

Decision Notice



Decision 021/2010 Mr Ian A Downie and Aberdeenshire Council

Housing requirement calculation

Reference No: 200901324

Decision Date: 8 February 2010

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Ian A Downie requested from Aberdeenshire Council (the Council) information pertaining to the numerical values specifying housing requirements within the Aberdeen City and Shire Finalised Structure Plan (Structure Plan). The Council provided an explanation of the process followed when preparing the Structure Plan, but did not supply a breakdown of the housing requirements as Mr Downie had requested. Following a review, Mr Downie remained dissatisfied and applied to the Commissioner for a decision.

During the Commissioner's investigation, it was recognised that relevant information was contained within published documents, and two spreadsheets, which were supplied to Mr Downie. However, it was established that no recorded information was held that would provide the particular breakdown he had requested.

The Commissioner found that the Council had failed to comply with certain technical aspects of FOISA in responding to Mr Downie's request. However, by the end of the investigation, the Commissioner was satisfied that Mr Downie had been provided with or directed to all of the information held by the Council which fell within the scope of his request. The Commissioner did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (6) (General entitlement); 8(1)(c) (Requesting information); 16(1) (Refusal of request); 17(1) (Notice that information is not held); 25(1) (Information otherwise accessible) and 73 (Interpretation) (definition of "information")

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 21 April 2009, Mr Downie wrote to the Council, commenting on the Aberdeen City and Shire Finalised Structure Plan (the Structure Plan) and requesting the following:
 - Information that informed the numerical values in a table (figure 8) specifying the housing requirements within the Structure Plan



- A breakdown of these numerical values to reflect different housing types, and to show the breakdown of the Aberdeen Housing Market Area according to the City and Shire parts thereof.
- Clarification as to whether and how a housing supply deficit that Mr Downie understood to have existed in 2007 was taken into account when calculating the requirement for the Aberdeen Housing Marketing Area.

His request referred to Scottish Ministers' policy (Scottish Planning Policy SPP 3: Planning for Homes) regarding the identification of housing requirements, the provision of land for housing and the delivery of homes through the planning system. Mr Downie's information request referred to various parts of this policy which underpinned his understanding of how the housing requirements set out in the Structure Plan would have been reached.

2. The Council responded on 20 May 2009. It explained that SPP 3 had been issued in July 2008, during its consultation on the draft Structure Plan. It was explained that the timing of this publication meant that it was not practical for a full Housing Need and Demand Assessment to be prepared to inform the Structure Plan as Mr Downie believed to be the case.
3. The Council went on to explain that the housing requirement allowances contained in the Structure Plan were "strategy-led rather than the result of bottom-up calculations", and that they represented a positive and representational view of the future, and a generous supply of land for new housing. The Council went on to state that the figures requested by Mr Downie were "insignificant when considered in this context", but explained that these factors were built into the strategic forecasts. It provided an example of an allowance of 2,210 new homes being built into the probable case forecasts to account for additions to the stock of vacant or second homes. It went on to state that the forecasts were for the requirements of all households, and include both mainstream and affordable housing.
4. The Council also provided further details of the Structure Plan's allowance for the Aberdeen Housing Market area across the period 2007-2016.
5. On 3 June 2009, Mr Downie wrote to the Council requesting a review of its response. He referred to Council reports and evidence to public local inquiries which suggested that a Housing Needs and Demands Assessment had been undertaken to inform the plan. He suggested also that the information he had requested should have been generated in the course of activities in line with other planning guidance that preceded the issue of SPP 3.
6. He went on to submit that the information he had requested should be readily available, assuming that guidance in force prior to the issue of SPP 3 in July 2008 was recognised and respected by those responsible for the preparation of strategic forecasts.
7. He noted also that if the Council was able to state that an allowance of 2,210 houses had been built into the probable case scenario to allow for additions to the stock of vacant or second homes, then the other component parts of the calculation should be readily available.



8. He also noted that his request for clarification concerning the deficit had gone unanswered.
9. The Council notified Mr Downie of the outcome of its review on 1 July 2009. The Council noted that its initial response to Mr Downie had explained the mechanism by which the housing requirements were calculated, and concluded that, in the circumstances, all information that could be provided in response to Mr Downie's request had been provided.
10. On 17 July 2009, Mr Downie 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. He stated that the information he had requested should be readily available given that it must have been used to formulate the numerical values specified within figure 8 within the Structure Plan.
11. The application was validated by establishing that the Council 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.

Investigation

12. On 23 July 2009, the Council was notified in writing that an application had been received from Mr Downie and it was asked to provide the Commissioner with any information withheld from him. The Council responded, providing a descriptive explanation of how the Structure Plan was created and confirmation that it was not withholding any information from Mr Downie. The case was then allocated to an investigating officer.
13. The investigating officer subsequently contacted the Council, 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 investigating officer noted that the Council provided an explanatory response to Mr Downie whereas FOISA requires an authority to consider and provide the recorded information it holds which falls within the scope of an information request, unless any exemptions apply to the information.
14. In response, the Council acknowledged that its response had sought to provide an explanation regarding the way in which the projections set out in figure 8 of the Structure Plan were arrived at rather than supply recorded information relevant to his request. However, it noted that it had not sought to withhold any information from Mr Downie. It explained that this approach was taken due to the fact that there was very little information on this subject that was not already in the public domain (and so exempt in terms of section 25(1) of FOISA). It noted that the main relevant document (Strategic Forecasts 2007) was available on its website. It also highlighted relevant information within the finalised Structure Plan Background Paper which was also available online.



15. The Council provided copies of two spreadsheets which contained information relating to the projections set out in figure 8 of the Structure Plan, which was not available in the public domain.
16. With respect to the part of Mr Downie's request concerning a housing supply deficit, the Council maintained that the request for clarification invited an explanatory response, although it noted that one method of providing that explanation might be to supply documentary evidence.
17. However, the Council stated that its difficulty with this was that it did not accept the premises of Mr Downie's question, or his interpretation of SPP 3. It also submitted that it did not know where Mr Downie had obtained the housing supply deficit figure quoted in his request, and so it could not provide any evidence of how it had been used in the Council's calculations, or say that it held information about this. The Council stated that there was no such thing as a deficit in the calculation of the housing requirement, and that the housing land audit (used for assessing need) is a snapshot in time which does not recognise the concept of carrying forward perceived deficit from the past.
18. The Council subsequently provided more detailed information regarding the individuals involved and the information sources that had been utilised to develop the Structure Plan. This also highlighted further information that was available online regarding the Structure Plan.
19. With the Council's agreement, the investigating officer provided a summary of her correspondence with the Council (which included links to relevant published documents online), and copies of the spreadsheets referred to in paragraph 15.
20. Following this, Mr Downie was asked to identify specific examples of the types of information which he considered that the Council held (which had not been already disclosed) and could be considered to fall within the scope of his request. In response, Mr Downie sent detailed comments with respect to the information which he believed should be held or deducible by the Council regarding the basis upon which the values set out in figure 8 of the Structure Plan were established. Mr Downie's responses noted in particular that all of the inputs necessary to reach a conclusion with regard to the probable case scenario housing requirements for the City and the Shire must exist at the level of each authority for the high growth scenario, otherwise the figures would have no rational justification.
21. The investigating officer passed copies of Mr Downie's comments to the Council and asked whether it would like to provide further submissions. The Council's response reiterated that all relevant information had been provided to Mr Downie. The Council noted that it had invited Mr Downie to attend a meeting regarding the matters he had raised, and this offer was still open.



Commissioner's analysis and findings

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

Information that informed the numerical values in figure 8

23. The subject matter of the information under consideration in this case is complex and technical. However, expressed simply, the main matter to be addressed by the Commissioner is whether recorded information exists (beyond that supplied to Mr Downie by the Council in response to his request) that would show the basis upon which certain figures set out in the Structure Plan were reached.
24. Mr Downie believes that, if policies and guidance on the development of such plans had been properly followed, then certain types of information should be held. In particular, he considers that the Council should be able to provide a breakdown of these numerical values according to housing types and in relation to the City and Shire parts of the Aberdeen Housing Market Area.
25. The Council, on the other hand has maintained that information of the type suggested by Mr Downie is not held, and that it has now supplied all relevant information to him. The Council has offered to meet with Mr Downie to discuss the Structure Plan in more detail and considers that this would be the best way to address any outstanding matters of concern to him on this subject.
26. Before setting out his conclusions, the Commissioner would note that it falls outwith his remit to consider whether the Council followed published guidance or policy in preparing its Structure Plan, or whether certain types of information should have been generated in this process. While he is aware that Mr Downie has serious concerns in this respect, the Commissioner's locus extends only to determining whether the Council acted in accordance with Part 1 of FOISA when responding to Mr Downie's information request, and whether it identified and supplied all relevant (and non-exempt) recorded information that it held in doing so.
27. The Commissioner has considered all of the Council's submissions regarding the process followed in developing figure 8 in the Structure Plan and, notwithstanding Mr Downie's expectations with regard to the steps underpinning its development, he is satisfied that the breakdowns requested by Mr Downie are not held by the Council (and were not held at the time of his request).
28. However, the Commissioner has identified deficiencies in the Council's response to the part of his request concerning information informing figure 8. As noted above, this provided an explanation of the process followed in developing those numerical values.



29. The Commissioner notes that the Council's response in respect of the breakdown of the numerical values stated that "the figures requested...are insignificant in this context". While it might (with the benefit of the hindsight following the investigation of this case) be inferred from this that the Council did not actually hold such a breakdown, this was not clearly stated.
30. Section 17 of FOISA states that where a Scottish public authority receives a request for information that it does not hold, then the authority must give the applicant notice in writing that it does not hold that information. Since the Council did not clearly indicate to Mr Downie that it did not hold the breakdown of the numerical values that he had requested, the Commissioner has concluded that it failed to comply with the requirements of section 17(1).
31. With respect to other types of information that had informed the numerical values, the Commissioner has noted that the Council did not direct Mr Downie to relevant recorded information that was publicly available, and it did not provide all information contained in the spreadsheets identified (and supplied to Mr Downie) during the investigation.
32. The Commissioner is satisfied that the exemption in section 25(1) of FOISA (which applies where the information concerned is already reasonably accessible to the applicant) would apply to the (relevant content within) the published documents which were identified during the investigation as having informed the development of figure 8 in the Structure Plan. However, the Council did not seek to withhold this information, and perhaps assumed that (as a planning consultant clearly knowledgeable on this subject) Mr Downie would already be familiar with these sources.
33. While this may have been an accurate assumption, the Commissioner finds that the Council failed to comply with Part 1 of FOISA, because it neither supplied this information in terms of section 1(1) (having decided not to apply the exemption available to it) nor issued a refusal notice in terms of section 16(1) of FOISA explaining that information relevant information was held but exempt from disclosure.
34. Where information that is requested by an applicant is already publicly available, the Commissioner would expect a public authority, in pursuit of its duty to provide advice and assistance to applicants under section 15(1) of FOISA, to direct the requestor to those sources. Since the Council failed to provide any such advice in this case, the Commissioner concludes that it failed to comply fully with the duty under section 15(1) of FOISA.
35. The Commissioner has also concluded that the two spreadsheets identified and provided to Mr Downie constituted "information that informed" the numerical values in figure 8, and, as such fell within Mr Downie's information request. Some information within these was referred to within the Council's explanatory response, but the remaining information therein was not supplied, although the Council has made no claim that this information was exempt from disclosure. By failing to provide Mr Downie with all of the information contained within these spreadsheets, the Commissioner concludes that the Council failed to comply with section 1(1) of FOISA.



Clarification regarding whether housing supply deficit was taken into account

36. The final part of Mr Downie's information request asked the Council to clarify if and how a deficit in housing supply that he understood to have existed in 2007 had been taken into account in Schedule 1 of the Structure Plan (which contains a table setting out housing allowances).
37. As noted above, the Council commented on this part of Mr Downie's request that it was not possible to provide anything other than an explanation in response, because it was unable to accept the premises of this request, and so no recorded information or evidence could be supplied which would provide the clarification Mr Downie requested.
38. The Commissioner accepts that, although Mr Downie referred to FOISA when making this request for clarification, this part of his request does not clearly seek recorded information and it is difficult to see what recorded information he envisaged being provided. He notes that section 8(1)(c) of FOISA, stipulates that a request for information to describe the information that is sought. The definition in section 73 of FOISA makes clear that information in this context must be *recorded* information.
39. He also accepts that, since the Council did not recognise the deficit identified by Mr Downie, nor see any role for it in developing the relevant part of the Structure Plan, then it was understandable that no recorded information could be identified that would provide the clarification that Mr Downie sought.
40. He concludes that the options open to the Council in dealing with this request would have included seeking clarification from Mr Downie as to which recorded information he wished to access, in terms of section 1(3) of FOISA. However, the Council did not do so.
41. The Commissioner notes that the response provided by the Council made no reference to this part of Mr Downie's information request. It neither indicated that it did not appear to be a valid or sufficiently clear request for recorded information, nor provided any response stating that no recorded information was held that would provide the requested clarification. No explanation of the type provided to the Commissioner was provided to enable Mr Downie understand why the Council felt unable to address this request.
42. In the circumstances, the Commissioner has concluded that the Council should have issued a notice stating it did not hold any recorded information that would provide the clarification that he had requested. By failing to do so, the Council failed to comply with the requirements of section 17(1) of FOISA in respect to this part of Mr Downie's information request.

Conclusion

43. Although the Commissioner has identified a number of breaches of the technical provisions of FOISA in the Council's handling of Mr Downie's information request, he is satisfied that the Council does not hold any further relevant information beyond that supplied to him either in response to his request, or during the investigation of this case.



44. As Mr Downie has now received the information to which he is entitled to, the Commissioner does not require the Council to take any further action in relation to this matter in response to this decision.

DECISION

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

The Commissioner finds that the Council complied with part 1 of FOISA by providing information in response to Mr Downie's request.

However, the Commissioner finds that by failing to provide all relevant recorded information that was held (while not seeking to rely upon the exemption in section 25(1) of FOISA where this was in the public domain), the Council failed to comply with the requirements of section 1(1) of FOISA.

The Commissioner also found that, by failing to alert Mr Downie to the availability of relevant information contained within published documents, the Council failed to comply fully with the duty to provide advice and assistance in terms of section 15(1) of FOISA.

The Commissioner also found that, by failing to provide notice to Mr Downie that it did not hold some of the information he had requested, the Council failed to comply with the requirements of section 17(1) of FOISA.

The Commissioner is satisfied that, by the end of his investigation, Mr Downie had been provided with or directed to published documents containing all of the information held by the Council which fell within the scope of his request. He does not require the Council to take any further action in relation to the breaches identified above in response to this particular application.



Appeal

Should either Mr Downie or Aberdeenshire 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
8 February 2010



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.

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-

...

- (c) describes the information requested.

...



16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-
- (a) discloses that it holds the information;
 - (b) states that it so claims;
 - (c) specifies the exemption in question; and
 - (d) states (if not otherwise apparent) why the exemption applies.

...

17 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.

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

....



73 Interpretation

In this Act, unless the context requires a different interpretation –

...

"information" (subject to section 50(9) and 64(2)) means information recorded in any form

...