

# Decision Notice



Decision 002/2013 Benthic Pelagic Solutions Ltd and Perth and Kinross Council

Sensory therapy unit

Reference No: 201201665

Decision Date: 16 January 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

Benthic Pelagic Solutions Ltd (BPS) requested from Perth and Kinross Council (the Council) all information contained in communications relative to a piece of equipment BPS had supplied. BPS was not satisfied that the Council had provided all of the relevant information it held. The Commissioner carried out an investigation and found that the Council had failed to identify, locate and provide all of the information it held falling within the scope of BPS's request. By the end of the investigation, the Commissioner was satisfied that this had been rectified.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (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

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1. On 23 April 2012, BPS wrote to the Council and, in relation to a sensory therapy unit described as a "Dolphin Dome", requested the following information:
  - a) All correspondence and communications between [named individual] and any member of staff at Fairview school with regard to the above and vice versa.
  - b) All correspondence and communications between [named individual] and any member of Management or staff or office at the Council with regard to the above and vice versa.
  - c) All correspondence and communications between [named individual] and any other educational body, organisation or group with regard to the above and vice versa.
  - d) All correspondence and communications between [named individual] and BPS and vice versa.
  - e) All correspondence and communications between any member of management or staff or office of the Council and BPS with regard to the above and vice versa.

BPS indicated a preference for receiving this information in electronic format, on CD-ROM.



2. The Council responded on 23 May 2012. It provided BPS with certain information (on CD-ROM), which had personal data redacted in terms of section 38(1)(b) of FOISA. The Council also informed BPS that certain legal advice was being withheld under section 36(1) of FOISA.
3. On 11 June 2012, BPS wrote to the Council requesting a review of its decision. In particular, BPS drew the Council's attention to its belief that certain relevant information was missing from what had been provided.
4. The Council notified BPS of the outcome of its review on 24 August 2012. It advised that an additional search had been carried out, without locating any further information. The Council concluded that all relevant information it held had been provided to BPS.
5. On 30 August 2012, BPS wrote to the Commissioner, stating that it 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 BPS had made requests 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 those requests. The case was then allocated to an investigating officer.

## Investigation

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7. On 12 September 2012, the investigating officer notified the Council in writing that an application had been received from BPS, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain the steps it had taken to identify and locate the information BPS had requested.
8. The Council responded on 11 October 2012, indicating that having carried out further searches it transpired that it did hold further information falling within the scope of BPS's request. The Council provided this information to BPS. The Council also provided submissions in support of its position that it did not hold any further information, describing the steps it had taken to reach this conclusion.
9. BPS confirmed receipt of the further information provided by the Council, indicating that this information had in fact been provided previously (it later transpired that only some of it had been provided previously). It provided reasons why it expected further relevant information to be held. Further submissions were sought and obtained from the Council.
10. The relevant submissions received from both the Council and BPS will be considered fully in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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

### Information held by the Council

12. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to certain restrictions which, by virtue of section 1(6), allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received (section 1(4)).
13. In its application to the Commissioner, BPS stated that it believed the Council had not provided all of the information falling within the scope of the requests narrated above. The Commissioner notes that BPS only sought a review regarding requests b), c) and d) and therefore only those requests can be considered in this investigation. This was explained to BPS at the beginning of the investigation
14. During the investigation, the Council confirmed that it had carried out further searches of its records and retrieved certain relevant information. The Council provided this further information to BPS and accepted that the information should have been located and provided at an earlier stage.
15. BPS acknowledged receipt of the information, while indicating that it had been provided previously. However, examination of the information previously provided showed that it did not include all of the information provided during the investigation.
16. The Council advised that it did not hold any further information, in addition to that located and provided to BPS during the investigation. It addressed points made by BPS in relation to the information. BPS, however, still expected further information to be held.
17. Having considered all relevant submissions, the Commissioner accepts that the Council carried out appropriate and adequate searches for the information in the course of the investigation and is satisfied, on the balance of probabilities, that it does not (and did not, at the time it received the requests) hold any further information falling within the scope of BPS's requests. Having considered the Council's submissions and the information located, the Commissioner does not consider it reasonable in the circumstances to expect that any further information would be held.



## **DECISION**

The Commissioner finds that, in the respects covered by the relevant application, Perth and Kinross Council (the Council) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Benthic Pelagic Solutions Ltd (BPS). In particular, she finds that the Council failed to identify, locate and provide all of the information it held and which fell within the scope of the requests.

Given that she is satisfied that (during the investigation) the Council provided BPS with all relevant information it held, the Commissioner does not require the Council to take any action.

## **Appeal**

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Should either Benthic Pelagic Solutions Ltd or the 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**  
**16 January 2013**



## 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.  
...
- (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.  
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