

Decision Notice



Decision 079/2012 Mr Ian Bell and South Lanarkshire Council

Numbers attending sports facility

Reference No: 201200368
Decision Date: 25 April 2012

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Margaret Keyse

Acting Scottish Information Commissioner

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Summary

Mr Bell requested from South Lanarkshire Council (the Council) information relative to the numbers of groups and patrons attending a specific sports centre. The Council responded by stating that it did not hold the information requested. Following a review, Mr Bell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the Council held no information falling within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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.

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 21 October 2011, Mr Bell wrote to the Council requesting the following information:
 - The number of ‘groups’ of any description attending Hamilton Water Palace over either a financial or calendar year.
 - The number of patrons utilising the gym facility over the same period.
 - The number of patrons utilising the dance studio, again over the same period.



2. The Council responded on 23 December 2011. In terms of section 17(1) of FOISA, it informed Mr Bell that it did not hold the information requested. The Council explained that Hamilton Water Palace was operated by South Lanarkshire Leisure and Culture Limited (SLLC), a separate charitable trust, which was more likely to hold the information Mr Bell had requested. SLLC was not, however, subject to FOISA.
3. On 11 January 2012, Mr Bell wrote to the Council requesting a review of its decision. He believed the Council should hold information for the period prior to October 2010, when SLLC had been formed, noting also that SLLC reported to the Council and was in receipt of public funds.
4. The Council notified Mr Bell of the outcome of its review on 8 February 2012. The Council confirmed its earlier decision that it did not hold the information he had requested. It explained that even if SLLC were a Scottish public authority for the purposes of FOISA, it could not respond to the request on SLLC's behalf. However, it also confirmed that it had carried out searches to determine whether it held any information falling within the scope of the request, either because it had been provided with that information or because information from prior to 2004 (when SLLC's predecessor, South Lanarkshire Leisure, was formed) had been retained. The searches had failed to locate any information.
5. On 21 February 2012, Mr Bell, 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 Bell 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 4 April 2012, the investigating officer notified the Council in writing that an application had been received from Mr Bell, giving it an opportunity to comment 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 explain the steps it had taken to identify and locate the information Mr Bell had requested.
8. The Council responded on 23 April 2012, providing submissions in support of its position that the requested information was not held.
9. The relevant submissions received from both the Council and Mr Bell will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Bell and the Council and is satisfied that no matter of relevance has been overlooked.
11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
12. In his application to the Commissioner, Mr Bell submitted that the formation of a charitable trust, fully underwritten and reporting directly to the Council, should not result in it failing to be accountable to local residents or subject to FOISA. He described SLLC as having limited authority to manage the facility in question, being in a "submissive position" to the Council. The Council, in his view, remained in control of the facility.
13. While Mr Bell has raised other concerns regarding the operation of the facility in question, the Commissioner can only comment on whether the Council complied with the provisions of Part 1 of FOISA when dealing with Mr Bell's request.
14. The Commissioner has considered the relevant provisions of FOISA and also SLLC's most recent Annual Report and Accounts¹. SLLC is not designated as a Scottish public authority under either Schedule 1 or section 5 of FOISA. It does not fall within the definition of a "publicly owned company" contained in section 6 of FOISA. Consequently, it cannot be a Scottish public authority for the purposes of FOISA, whatever its operational relationship with the Council may be.
15. In the context of whether the information requested might be expected to be held by the Council, however, the Council explained the relationship between the two bodies. It confirmed that SLLC operated the majority of the facilities in its charge in its own right and not on behalf of the Council. The Council leased properties to SLLC and had a funding agreement with it, but there was no general agreement for the provision of services by SLLC to the Council. SLLC managed a few facilities on behalf of the Council, but these did not include Hamilton Water Palace.

¹ <http://www.slleisureandculture.co.uk/site/scripts/about.php>



16. The Council also explained (with details) that it had carried out specific searches and enquiries to confirm that it did not hold the information requested by Mr Bell. The Commissioner notes the steps taken by the Council in this connection and she is satisfied (taking account of the resources searched, the officials consulted and the reasons provided by the Council) that these were appropriate and adequate in the circumstances. She notes in particular that SLLC does not report to the Council in respect of the operation of individual facilities, or particular areas or activities within those facilities. In the circumstances, there would appear to be no reasonable expectation that the Council should hold the requested information (and, as the Council pointed out when responding to Mr Bell, it cannot be required under FOISA to respond on SLLC's behalf).
17. Having considered all relevant submissions and the terms and context of Mr Bell's request, the Commissioner accepts that it was reasonable in all the circumstances for the Council to conclude that it did not hold information which fell within the scope of his request. She is therefore satisfied that the Council was correct to give Mr Bell notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of that request.

DECISION

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

Appeal

Should either Mr Bell or South Lanarkshire 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
Acting Scottish Information Commissioner
25 April 2012



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.

...