

Decision Notice



Decision 055/2009 Mr N and South Lanarkshire Council

Inspection report and telephone note

Reference No: 200900600
Decision Date: 18 May 2009

www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

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



Summary

Mr N requested from South Lanarkshire Council (the Council) copies of an inspection report and notes of a telephone conversation. The Council responded by providing copies of an inspection report but stated that it did not hold a record of the telephone conversation in question. Following a review, Mr N remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council did not hold a record of an inspection report as specified by Mr N or a record of the telephone conversation. He therefore 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) and 17(1) (Notice that information is not held)

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 8 May 2007, Mr N wrote to the Council requesting a range of information in connection with incidents which had allegedly taken place around Mr N's former residential property.
2. After seeking clarification from Mr N regarding the meaning of certain aspects of his request, the Council responded on 13 July 2007. The Council provided Mr N with some information which it considered fulfilled certain aspects of his request. The Council also advised Mr N that some of the information requested by him was either not held by it or was considered exempt from disclosure under Part 2 of FOISA.
3. On 20 September 2007, Mr N wrote to the Council requesting a review of its decision. In particular, Mr N referred to the information supplied in response to his request for an environmental inspection report carried out at specified premises on a specific date. He stated that the report supplied was not what he had asked for. Mr N also expressed dissatisfaction with the Council's contention that a note of a telephone conversation between a Council officer and a private solicitor on a specified date was not held by it.



4. The Council notified Mr N of the outcome of its review on 17 October 2007. The Council informed Mr N that no environmental inspection report was held bearing the date he had specified in his letter of 20 September 2007, and he had been supplied with a copy of the only report held by it (which was dated some two weeks earlier than the date specified in Mr N's request). The Council's review did not address the issue of the phone note.
5. On 19 April 2008, Mr N 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. Following a delay in taking forward this case (the reasons for which are not relevant to this decision), the application was validated in December 2008 by establishing that Mr N 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

7. The investigating officer wrote to the Council on 22 January 2009, 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 justify its contention that it did not hold certain information (with reference to the steps and specific searches it had taken to establish this).
8. At this stage, the investigating officer also informed the Council of the scope of the Commissioner's investigation and that it would be limited to two aspects of Mr N's request: the environmental inspection report and note of a telephone conversation.
9. The Council responded on 25 February 2009, confirming that it held no documentation in relation to an environmental report on the date specified by Mr N nor the telephone conversation to which Mr N had referred. The Council also explained the searches it had undertaken in order to ascertain whether any relevant information was held by it.
10. In relation to the note of a telephone conversation between a Council officer and a private solicitor, the Council's view was that Mr N had not sought a review of the Council's response to this aspect of his request. The Council considered that, in his letter of 20 September 2007, Mr N had queried whether the conversation had actually taken place but had not sought a note of the conversation. The Commissioner has considered this matter further in the analysis and findings section below.



Commissioner's analysis and findings

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

The scope of the investigation

12. The Commissioner has noted the Council's comments regarding the wording of Mr N's request for review in relation to the note of a telephone conversation. However, the Commissioner's view is that Mr N has expressed dissatisfaction with the response provided by the Council in relation to this aspect of his request, albeit that he has not expressly stated that he considers that the note of the telephone conversation does actually exist.
13. Accordingly, the Commissioner is satisfied that his investigation should correctly address the Council's application of section 17 of FOISA to the two aspects of Mr N's request noted at paragraph 8 above.

Whether the information requested by Mr N is held by the Council

14. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held.
15. In its response of 13 July 2007, the Council provided Mr N with a copy of an environmental inspection report which it considered fulfilled the terms of his request. The Council also informed Mr N that, in relation to the note of a telephone conversation which he had requested, the information was not held by it.
16. In its response to Mr N's request for review, the Council informed him that he had been supplied with a copy of the only environmental inspection report held by it in relation to the specified premises. The Council also informed Mr N that it did not hold a report with the date specified by him.
17. In order to determine whether the Council was correct to advise Mr N that it does not hold the requested information, the Commissioner must establish whether the Council holds (or held at the time of Mr N's request) information which would address his requests.

Environmental services report

18. In his request for review to the Council of 20 September 2007, Mr N stated that he had requested an environmental services report of a specific date and that the report released by the Council had a different date and was not the one that he was seeking. Mr N repeated this assertion in his application to the Commissioner.
19. In its submissions to the Commissioner, the Council stated that its position remained as set out in its response to Mr N's review request on 17 October 2007. The Council reiterated that it did not hold a report compiled on the date specified by Mr N.



20. The Council stated that the report which it had released had been compiled on a date slightly earlier than the date specified by Mr N. The report had been slightly updated a week later; however, this update was still prior to the date specified by Mr N.
21. The Council explained that it had carried out a number of searches to ascertain whether the specified information was held by it. It had conducted searches of its electronic recording system, personal diaries and the manual filing system.
22. The Council explained that its electronic system allowed officers to record the outcome of inspections. Its search criteria would be by premises and/or date of visit. The Council found no entry in the system under either of these criteria.
23. The Council also stated that it had checked the position with the officer who had carried out the earlier inspection, the report of which had been provided to Mr N. The Council explained that the officer had kept a manual diary and had been able to confirm that he had not carried out an inspection on the date specified by Mr N.
24. The Council also explained that its manual filing systems consist of paper files for each of the premises within Environmental Services' remit and that there were no relevant inspection reports for the date specified by Mr N.
25. The Council also provided the Commissioner with a copy of the relevant Environmental Health Officer's diary pages on and around the dates in question. These indicated that the officer had only attended the premises on the date of the inspection report supplied to Mr N and had not attended the premises on the date specified in Mr N's request.
26. In conclusion, the Council stated that it is of the view that the specific report requested by Mr N is not, and never has been, held by it.
27. Having considered the submissions made by the Council and Mr N, and on the basis of the searches and enquiries undertaken by the Council, the Commissioner is satisfied that the Council has carried out thorough and reasonable searches for any relevant information that would address this aspect of Mr N's request.

Note of telephone call

28. In its response to Mr N on 13 July 2007, the Council stated that the information was not held by it in terms of section 17 of FOISA. The Council's response referred to "the contents of the alleged telephone conversation of (date) between (Council officer) and (private solicitor)."
29. Mr N's request for review queried the use of the word "alleged" and asked whether the Council's position was that no such conversation had taken place.



30. In his application to the Commissioner, Mr N stated that the solicitor concerned had confirmed to Mr N that the conversation had taken place. Mr N also provided the Commissioner with a copy of the hand written notes compiled by the solicitor at the time of the phone conversation.
31. In its submissions to the Commissioner, the Council explained that it had spoken to the officer involved. The officer had stated that it was not their practice to take notes of telephone conversations.
32. The Council explained that it had carried out searches of the officer's manual records (planning records and diary) and electronic files on both the officer's own PC, including private folders and that of his secretary. The Council did not locate any relevant information.
33. The Council also stated that it had searched to ascertain whether it had any backup records for its electronic systems for the period around the date of the telephone conversation. However, the Council stated that its practice is to destroy these records after six months and consequently (as the telephone conversation took place more than six months ago), it does not hold any backup records from that period.
34. The Council also explained that the officer concerned is unable to recall now, or at the time of Mr N's initial request, whether the telephone call had actually taken place. The Council noted, however, that this does not mean that the telephone call never occurred, but just that the officer concerned does not recollect it.
35. Having considered the submissions made by the Council and Mr N, and following the searches and enquiries undertaken by the Council, the Commissioner is satisfied that the Council has carried out thorough and reasonable searches for any relevant information that would address this aspect of Mr N's request. The Commissioner notes that the telephone conversation in question took place a considerable time ago and it is unsurprising that the officer concerned does not recollect it taking place.

Conclusion on section 17

36. The Commissioner has concluded, for the reasons stated above, that the Council was correct in informing Mr N in terms of section 17 of FOISA that it did not hold the information which is the subject of this decision.

DECISION

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

The Commissioner finds that by correctly advising Mr N that it did not hold certain of the information held by him, the Council complied with Part 1 of FOISA, and particularly section 17(1).



Appeal

Should either Mr N 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
18 May 2009



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.

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.