

**Decision 208/2006 – Ms X and Scottish Borders
Council**

Accidents or incidents reported within Scottish Borders Council

**Applicant: Ms X
Authority: Scottish Borders Council
Case No: 200502444
Decision Date: 16 November 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 208/2006 – Ms X and Scottish Borders Council

Accidents or incidents reported within Scottish Borders Council - whether the information requested is held

Relevant Statutory Provisions

The Freedom of Information (Scotland) Act 2002 section 17 (Notice that information is not held).

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 regulation 3 - Notification and reporting of injuries and dangerous occurrences

For the full text of these sections see the Appendix to this decision. The Appendix forms part of this decision.

Facts

Ms X requested information relating to the number of accidents or incidents reported by the Architecture Section of Scottish Borders Council (the Council) to the Council's Health and Safety Section.

The Council responded that no accidents or incidents had been reported by its Architects' Section to its Health and Safety Section. Ms X requested that the Council review its response. The Council provided further information about accidents or incidents which must be reported to its Health and Safety Section, but essentially upheld its initial response.

Ms X was dissatisfied with the response received and wrote to the Scottish Information Commissioner asking him to investigate. Following investigation the Commissioner found that the Council did not hold the information requested.

Background

1. On 25 July 2005 Ms X emailed the Council and requested the following information:

“The number of accidents/incidents reported by the Architecture Section in 2004 – 2005, with serious incidents (leading to three days or more work-related sick leave) identified separately, together with the total cost of lost time” and

“Whether line managers are duty bound to report that accidents/incidents are work related”.

2. On 9 August 2005 the Council responded to Ms X by email, advising that no accidents or incidents had been reported by its Architecture Section to its Health and Safety Section for that period of time. It added that line managers within the Council were required to report all accidents/incidents to its Health and Safety Section, although its reporting procedures did not cover (work related occupational ill health” unless it had been diagnosed as a reportable disease (as defined by regulation 3 of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)).
3. On 10 August 2005 Ms X again emailed the Council requesting that it review its response.
4. The Council responded on the same day reiterating that no incidences of work related sick leave had been or required to be reported to its Health and Safety Section from its Architecture Section, and providing more details about the definition of a reportable disease under regulation 3 of RIDDOR.
5. As she was dissatisfied with the Council’s response Ms X wrote to me on 11 August 2005 and asked me to investigate.
6. An investigating officer was allocated to the case and Ms X’s application validated by establishing that she had made a valid request for information to a Scottish public authority and had appealed to me only after asking the authority to review its response to her request.

The Investigation

7. A letter was sent to the Council on 24 November 2005 giving notice that appeal had been received and an investigation into the matter had begun, as required by section 49(3)(a) of FOISA. The Council was asked to comment on the issues raised by Ms X’s case and to provide supporting documentation for the purposes of the investigation.
8. There followed protracted correspondence with the authority concerning the scope of the request and whether the information was held by the Council.

9. As part of this correspondence the Council provided me with information about its procedures for records management and copies of the relevant sections of its personnel policies and guidelines.
10. In particular the Council sent copies of its Accidents and Incidents at Work Policy, its notification of sickness absence form, its Employee Handbook, its Absence Management Policy and relevant entries from its Health and Safety database.

The Commissioner's Analysis and Findings

11. Ms X made 2 requests for information, firstly; "The number of accidents/incidents reported from the Architects' Section 2004 - 2005 identified separately, together with the total cost of lost time" and secondly; "Whether line managers are duty bound to report that accidents/incidents are work related". The Council provided a full response to Ms X's second request in its initial response, and Ms X has not indicated that she is dissatisfied with that response either in her request for review or in her application to me. As I have received no notification from Ms X to do so I will not investigate the Council's response to her second request.

Whether the information is held

12. Section 17(1) of FOISA requires that an authority must give notice to an applicant if it does not hold the information which has been requested.
13. Ms X requested the number of accidents/incidents reported from the Architecture Section in 2004 – 2005, with serious incidents (as defined by her) identified separately, together with the total cost of lost time. The Council stated that no accidents or incidents had been reported by the Architects' Section to the Health and Safety Section of the Council for that period of time. I am satisfied that it follows from this statement that the Council was claiming no information was held in relation to the request.
14. Ms X maintains that a number of accidents and/or incidents were reported to the Council's Architects Section during 2004/2005 and so the Council are withholding the information requested. In its comments to me on Ms X's application the Council asserted that it did not hold any recorded information relating to her request.

15. I have noted that regulation 3 of RIDDOR sets out a restricted list of accidents and incidents which must be reported to a health and safety official within a workplace, who must then make a report to the relevant enforcing authority. This is reflected in the relevant policies and guidance of the Council. Therefore I am satisfied that not all accidents or incidents are required to be reported to the Council's Health and Safety Section despite Ms X's assurance in her request for review that this was the case.
16. Having examined the records held by the Council, I am satisfied that where an reportable accident or incident has occurred at the Council, a record is made of the accident or incident and passed to the Council's Health and Safety Section who then enter it in their health and safety database for possible action.
17. I checked the database which the Council's Health and Safety Section uses to record any accidents or incidents of which it has been notified, and also records of the section of the Council which would have reported any relevant accident or incident. I found no records of accidents or incidents reported by the Architects section of the Council within the time period specified by Ms X. I am therefore satisfied that the Council was correct in informing Ms X that it held no information relating to her request.

Decision

I am satisfied that Scottish Borders Council does not (and did not at the time of the request) hold any information falling within the scope of Ms X's request for information and therefore was entitled to apply section 17 of the Freedom of Information (Scotland) Act 2002 to the request.

Appeal

Should either Scottish Borders Council or Ms X wish to appeal against this decision there is an appeal to the Court of Session on a point of law only. Any such appeal should be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
16 November 2006

APPENDIX

Relevant Statutory Provisions Freedom of Information (Scotland) Act 2002 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.

Statutory Instrument 1995 No. 3163 The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 Notification and reporting of injuries and dangerous occurrences

3.—(1) Subject to regulation 10, where—

- (a) any person dies as a result of an accident arising out of or in connection with work;
 - (b) any person at work suffers a major injury as a result of an accident arising out of or in connection with work;
 - (c) any person not at work suffers an injury as a result of an accident arising out of or in connection with work and that person is taken from the site of the accident to a hospital for treatment in respect of that injury;
 - (d) any person not at work suffers a major injury as a result of an accident arising out of or in connection with work at a hospital; or
 - (e) there is a dangerous occurrence,
- the responsible person shall—
- (i) forthwith notify the relevant enforcing authority thereof by the quickest practicable means; and
 - (ii) within 10 days send a report thereof to the relevant enforcing authority on a form approved for the purposes of this sub-paragraph, unless within that period he makes a report thereof to the Executive by some other means so approved.