

Decision Notice



Decision 062/2010 Mr F and West Dunbartonshire Council

Actions of specified individuals

Reference No: 201000141
Decision Date: 06 May 2010

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Summary

Mr F requested from West Dunbartonshire Council (the Council) information relating to the actions of certain specified individuals. The Council responded by providing Mr F with some of the information requested, while also giving him notice that it did not hold the remainder. Following a review, Mr F remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr F's request for information in accordance with Part 1 of FOISA, by providing all the information it held which fell within the scope of the request. Consequently, 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) 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 15 October 2009, Mr F wrote to the Council requesting the following information:
 - a. *A comprehensive account by [named individual] of his whereabouts and actions between 4pm and 8pm on 11th September 2006.*
 - b. *Comprehensive details of the [] patient that [named individual] interviewed immediately before he interviewed my wife [] that evening. You have already told me that you have [named individual]'s booking diary for that day. I wish the patient's name, contact details and actual and expected times that this interview started and finished.*
 - c. *Comprehensive details of all mobile phone calls that [named individual] or [named individual] made or received between 4pm and 8pm on 11th September 2006. I have already been given records of phone calls made from [named individual]'s extension at this time.*



2. The Council responded on 11 November 2009, by providing certain information in relation to part (a) of Mr F's request. With respect to parts (b) and (c), the Council gave notice under section 17(1) of FOISA that it did not hold the information requested.
3. On 15 November 2009, Mr F wrote to the Council requesting a review of its decision. At this point, the focus of request (b) was changed to details of a specific interview.
4. The Council notified Mr F of the outcome of its review on 14 December 2009. The Council upheld its decision that in relation to parts (b) and (c) of Mr F's request it did not hold the information requested. With respect to part (a) of the request, the Council stated that it had provided Mr F with all the information it held in relation to the original request made.
5. On 27 December 2009, Mr F 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 F 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. On 15 February 2010, the investigating officer 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. These focused in particular on the steps taken by the Council to identify and locate what relevant information it held.
8. The Council responded with its comments on 8 March 2010.

Commissioner's analysis and findings

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

Section 17 of FOISA (Notice that information is not held)

10. Section 17(1) of FOISA requires that where an authority receives a request for recorded information that it does not hold, it must give the applicant notice in writing to that effect.



11. In order to determine whether the Council dealt with Mr F's request correctly, the Commissioner must establish whether, at the time it received Mr F's request, the Council held any information which would fall within the scope of that request, in addition to that identified and provided in its response to Mr F.
12. In seeking to establish what information it held in relation to the request, the investigating officer asked the Council to consider both manual and electronic sources searched and to provide an explanation of the search methodology it used in arriving at its conclusions. In response, the Council provided an overview of the searches it had conducted to identify whether it held the information requested and also of the search methodology used.
13. In doing this, the Council confirmed that it had considered both manual and electronic sources and provided a description of these and the searches carried out in them. It also provided an overview of the contact made with one of the individuals named in the request with a view to establishing if that person held any additional information. It reiterated that it had no locus in relation to the matters raised in request (b).
14. The Council also provided details of the steps it had taken to establish whether it held records of the mobile phone calls referred to in part (c) of Mr F's request. The Council explained that although it had established it did not have any relevant logs or other records, it had approached its current mobile phone provider to check whether they retained copies of call records, with a view to ascertaining whether it would be possible to contact the previous provider for the information Mr F was looking for. The current provider confirmed that they only kept such records for one year: and as the records in question were three years old at the time of the request, the Council decided there was little likelihood of obtaining the relevant information from the previous provider and therefore that such an approach was not required. The Council further pointed out that the approach made to its mobile phone provider went beyond its obligations under FOISA, but was done with a view to assisting Mr F in his request.
15. Having considered the Council's submissions, the Commissioner is satisfied that it provided Mr F with all the information it held in relation to part (a) of his request (on a reasonable interpretation of that request as originally submitted) and also that it held no information in relation to parts (b) and (c). He acknowledges that the Council would have no locus in relation to the matters raised in part (b) and therefore could not reasonably be expected to hold that information. In all the circumstances, therefore, the Commissioner has concluded that the Council took all reasonable steps to identify what relevant information it held and was correct to give Mr F notice that it held no further information pertinent to his request.



DECISION

The Commissioner finds that West Dunbartonshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr F.

Appeal

Should either Mr F or West Dunbartonshire 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
06 May 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.

...

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.

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