



Scottish Information
Commissioner

**Decision 028/2007 Mr Gordon Ingram and Aberdeenshire
Council**

*Policy relating to additional property built in the gardens of former
council houses*

**Applicant: Mr Gordon Ingram
Authority: Aberdeenshire Council
Case No: 200600852
Decision Date: 12 February 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 028/2007 Mr Gordon Ingram and Aberdeenshire Council

Request for a copy of a policy relating to additional property built on council house grounds – information not held

Relevant Statutory Provisions and other Sources

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

The full text of this provision is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Ingram wrote to Aberdeenshire Council (the Council) requesting a copy of a policy which prevented former council houses from having additional properties built in their gardens. The Council informed Mr Ingram that the Council did not have such a policy and that the information was therefore not held.

Mr Ingram was not satisfied with this response and wrote to the Council to request it to carry out a review of its decision not to supply him with the information he had asked for. After carrying out a review the Council upheld its original decision and informed Mr Ingram that the Council did not hold the information.

Mr Ingram was dissatisfied with the outcome of the review and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Ingram's request for information in line with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA).



Background

1. Mr Ingram had been corresponding with Aberdeenshire Council (the Council) for a number of months on a number of issues before he wrote to the Council on 13 November 2005, requesting a copy of a policy concerning “new build in former Council gardens”.
2. The Council responded to Mr Ingram on 18 November 2005. In its letter the Council stated that a check had been carried out in order to determine whether there was any policy within the Council designed to stop former council houses from having any additional property built on their feus.
3. Referring to previous correspondence on this matter, the Council confirmed to Mr Ingram that the Council did not have such a policy and, even if it did, new legislation on land reform had clarified that the Council could not enforce such a policy as a feu superior. In view of this the Council enclosed a formal Notice confirming that a full search for the information which had been requested had been undertaken and that the information was not held, in line with section 17 of FOISA. Further information was provided by the Council informing Mr Ingram of his right to request a review and detailing the appeals process.
4. Mr Ingram wrote to the Council on 4 December 2005, requesting a review of its decision not to supply the information he had requested. Mr Ingram contended that the Council’s policy had been used to refuse a number of planning applications made by house owners. He was therefore of the view that the policy did in fact exist.
5. On 6 December 2005, the Council acknowledged Mr Ingram’s request for a review. The Council subsequently contacted Mr Ingram on 7 December 2005, in order to try and clarify Mr Ingram’s grounds for review. This was because a considerable number of letters had been received by the Council from Mr Ingram on a variety of topics and issues in the weeks and months preceding his request for a review and it was not clear from his letter which points he wished to be reviewed.
6. Further correspondence was entered into between the Council and Mr Ingram in an attempt to clarify matters. Mr Ingram provided the Council with such clarification in his letter to them, dated 20 January 2006. On 24 January 2006, the Council wrote to Mr Ingram stating that its view was that the only part of his complaint which could be reviewed concerned his contention that the Council had a policy designed to prevent former Council houses from having any additional property built on their feus.



7. The Council reiterated to Mr Ingram that no such policy existed, although it was previously the practice to put a clause in the Feu Conditions seeking to prevent such development without the permission of the Feu Superior. It was pointed out to Mr Ingram that recent Land Reform legislation meant that it was no longer possible for the Council to enforce such clauses.
8. In its letter, the Council asked Mr Ingram to confirm its interpretation of his request for review. Mr Ingram responded to the Council on 1 February 2006, but it was not clear from his letter if he agreed with the Council in relation to the scope of his request for review. The Council therefore wrote to Mr Ingram on 7 February 2006, stating that it was of the view that it could see no alternative but to arrange for a meeting of the Council's Freedom of Information Review Panel to consider his request for information.
9. The Council detailed its internal review procedure and invited Mr Ingram to make any further representations in addition to the points already made in his previous letters. The Council emphasised that the Review Panel was only empowered to consider requests for recorded information.
10. On 2 March 2006, the Council wrote to Mr Ingram informing him of the outcome of its review, attaching the Review Panel's decision notice and its statement of reasons. In relation to Mr Ingram's request concerning residential properties being constructed in the grounds of other council houses, the Council's Review Panel concluded that there are and were no specific conveyancing policies regarding this and as such there was no information to provide to Mr Ingram. The Review Panel noted that any additional property development would in addition require planning permission and there would almost certainly be restricting planning policies which may be of relevance. However, no further information was held which could be provided to Mr Ingram.
11. Mr Ingram was dissatisfied with the outcome of the Council's review and applied to me for a decision on 28 April 2006. Mr Ingram's application was acknowledged by my Office on 11 May 2006, and the Council was given notice that an application had been received and that an investigation into the matter had begun.
12. The case was then allocated to an investigating officer who contacted the Council on 17 October 2006, in order to obtain further documentation to enable the validation process to begin.
13. After further correspondence with Mr Ingram and the Council in order to clarify the grounds of Mr Ingram's dissatisfaction for the way in which his request had been dealt with, the application was validated by establishing that Mr Ingram had made a valid request to a Scottish public authority and he had appealed to me only after asking the Council to review its response to his initial request.



14. It was pointed out to both Mr Ingram and the Council that the application was valid only in regard to Mr Ingram's contention that the Council had refused to provide him with a copy of a policy to prevent former council houses from having additional property built on their feus. This was in order to differentiate the matter in hand from any supplementary issues that Mr Ingram had raised in his extensive correspondence with the Council.

The Investigation

15. Once the investigating officer had established that Mr Ingram's application was valid, the Council was contacted and asked to provide further documentation for the purposes of the investigation. The Council was invited to provide comments on any of the matters raised by Mr Ingram and on the application as a whole, in terms of section 49(3)(a) of FOISA.
16. The Council was also asked if it wished to add to the submissions it had already made in relation to the notice it had issued under section 17 of FOISA, informing Mr Ingram that the information was not held. The Council was asked to supply any further details setting out the steps that were taken to establish whether or not it held the information requested and any attempts that had been made to locate such information.

The Commissioner's Analysis and Findings

17. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Ingram and the Council and I am satisfied that no matter of relevance has been overlooked.
18. In its letter to my Office, dated 13 November 2006, the Council stated that the Marr Area Manager had checked with legal, estates and housing colleagues about the Council's approach when considering requests to develop an additional property in the garden of a former council house. All of them confirmed that no such policy existed and that the Council had never had a policy that prevented splitting the feu of former Council properties, as had been contended by Mr Ingram in an earlier letter dated 21 September 2005.



19. The Council stated that, as Planning Authority, it is not entitled to distinguish between former Council property and its land or any other property when assessing planning applications. Each application has to be considered against the planning policies of the Council on its own merits.
20. The Council added that it used to be the practice when selling council houses to look at the size of the garden and, if it was capable of development, to put a clause in the Feu Conditions which sought to prevent such development in the future without the permission of the Feu Superior. However, it was pointed out that any rights which the Council may have had as former owner and Feu Superior had diminished significantly as a result of recent Land Reform legislation and it is no longer feasible for the Council to enforce such clauses.
21. The Council stated that despite being given all of this information, Mr Ingram proceeded to request a copy of a policy concerning restrictions regarding new build in former Council gardens. When this request was received, the Marr Area Manager had rechecked the position with his colleagues, some of whom had been working in local government for over 30 years and could be expected to be highly knowledgeable on the subject, who confirmed that they had no knowledge of such a policy. On the basis of this investigation, and on the basis that a search had been carried out and no record had been found of any policy document which equated to the document requested by Mr Ingram, an "information not held" notice was issued to Mr Ingram. The Council's Review Panel was satisfied with the assurances given by officers with many years of experience that there was no information to provide to Mr Ingram.
22. Taking into account the Council's submission and the efforts it has made to determine whether or not such a policy exists, or ever existed, I am satisfied that the policy requested by Mr Ingram does not exist and is therefore not held by the Council.

Decision

I find that Aberdeenshire Council acted in accordance with Part I of FOISA in responding to Mr Ingram's request through the issue of a notice under Section 17(1) of FOISA, to the effect that the information was not held.



Appeal

Should either Mr Ingram or Aberdeenshire Council wish to appeal against this decision, there is a right to 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.

Kevin Dunion
Scottish Information Commissioner
12 February 2007



APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002:

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.

(2) Subsection (1) is subject to section 19.

(3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.