

Decision Notice



Decision 041/2014 Mr James Angus and Angus Council

Formation of bus stop and access

Reference No: 201302609

Decision Date: 26 February 2014

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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



Summary

On 31 July 2013, Mr Angus asked Angus Council (the Council) for information relating to the formation of a bus stop in Brechin, and access to that bus stop by school pupils. The Council told Mr Angus that it did not hold any relevant information.

Following an investigation, the Commissioner accepted that the Council did not hold any information covered the request. She also found that the Council had failed to respond to Mr Angus's request for review within the required timescale.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority)

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 31 July 2013, Mr Angus wrote to the Council, requesting all documentation relating to:
 - the formation of bus stop in Argyll Street, Brechin
 - access by school pupils to the bus stop, through the grounds of St Andrews Episcopal Church.
2. The Council responded on 11 September 2013, stating that it had searched its files but held no information relating to the formation of the bus stop. The Council provided Mr Angus with the minutes of a meeting of the Maisondieu Primary School Board, which it believed suggested the bus stop was created in 2001.
3. On 15 September 2013, Mr Angus wrote to the Council requesting a review of its decision. He was disappointed that the Council had not located any information and asked for further searches to be carried out. He reiterated his surprise at the lack of information in a letter of 23 September 2013, adding that he was unhappy with the Council's failure to respond to his request within 20 working days.



4. The Council notified Mr Angus of the outcome of its review on 25 October 2013. It upheld its original decision that it held no information and apologised for the delay in both its initial response and the response to Mr Angus's requirement for review.
5. On 4 November 2013, Mr Angus 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.
6. The application was validated by establishing that Mr Angus made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. The investigating officer contacted the Council, giving it notice of the application and an opportunity to provide comments on it (as required by section 49(3)(a) of FOISA). The Council was asked to explain the steps it took to establish that it held no relevant information.
8. Mr Angus was also invited to provide comments during the investigation.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr Angus and the Council. She is satisfied that no matter of relevance has been overlooked.

Section 17 - Notice that information is not held

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
11. Given the application of the regulation "bus stop" sign to the road, the Council submitted that there was a statutory presumption that the road markings were applied in pursuance of its statutory powers as local road authority. It did not, however, hold any information on the use of statutory powers for the creation of the bus stop.
12. The Council explained the process involved in the creation of a bus stop of this kind. It did not understand a traffic regulation order, or any consultation, to have been required in this case.



13. Mr Angus understood the bus stop to have been placed in its current location as a safety measure. As there was an issue of safety involved, he expected the Council to hold information on the formation of the bus stop. This was put to the Council, along with other comments Mr Angus provided on the nature of the bus stop and the arrangement with the church.
14. The Council described the searches it conducted within its Education, Transport and Roads services (which it considered to be the services relevant to the request, given its nature). A specific search was carried out on the computer of the officer in the Education service who had been involved in securing an understanding with the church regarding passage for school pupils through its grounds. It had focused on information evidencing the matters covered by Mr Angus's request (which the Commissioner would accept as a reasonable approach in the circumstances), but had found none.
15. The Council identified information in minutes of the Angus Area Traffic Co-ordination Group, all of which dealt with the bus stop as an existing stop. The Commissioner accepts that this information does not relate to the formation of the bus stop (or the other matter raised in Mr Angus's request) and therefore falls outwith the scope of the request.
16. Having been referred to a comment from Mr Angus relating to an article in the *Brechin Advertiser*, the Council carried out a further search in its Communications unit (which deals with media enquiries). It identified information which contained an officer's recollection as to approximate time when the bus stop was created. It did not consider this to fall within the scope of the request and the Commissioner agrees.
17. The Commissioner has considered all of the above carefully. In all cases, she would expect a Scottish public authority to take reasonable, proportionate steps to identify and locate any information it holds and which falls within the scope of a request under section 1(1) of FOISA. In all the circumstances, the Commissioner is satisfied from the Council's submissions that it took reasonable and proportionate steps to identify and locate any information it held and which was covered by the request. She accepts that these steps were based on a reasonable interpretation of the request.
18. The Commissioner therefore accepts, on the balance of probabilities, that it was reasonable for the Council to conclude that it did not hold any information falling within the scope of Mr Angus' request.

Technical issues

19. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
20. Mr Angus wrote to the Council on 15 September 2013, expressing his dissatisfaction that the Council had found no information requested further searches. While he expanded on this in a letter of 23 September 2013, it is clear that the first letter was a valid requirement for review (indeed, the Council confirmed on 17 September 2013 that it was being dealt with as such).



21. The Council responded to Mr Angus's requirement for review on 25 October 2013. Therefore, the Council failed to respond to the requirement within the 20 working days required by section 21(1). This is particularly disappointing considering (as it has acknowledged) the Council failed to respond to Mr Angus's request within the 20 working days required by section 10(1) of FOISA. The Commissioner notes that the Council's review outcome of 25 October 2013 apologised for both failures.

DECISION

The Commissioner finds that Angus Council generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Angus, in particular by giving Mr Angus notice, under section 17(1) of FOISA, that it did not hold the requested information.

The Commissioner also finds that the Council failed to comply with Part 1 of FOISA, by failing to respond to Mr Angus's requirement for review within the timescale laid down by section 21(1) of FOISA. Given that a response was provided, she does not require the Council to take any action in respect of this failure, in response to Mr Angus's application.

Appeal

Should either Mr Angus or Angus Council wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
26 February 2014



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.

...

- (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.

...

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.

...



21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...