

Case 200501581: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Planning; Complaint handling

Overview

The complaint concerned an allegation of failure by the Council to maintain a customer's request for confidentiality. The complainant was dissatisfied with the Council's handling of her representations on the matter and she claimed that they had failed to reply to her correspondence.

Specific complaints and conclusions

The complaints about the Council which have been investigated are their:

- (a) failure to properly investigate her complaint about an officer divulging her identity to a third party (*not upheld*); and
- (b) failure to reply to correspondence (*no finding*).

Redress and recommendation

The Ombudsman recommends action to minimise the risk of Council files being misplaced.

The Council have accepted the recommendation and are acting on it accordingly.

Main Investigation Report

Introduction

1. On 15 September 2005 the Ombudsman received a complaint from a woman (Ms C) concerning her dissatisfaction with The City of Edinburgh Council's (the Council) handling of her complaint about a breach of confidentiality. She stated that, before entering into correspondence with the Council, she received assurances that the information she provided to them would be treated in confidence. However, her identity was divulged. She was dissatisfied with the Council's response to her representations on the matter, which she considered were condescending, and she complained that the Council failed to undertake a proper investigation of her complaint.

2. The complaints from Ms C about the Council which I have investigated are:
- (a) the failure to properly investigate her complaint about an officer divulging her identity to a third party;
 - (b) the failure to reply to correspondence.

Investigation

3. Ms C provided all the documents which she held and I made enquiries to the Council, who provided comments on the matter. I have also considered the Planning Enforcement Charter on the Council's website (revised in September 2005). Ms C and the Council have been given an opportunity to comment on the draft of this report.

Planning Enforcement Charter

4. Under Section 2 of the Council's Planning Enforcement Charter, advice is given:

'...that it is essential for all preliminary enquiries, whether by letter or e-mail, to state if the enquiry is to be treated confidentially ... It may not be possible to respect a request for confidentiality in all cases, and the effect of the Freedom of Information (Scotland) Act 2002, must be taken into consideration.'

(a) The failure to properly investigate her complaint about an officer divulging her identity to a third party

5. Ms C became aware that her contact with the Council was known in May 2004, when the party concerned informed her that a telephone enquiry to the Council provided confirmation that she had made a complaint about a planning enforcement issue. Her grievance was not only because of the informal assurances from the Council that her confidentiality would be kept, but also because she had been directed to their website and the Planning Enforcement Charter. She stated that she marked her letter 'in confidence' and she provided a copy of her letter as evidence of this.

6. Unfortunately, the only other copy letter from Ms C to the Council is her later letter to the Enforcement Officer (6 September 2004) because of the misplacement of her file. However, Ms C provided copies of the Enforcement Officer's replies to her, dated 10 August 2004 and 3 September 2004. These referred to the Planning Enforcement Charter's standards and confirmed that the investigation of her complaint about her identity being divulged to a third party – which included speaking to the enforcement officers who were involved -confirmed that she had not been identified. It was suggested that the party concerned may have been able to guess her identity and that there was no evidence that 'either of the officers breached your request for confidentiality'. The Enforcement Officer informed Ms C that he did not consider any further action was required, however, she was invited to telephone him on his direct dial number if she had any further queries.

7. In his letter of 3 September 2004, the Enforcement Officer confirmed that he had read the copy letter from the other party (this was a letter from the party concerned to Ms C's solicitors stating that they had been advised of Ms C's identity by a Council official) but he: 'could not comment on the circumstances surrounding this letter and the reason for [the other party] making this statement'. He did not consider it necessary to review the Council's procedures because he was satisfied that all officers within his Section were aware of the standards in respect of confidentiality.

8. At the time Ms C made her complaint, the events were fresh and the Enforcement Officer's enquiries about the matter should have been straightforward. Ms C's complaint was clear, that is, that the breach occurred in a telephone

enquiry. The replies confirmed that the officers involved were asked to comment – although it was not clear if they were asked directly about taking a telephone call on the matter. This has now been clarified in the response to my formal enquiry. It has been confirmed that:

'a third Enforcement Officer took a telephone call and in that discussion the caller, who appeared to be a neighbour, asked if the complainant had been [Ms C]. Again the officer refused to comment on this.'

9. However, the Council have commented that, as it is not known precisely when the neighbour is alleged to have telephoned the Department and been given the information in question, it is not possible to identify who they spoke to. On this basis, there is a 'remote possibility' that the source of the information was the Help Desk, although the Council considered it unlikely that an officer on the Help Desk would have divulged Ms C's identity. Nevertheless, if the records are accessible by all planning staff then they too are covered by the Charter and I would draw this to the Council's attention.

10. Ms C complained that the Council failed to undertake a proper investigation of her complaint, however, the evidence suggests that the Enforcement Officer did treat the matter seriously and spoke to the officers who were directly involved in the case.

(a) Conclusion

11. I can understand Ms C's disquiet when it appeared that the confidentiality, which she had been given an assurance would be maintained, seemed to have been breached. It may be, as has been suggested by the Council, that the other party was able to work out who would be likely to raise a complaint – and Ms C's actions only served to crystallise an assumption. The grounds for her complaint centred on whether or not the Council had undertaken a proper investigation into the matter and, based on the documents which I have seen which cover the time of the initial complaint, this appears to be the case. I am unable to verify the facts on later events because the file cannot be found. I must, therefore, form a view on the basis of the available documentation and, given that there is documentation which showed the initial complaint was investigated, I do not uphold this head of complaint.

(b) The failure to reply to correspondence

12. Ms C stated that she complained initially to her councillor in May 2004 but the complaint was not forwarded to the Department concerned (this issue does not form part of the complaint but was provided as background). She made representations in August 2004 and received a response from the Enforcement Officer within a week. The letter she sent subsequently (6 September 2004) was also replied to promptly and I have seen a copy of the follow up letter to the Enforcement Officer sent by the complainant within days of receiving the last reply. In her complaint form, she stated that she did not receive a response to her last letter in November 2004 and, although her complaint subsequently to the data controller in May 2005 was acknowledged, no reply was sent.

13. In response to my enquiry on this head of complaint, the Council informed me that the Enforcement Officer recalled the reply being sent to Ms C's letter of 6 September 2004 but, unfortunately, the file could not be found within his Department. There was no record of Ms C lodging a formal complaint with the Council.

14. In their comments on the report, the Council clarified that Planning and Strategy have filing material dating back to 1947 and that it would be unrealistic to expect that files are not on occasions misplaced. However, works are in hand to thin out some records in accordance with an agreed records management schedule.

15. Ms C has commented that she made a number of enquiries about the appropriate avenue to pursue her complaint before her approach to the Ombudsman. As she claimed that she did not receive a reply to her letter to the Council's data protection officer, I asked the Council if a wider check could be made to try to locate the missing file. In response, the Council provided a copy of the correspondence file between Ms C and the Information, Communication and Technology Client & Development Team. However, this did not contain any of the correspondence between Ms C and Planning and Strategy.

(b) Conclusion

16. The available documentation was provided by Ms C and this is incomplete. The misplacement of the Council file made it difficult to investigate this head of

complaint. The lack of documentation confirming that Ms C lodged a formal complaint in May 2005 means that this cannot be verified; and, with the lack of an audit trail because of the missing file of correspondence between Ms C and Planning and Strategy, the Council have had to rely on the memory of their personnel about events in 2004. This is most unsatisfactory and an issue which the Council should investigate thoroughly and take appropriate action in order to minimise a repetition. I have to rely on the documentation before me and, on the basis of this, I am unable to make a finding.

(b) Recommendation

17. In light of the Council's failure to locate the file and the effect this has had on my investigation, the Ombudsman recommends that the Council take action urgently to minimise the risk of Council files being misplaced.

18. The Council accepted my findings and commented that the concern which has been raised is being taken seriously and is being addressed. The Council commented also that the whole issue of records management has a high profile at the present time and considerable effort has been expended on the organisation, content and management of files, both paper and electronic. They are committed to continuing to undertake further work in this area and have advised the Ombudsman that a Records Manager is being appointed.

26 September 2006

Explanation of abbreviations used

Ms C

The complainant

The Council

The City of Edinburgh Council