had identified all of the relevant information that it held.

The Commissioner found that the Council had partially dealt with Mr Gribben's request for information in accordance with Part 1 of FOISA, by disclosing some information to him. However, the Council had failed to identify and supply the remaining information falling within the scope of his request, and in so doing it breached section 1(1) of FOISA.

As the Council disclosed this further information to Mr Gribben during the investigation and the Commissioner was satisfied that the Council held no further relevant information, she did not require the Council to take any action in response to this decision. She did, however, express concerns about the Council's handling of Mr Gribben's information request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement)

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



Background

1. On 5 September 2011, Mr Gribben wrote to the Council requesting all email or hard copy correspondence between the Council's Community Planning Partnership Manager and (a) certain named individuals and (b) certain named organisations, where such correspondence contained specified names, words or phrases.
2. The Council responded on 20 October 2011. It indicated that it had not found any email messages containing the search terms, but disclosed three items of relevant correspondence. The Council also disclosed some meeting notes which, although not correspondence and so falling outside the terms of his request, mentioned search terms specified by Mr Gribben.
3. On 31 October 2011, Mr Gribben wrote to the Council requesting a review of its decision. Mr Gribben believed that the Council should hold emails falling within the scope of his request. He provided examples of such emails and asked the Council to conduct searches of both live and deleted emails between relevant parties.
4. The Council notified Mr Gribben of the outcome of its review on 29 November 2011. The Council stated that it did not dispute that it had held the emails sought by Mr Gribben at one time, but that, at the time of his request, it no longer held the emails. The Council indicated that searches had been undertaken of the emails of the staff members named in Mr Gribben's request and advised him that it held no further relevant information beyond that already supplied to him.
5. On 2 December 2011, Mr Gribben wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Gribben had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 14 December 2012, the Council was notified that an application had been received from Mr Gribben. The Council was invited to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, it was asked to provide full details of all the searches it had carried out to locate any information falling within the scope of Mr Gribben's request.



8. In response to a request from the investigating officer, Mr Gribben provided copies of the emails referred to in paragraph 3 above and copies of correspondence disclosed by the Council in response to his initial request. He maintained that emails falling within the scope of his request should have been archived by the Council rather than deleted, and expressed the view that the Council may still hold some of the emails which it said had been deleted.
9. The Council provided its initial submissions and responses to the investigating officer's questions on 18 January 2012. After considering this response, the investigating officer asked the Council to undertake further searches of shared electronic drives, hard copy records and the archived emails of a particular member of staff, since these possible sources of relevant information appeared not to have been checked. The investigating officer also asked the Council to confirm its position with respect to the extent to which it was possible for it to access deleted emails without the assistance of IT specialists.
10. The Council's additional searches identified a significant amount of information relevant to Mr Gribben's information request. This information was subsequently disclosed to Mr Gribben, subject to the redaction of certain personal data.
11. When invited to comment on the Council's further disclosures, Mr Gribben did not object to the redaction of personal data. However, he was not wholly satisfied that the Council's further searches had identified all of the relevant information held by the Council. Therefore, the investigating officer again asked the Council to check that it had in fact provided all of the relevant information it held to Mr Gribben.
12. After carrying out further searches, the Council found one further email falling within the scope of Mr Gribben's request, which it also disclosed to him.
13. The relevant submissions received from both the Council and Mr Gribben will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr Gribben and the Council and is satisfied that no matter of relevance has been overlooked.

Section 1(1) of FOISA – General entitlement

15. Section 1(1) of FOISA creates a general entitlement to access information held by a Scottish public authority (subject to the application of any exemptions in Part 2 of FOISA, and any other relevant provision in Part 1).



16. In order to comply with section 1(1), an authority must therefore take steps to identify all information falling within the scope of a request, and provide it to the applicant, unless it is exempt from disclosure under Part 2 of FOISA, or otherwise subject to one or more of the provisions set out in Part 1 of FOISA.
17. In this case, when prompted to undertake further searches for relevant information during the investigation, the Council located a range of information falling within the terms of Mr Gribben's request, which had not previously been identified or supplied to him.
18. Since it is clear that the Council failed to identify and supply this information to Mr Gribben until after he had applied to the Commissioner, the Commissioner must find that the Council failed to comply with section 1(1) of FOISA when responding to Mr Gribben's information request.
19. However, the Commissioner recognises that after the deficiencies in its searches came to light during the investigation, the Council has taken steps to rectify these by undertaking further searches within areas not previously searched to identify relevant information.

Does the Council hold further relevant information?

20. While the Council considers that it has now located all relevant information, Mr Gribben remains of the view that the Council should hold further information that has not yet been supplied to him. During the investigation, Mr Gribben commented that he considered that the Council should take steps to restore emails that had been deleted prior to the point when his request was received. The Commissioner has therefore considered whether the Council holds further information that should be disclosed to Mr Gribben.
21. As noted above, it became clear during the investigation that the Council had failed to conduct adequate searches to locate the information requested by Mr Gribben. However, the Commissioner is satisfied that, by the end of the investigation, the Council had undertaken thorough searches covering a range of locations where the information might still be held.
22. Although these searches identified a substantial amount of information, Mr Gribben has noted the absence of emails from the most recent months leading to his request. The Commissioner recognises that the correspondence identified by the Council may not be a complete record of what was once held. However, she also recognises that the Council's records management practice would not require or lead to the expectation that every piece of correspondence would be retained.
23. The Council has explained that its Community Planning Manager (a party in the correspondence of interest to Mr Gribben) has no regular practice around deleting emails, apart from generally deleting when it becomes clear that the emails are no longer required. This, the Council stated, was in line with its email management guidance (a copy of which was provided to the Commissioner), which encourages all staff to routinely clear out their email inboxes, but leaves it up to individuals to identify which messages need to be kept and which can be deleted.



24. The Council explained that emails from the Community Planning Manager's inbox would be automatically archived after 30 days and that she would then delete emails either directly from her email inbox or from her archived mailbox when she felt that they were no longer required.
25. Although still in the process of adopting a formal Records Policy, the Council stated that it did currently work to a set of record retention rules, but that these applied only to records deposited within the Council's Records Centre and did not apply to email correspondence.
26. Within this context, the Commissioner considers it reasonable to expect that, had some of the emails of interest to Mr Gribben been judged no longer relevant by the Community Planning Manager, they would have been deleted from her current or active email inbox and so no longer easily locatable in response to Mr Gribben's information request.
27. In relation to any deleted emails, the Commissioner has considered whether the Council should be expected to reinstate these. On this point, the Council referred to the Commissioner's position on deleted electronic data, set out on her website as follows¹:

"Where a public authority has deleted an e-mail or an electronic file and it can only be retrieved by an IT specialist, the Commissioner takes the view that the information is no longer held by the public authority."
28. The Council has confirmed that it does hold back-ups of its electronic records, from which the Commissioner understands that deleted data could, in principle, be restored. However, the Council has confirmed that this process is time consuming and could only be undertaken by a small number of specialised IT officers within the Council.
29. In the circumstances, the Commissioner accepts that the task of restoring any deleted emails could only be achieved through the intervention of IT specialists. In accordance with the position set out on her website, she concludes that any further correspondence that was once held by the Council is no longer held by it for the purposes of FOISA.
30. Having reached this conclusion, the Commissioner is satisfied that the Council's searches had, by the end of her investigation, been reasonable and adequate for the purposes of identifying all relevant correspondence still held by the Council at the date when Mr Gribben's request was received. On balance of probabilities, she accepts that no further relevant information is (or was, at the relevant time) held by the Council, beyond that disclosed by the end of her investigation.
31. In reaching this decision, the Commissioner acknowledges that Mr Gribben is in possession of emails which, if still held by the Council, would fall within the scope of his request, and which must have been in the possession of the Council at some point in time. However, given that the dates of these emails were 20 October 2010 and 20 January 2011, and that Mr Gribben made his request on 5 September 2011, the Commissioner is of the view that it would not be unusual for emails to have been deleted after such a period of time has elapsed.

¹ <http://www.itspublicknowledge.info/FAQ/PublicAuthorityFAQ/ResponseFAQ.asp#email>



32. The Commissioner is concerned to note that the Council had to be asked to carry out additional searches during the course of the investigation, after it was identified that the searches undertaken prior to that stage had failed to include all possible sources of that information. It was only after these additional searches had been requested of the Council by the investigating officer that further documents were located and disclosed to Mr Gribben.
33. It is clear that there were serious deficiencies in the Council's original searches which were not identified in the Council's internal review. The Commissioner recommends that the Council consider what might be learned from the errors in this case, and whether steps should be taken to avoid similar occurrences in future.
34. The Commissioner also recognises and welcomes the fact that, following the discovery of the additional information, the Council apologised and took steps promptly to ensure that the relevant information was identified and supplied to Mr Gribben. It accepted that the Council department in question had not carried out adequate and thorough searches, and that this had been identified as a Council training need.
35. In the circumstances, the Commissioner does not require any further action to be taken in response to this decision.

DECISION

The Commissioner finds that Stirling Council partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Gribben.

The Commissioner finds that by disclosing some information to Mr Gribben, the Council complied with Part 1.

However, by failing to identify other information falling within the scope of Mr Gribben's request, the Commissioner finds that the Council failed to comply with Part 1 and section 1(1) of FOISA.

Given that the Council has now disclosed all of the relevant information held by it to Mr Gribben the Commissioner does not require the Council to take any action in response to the failure noted in this decision.

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Appeal

Should either Mr Gribben or Stirling 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.

Margaret Keyse
Head of Enforcement
12 July 2012



Appendix

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.
...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
...
- (6) This section is subject to sections 2, 9, 12 and 14.