



Scottish Information
Commissioner

**Decision 002/2005 - Ms Gilchrist and The City of Edinburgh
Council**

Refusal to release procedures for student discounts on Council Tax, the name and telephone number of the office which handles student discounts on Council Tax and the length of time it would take to adjust Council Tax payments to take account of a student discount.

**Applicant: Ms Kim Gilchrist
Authority: The City of Edinburgh Council
Case No: 200500862
Issue Date: 21 June 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision - Ms Kim Gilchrist and The City of Edinburgh Council

Council Tax information - refusal of access

Facts

1. Ms Gilchrist asked for The City of Edinburgh Council's procedures for student discounts on Council Tax, the name and telephone number of the office which handles student discounts on Council Tax and the length of time that it would take to adjust Council Tax payments to take account of a student discount. The City of Edinburgh Council did release the information to Ms Gilchrist during the course of the Commissioner's investigation, but Ms Gilchrist has requested that the Commissioner investigate the way in which The City of Edinburgh City Council has responded to her request for information.

Decision

2. The Commissioner found that The City of Edinburgh Council ("the Council") has not dealt with Ms Gilchrist's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). The Council should put in place procedures to conform with the provisions of FOISA particularly in respect to sections 1, 10, 15, 16, 19 and 21, and with paragraphs 3, 6 and 63-71 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002.

Appeal

3. Should either the Council or the applicant 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

4. On 3 February 2005, Ms Gilchrist used the Council's online freedom of information form to request information about procedures for student discounts on Council Tax, the name and telephone number of the office which handles student discounts on Council Tax and the length of time that it would take to adjust Council Tax payments to take account of a student discount.
5. On the same day, the Corporate Services Department of the Council responded to Ms Gilchrist by email. This response stated that her request was not a request made under FOISA, and that she should contact the Council's Revenues and Benefits Department to access the information. Ms Gilchrist stated in her application to me that she had been trying for some time prior to the introduction of FOISA to access the information from this very department, but had not received a satisfactory response. As a result of the response to her request from the Council's Corporate Services Department, Ms Gilchrist again attempted to access the information from the Revenues and Benefits Department, but did not receive a satisfactory response.
6. On 4 February 2005, Ms Gilchrist contacted the Council's Corporate Services Department by email, asking why they did not consider her request to be made under FOISA and which category of exemption applied to the information that she had requested. A different employee from that Department responded to Ms Gilchrist on the same day, restating that the request for information that she had made was not relevant to FOISA, but that this time her request had been passed on to the Council's Revenues and Benefits Department, which would respond within 20 working days. Although the Council assured Ms Gilchrist that she would receive a response within 20 working days, this did not happen.
7. Ms Gilchrist then applied to me on 10 March 2005 for a decision on whether the Council had dealt with her request for information in accordance with Part 1 of FOISA.
8. The case was allocated to an Investigating Officer within my office.

The Investigation

9. Ms Gilchrist applied to me for a decision on 10 March 2005. She enclosed copies of her request, the Council's response, her request for a review, and the Council's second response.



10. I considered that the application was valid in terms of section 47 of FOISA. Ms Gilchrist had firstly made a request to the Council for the information and then asked the Council to review their decision not to release the information requested. Ms Gilchrist's second email did not specify that she required a review of the Council's decision, nor state the matter giving rise to her dissatisfaction with the Council's response, as is set out as a requirement for a valid request for review in section 20(3)(c)(ii) of FOISA. However, Ms Gilchrist had not been informed of her right to appeal by the authority. Paragraph 64 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities ("the Section 60 Code") makes it clear to public authorities that where an applicant has not been made aware of his or her rights to a review but nevertheless questions, in writing, the decision of an authority, the authority should treat the query as a formal request for a review. It is concluded that Ms Gilchrist had fulfilled these requirements, and therefore I consider her second email to the Council to be a valid request for review.
11. On 6 April 2005, I asked the Council to provide me with copies of the information which had originally been requested by Ms Gilchrist on 3 February 2005. I also asked for its comments on the case, as I am obliged to do in terms of section 49(3)(a) of FOISA. In addition, I specifically asked it to explain why it did not consider Ms Gilchrist's request to be a request made under FOISA. I asked the Council to provide me with the information within 10 working days, a period which I considered reasonable given the amount of information Ms Gilchrist had asked to see. The Council failed to respond by this deadline.
12. The Council finally replied to my letter on 24 May 2005 after four telephone calls from my Office to check on the progress of the response. In its response, the Council stated that it recognised failings in the way in which it had responded to Ms Gilchrist's request for information. However, it confirmed that it had now made all of the information available to Ms Gilchrist.
13. The Council did not include with its response copies of the documents as requested in my letter. In response to a further telephone call on 1 June 2005, a solicitor for the Council provided the requested documents on 3 June 2005.
14. In some cases where an authority provides disputed information during the course of an investigation to an applicant, this may be done with a view to settling the case without a need for a decision notice to be published. However, Ms Gilchrist confirmed that she did not wish to withdraw her application to me, as although she was satisfied with the information which had been released to her, she was unhappy with the way in which her request had been handled by the Council.

The Commissioner's Analysis and Findings

15. In my view, the main issue in this investigation is whether the Council was correct in telling Ms Gilchrist that the information request was not made under FOISA.



Was the information request valid?

16. The Council originally responded to Ms Gilchrist's request on 4 February 2005, well within the timescales set out within FOISA. However, the response did not comply with the provisions of FOISA for the following reasons.
17. The Council's response stated that Ms Gilchrist's initial request was not a request made under FOISA and that she should apply to a different department within the Council for the information that she had requested. Section 8 of FOISA sets out the following conditions for valid requests for recorded information made under FOISA. The request must:
- be in writing or other recordable format;
 - state the name of the applicant and an address for correspondence and
 - describe the information requested.
18. Ms Gilchrist's request to the Council fulfilled all of these conditions. As a result, the request was a valid information request to which the rights of FOISA applied.
19. Ms Gilchrist stated in her application to me that she was unhappy with the way in which the Council had responded to her request for information. I find that the Council's response to Ms Gilchrist's request did not comply with the requirements for responding to information requests made under FOISA for the following reasons.
20. Ms Gilchrist was told that she should contact the Council's Revenues and Benefits Department in order to access the information she had requested. FOISA does not state that a member of the public must go to a specific department to request information from a public authority. An information request made to any employee of a public authority should be dealt with in accordance with FOISA, although in practice this may mean arranging for another department of the authority to comply with the information request. In failing to process Ms Gilchrist's request, the Council effectively withheld the information that Ms Gilchrist had requested from it.
21. On receipt of a valid request for information, a public authority has three main options: release the information to the applicant; issue a formal notice to the applicant stating that the authority does not hold the information or issue a formal refusal notice to the applicant. I consider that the Council's email of 3 February 2005 can only be treated as a refusal notice. Sections 16 and 19 of FOISA clearly set out the information which must be included in a refusal notice in order for that notice to be valid. The notice must:
- disclose that the public authority holds the information;
 - specify the exemption that applies to the information;
 - state why the exemption applies (including consideration of the public interest test, where relevant);
 - provide information about the applicant's right to request that the authority conduct a review of their decision, and
 - give information about the applicant's right to apply for a decision from the Commissioner.



22. Although it could be argued that the Council implicitly disclosed that it held the information that Ms Gilchrist requested in its response, none of the other requirements set out in FOISA were complied with. Therefore, I find that the Council failed to meet its obligations under FOISA in its initial response to Ms Gilchrist. However, I note that in the comments submitted to my Office, the Council has accepted that the initial failure to recognise Ms Gilchrist's request as a valid request made under FOISA meant that subsequently the request was not handled in accordance with the provisions of FOISA.

Review stage

23. When Ms Gilchrist requested that the Council review its decision to withhold the information that she had requested, she was again told that her request was not relevant to FOISA, but that the Revenues and Benefits Department of the Council would respond to her request within 20 working days. I find that this is not an adequate response to a request for review made to an authority for the following reason.

24. Section 21 of FOISA requires an authority to carry out a review in response to an applicant's request to do so. Following the review, the public authority must issue a written notice to the applicant, which must include details about the requester's right of application to me for decision and about the right to appeal against any decisions by me to the Court of Session. No review appears to have been carried out and this information was not included in the response sent to Ms Gilchrist. Again, I note that the Council has conceded that the case was not handled under FOISA during the stages of initial request and review as it had not designated the email from Ms Gilchrist as a valid request when it was first received by the Council.

Duty to advise and assist

25. All public authorities have an obligation under FOISA to advise and assist applicants in making information requests. This duty is set out in section 15 of FOISA. Paragraph 3 of the Section 60 Code states that staff of public authorities should be prepared to explain the key provisions of FOISA to those who may benefit from assistance. Paragraph 6 of the Section 60 Code goes on to state that where the authority has significantly departed from the approach to the provision of advice and assistance to the applicant, it may have failed in its obligation under section 15 of FOISA. I find that in this case the Council failed to recognise a request for recorded information which it held as a request made under FOISA. Given that the member of staff who responded to the initial request held the post of "Freedom of Information Officer", it is reasonable to expect that she should have received sufficient training from the Council to recognise and respond to requests made under the FOISA. Therefore, the Council failed in its duties both under the Section 60 Code and section 15 of FOISA.

26. However, I note that the Council recognises that its approach to this case has fallen short of what is required, that it did eventually provide the information to Ms Gilchrist in full and that I have been assured in the comments submitted to me that this was an isolated case.



27. The final comment I wish to make relates to the way in which the Council responded to requests from my Office for information. Despite a number of reminders, the Council took almost 8 weeks to provide the information required and to respond to the invitation for comments on this case. I am expected by FOISA to conclude my investigations within 4 months from receiving a valid application. Where I fail to issue a decision notice within this time, I must report this to the Scottish Parliament. Delays in receiving correspondence from public authorities constrain these time limits. It is therefore crucial that authorities provide information to my Office in the timescales laid down by my Office. Failure to do so will result in me serving a formal Information Notice on the public authority. If a public authority fails to comply with such a Notice, I can refer the matter to the Court of Session, where the failure can be treated as contempt of court. .

Decision

I find that the Council has not dealt with Ms Gilchrist's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). The Council should put in place procedures to conform to sections 1, 10, 15, 16, 19 and 21 of FOISA, and with paragraphs 3, 6 and 63-71 of the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities under the Freedom of Information (Scotland) Act 2002. These processes must, through staff training and revisions to the Council's processes:

- ensure that a request for information is recognised as a request to be dealt with under FOISA;
- ensure that refusals conform with FOISA by stating that an exemption is being claimed, specifying the exemption and stating why the exemption applies (as required by section 16 of FOISA) and
- ensure that all applicants are informed of their rights of redress (as required by section 19 of FOISA).

I find that the Council did not carry out a review in terms of section 21(1) of FOISA and that its written notice to the applicant did not comply with the requirements as set out in section 21(10) of FOISA in that the notice did not contain particulars about the rights of application to the Commissioner and, subsequently, to the Court of Session.

The Council must take steps to put in place improvements with immediate effect. It should implement the necessary staff training and improvements no later than 3 months from the date of this notice.

Kevin Dunion
Scottish Information Commissioner
21 June 2005