

Decision Notice



Decision 043/2010 Ms Kirstin Scott and Scottish Borders Council

Property in Selkirk

Reference No: 200901722
Decision Date: 12 March 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

Ms Scott requested from Scottish Borders Council (the Council) information relating to land in Selkirk. The Council responded by acknowledging receipt of the request. Following a number of reminders and a review, information was released by the Council, but Ms Scott remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Ms Scott's request for information in accordance with Part 1 of FOISA. While satisfied that the Council held no further relevant information, he found that it had failed to issue a notice that certain information was not held or to respond to Ms Scott within the requisite timescales. In the circumstances, he 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) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held) and 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 16 July 2009, Ms Scott wrote to the Council requesting copies of any and all dispositions relating to land at Ettrick Park (the former football ground in Selkirk) and at Philiphaugh Playing Fields (the new football ground in Selkirk), including the original acquisitions and any subsequent disposals, in whole or in part, of such lands.
2. The Council acknowledged receipt of the above request on 20 July 2009, confirming it would deal with the request under FOISA within the 20 working day period.
3. On 17 August 2009, Ms Scott wrote to the Council for an update as she had not received a response to her request for information.
4. The Council responded on 18 August 2009, to the effect that the deadline for a response was 1 September 2009.



5. Ms Scott queried the Council's calculation of the 20 working day period in an email dated 18 August 2009 as she did not agree with it.
6. The Council responded on 18 August 2009, explaining there had been confusion with another FOI request submitted by Ms Scott and confirming that a response to the above request would be pursued.
7. On 28 August 2009, following a further request for an update, Ms Scott wrote to the Council requesting a review of its failure to respond to her request.
8. On 7 September 2009, the Council acknowledged receipt of Ms Scott's request for review, advising that its FOI Advice Group would meet to discuss the request for review and that a response would be sent to her by 25 September 2009.
9. The Council contacted Ms Scott again on 23 September 2009 to confirm that the FOI Advice Group had met that day and agreed to send the information requested to Ms Scott as soon as possible.
10. On 28 September 2009, Ms Scott wrote to the Council as she had not received the information, noting that the relevant timescale had elapsed.
11. The Council notified Ms Scott of the outcome of its review by email dated 29 September 2009, supplying information in response to the request.
12. On 30 September 2009, Ms Scott wrote to the Council, asking whether all the information which fell within the scope of the request had been supplied and asking to be provided with any which had not.
13. The Council responded on 30 September 2009, confirming that it did not hold certain information.
14. On 3 October 2009, Ms Scott wrote to the Commissioner, stating that she 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.
15. The application was validated by establishing that Ms Scott 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. The case was then allocated to an investigating officer.



Investigation

16. On 16 November 2009, the Council was notified in writing that an application had been received from Ms Scott and was invited to comment on the application, as required by section 49(3)(a) of FOISA. In particular, the Council was asked to provide details of any searches or enquiries it had carried out to identify and locate the information Ms Scott had requested.
17. The Council replied to the investigating officer on 16 December 2009. Its submissions, insofar as relevant, will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

Section 17 of FOISA

19. The wording of Ms Scott's request specified information relating to the title deeds of two areas of land in Selkirk, including "the original acquisitions and any subsequent disposals, in whole or in part, of such lands". Ms Scott was dissatisfied in that when the Council released information on 29 September 2009 it did not fully explain whether this was all the information she had requested. In particular, there was no information as to the disposals she had specified and it was not clear from the Council's response whether it held this information. The Council provided Ms Scott with subsequent clarification on this point, to the effect that it did not hold a copy of a particular statutory conveyance. She was not satisfied with this response.
20. Responding to the investigating officer, the Council outlined the searches carried out in relation to both areas of land, including manual searches of its title register (it was not possible to do a comprehensive electronic search) and relevant transaction/correspondence files. The computer files of individual members of staff were searched against the names of both areas. While acknowledging that it was good practice to do so, it acknowledged that it did not hold comprehensive information on property it had disposed of, noting however that such information was otherwise accessible from the General Register of Sasines/Land Register.
21. From its searches, the Council confirmed that it held correspondence in respect of land sold from the areas in question, but not a copy of the relative title (i.e. the information requested by Ms Scott). This had been identified in early September 2009. There was no obligation to hold a copy and (as indicated above) one could always be obtained from the General Register of Sasines/Land Register if required. The deed in question had not been drafted by the Council and therefore a copy would not be held on any of its computer systems.



22. The Commissioner believes it was understandable to expect that the Council records might document both the original acquisitions of the land in question and any subsequent disposals, in whole or in part, of such lands. He cannot, however, having satisfied himself as to what the Council actually held, comment on whether or not it should have held such information. Having considered the Council's submissions in this case, he is satisfied that it did not hold any information falling within the scope of Ms Scott's request, in addition to that provided to her.
23. The Council did not, however, in response to either her information request or her request for review, inform Ms Scott that it did not hold information which would meet a particular element of her request. It did not hold any dispositions in respect of disposals, which Ms Scott clearly specified that she required. Section 17(1) of FOISA, the full text of which is reproduced in the Appendix to this decision, requires a Scottish public authority to give the applicant notice to that effect where it does not hold information the applicant has requested. While it is apparent that the Council had confirmed (to itself) before the completion of its review that it did not hold the information in respect of disposals, it failed to advise Ms Scott of this in responding to her information request or her request for review.
24. The Commissioner therefore finds that the Council failed to give Ms Scott notice that it did not hold any relevant information in relation to disposals from the land in question, as required by section 17(1) of FOISA.

Technical breaches of FOISA – sections 10 and 21

25. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
26. The details of the Council's response to Ms Scott's request are set out in the "Background" section above. The Commissioner finds that the Council failed to respond to Ms Scott's request for information within the 20 working days allowed under section 10(1) of FOISA.
27. Section 21(1) of FOISA gives public authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case. Again, it will be clear from the "Background" section above that the Council failed to meet this requirement.
28. It should be noted that the Commissioner carried out an assessment of the Council's practice in dealing with information requests in February 2010. The findings from this will be discussed with the Council and a report published in due course.



DECISION

The Commissioner finds that Scottish Borders Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in respect of the matters specified in the application made by Ms Scott, in particular by failing to give notice that it did not hold relevant information in respect of a particular element of Ms Scott's request (as required by section 17(1)) and by failing to respond to Ms Scott's request for information and requirement for review within the timescales specified in sections 10(1) and 21(1) respectively.

Given that a review was carried out and the Commissioner is satisfied that all relevant information held has been released to Ms Scott, the Commissioner does not require the Council to take any further action in respect of these failures in response to this particular application.

Appeal

Should either Ms Scott or Scottish Borders 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
12 March 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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

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.

...