

Decision Notice



Decision 089/2009 Michael McParlane and South Lanarkshire Council

Development and partnership arrangements for a nursery, Council visits, etc.

Reference No: 200900759
Decision Date: 28 July 2009

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr McParlane requested from South Lanarkshire Council (the Council) information relating to a development at, and visits to, a specified address in Hamilton. The Council responded by informing Mr McParlane that it held no such information. Following a review, as a consequence of which the Council provided some information, Mr McParlane remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr McParlane's request for information in accordance with Part 1 of FOISA by responding in terms of section 17(1) of FOISA that the requested information was not held. 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 24 February 2009, Mr McParlane wrote to the Council requesting the following information:
 - a. *Details of the viability, from the outset, of the developer's proposals for 6A Auchingramont Road, Hamilton... This should also include any and all "third party" information,*
 - b. *Details, including the registration mark of the vehicle driven by [named individual] on Fri 15 Jul 05, when he visited the address at 1 above,*
 - c. *Details, including the registration mark of the vehicle driven by [named individual] on Fri 15 Jul 05, when she also visited the address at 1 above,*



- d. *Details, from the outset, of the “partnership” between Council and the developer/proprietor at 1 above. This too should include any and all “third party” information, and*
 - e. *Details of how [named individual] appeared to know, during the course of what seems to me a rotten investigation, that a bystander was “known to the police”.*
2. On 5 March 2009, the Council wrote to Mr McParlane asking for clarification of his requests (i), (iv) and (v) as outlined above.
 3. The Council responded on 13 March 2009 in relation to requests (ii) and (iii) stating that the requested information was not held.
 4. On 14 March 2009, Mr McParlane wrote to the Council providing clarification of his requests (i), (iv) and (v). In particular, he clarified that the property in question was Cadzow Nursery, 8A Auchingramont Road, referred to “viability” in the context of the obtaining of planning permission for the Nursery and indicated that he was seeking information about the Council’s involvement in the venture.
 5. On 17 March 2009, Mr McParlane wrote to the Council requesting a review of its decision that no information was held in respect of requests (ii) and (iii).
 6. The Council responded on 2 April 2009 in relation to requests (i), (iv) and (v). It stated, with explanations, that nothing was held in respect of requests (i) and (v). In relation to request (iv) the Council explained that there were no details of a partnership “from the outset”, while informing Mr McParlane that its Education Resources had entered into a partnership agreement with Cadzow Nursery in August 2004. It understood that the Nursery had received grant funding through Lanarkshire Business Venture in early 2004.
 7. On 8 April 2009, Mr McParlane wrote to the Council requesting a review of its decision in relation to requests (i), (iv) and (v). He provided various reasons why he did not believe he had been provided with all the information he had requested and raised more specific questions about grant funding.
 8. The Council notified Mr McParlane of the outcome of its review relative to requests (ii) and (iii) on 17 April 2009, upholding its original response that the information was not held. On 11 May 2009 it notified Mr McParlane of the outcome of its review in respect of requests (i), (iv) and (v), in the case of the first and last of these upholding its original response that the information was not held. In relation to request (iv), the Council acknowledged that its original response had contained a regrettable error as to the source within the Council of information as to funding. It provided further information on funding provided to the Nursery while otherwise upholding its original response that no information was held.
 9. On 15 May 2009 Mr McParlane 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.



10. The application was validated by establishing that Mr McParlane 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

11. On 1 June 2009, the Council was notified in writing that an application had been received from Mr McParlane and was asked to provide the Commissioner with comments on it (as required by section 49(3)(a) of FOISA). The Council was asked to respond to specific questions and in particular to provide details of the searches carried out to locate any information falling within the scope of Mr McParlane's request. The Council's submissions are discussed in the Commissioner's analysis and findings section below.
12. Mr McParlane provided the Commissioner with copies of correspondence, some of it dating back to 2004, which provided background to his request.

Commissioner's analysis and findings

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

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

14. As outlined above, the Council intimated that it held no information falling within the scope of Mr McParlane's requests with the exception of the information provided (largely by way of explanation) as outlined above.
15. In order to determine whether the Council was correct to respond to Mr McParlane's request by stating that it did not hold the information he had requested, the Commissioner must satisfy himself as to whether the Council held the information requested at the time it received the request.



16. The Council started by advising that where in its view the requested information had related to one particular function of the Council only the records pertaining to that particular function had been searched for the purposes of that request. It understood request (i), as clarified by Mr McParlane, to relate to the planning application in respect of the Nursery. All paper files relating to the application had been searched and the matter discussed with the officers concerned. It confirmed that there was no requirement for an applicant to provide this information as part of the planning process, the main issue in planning terms being the acceptability of the use in the location and how that fitted with policy. In any event, the Council submitted that it had never held this information, regardless of whether it should or should not have been requested as part of the planning application. In the circumstances, the Commissioner accepts this submission.
17. In relation to requests (ii) and (iii), the Council reasserted that the information requested was not held and outlined to the Commissioner the searches undertaken to ascertain whether the information was held. The Commissioner accepts that the relevant searches were carried out and that these were adequate in the circumstances, and consequently is satisfied that the information requested was not held by the Council.
18. In relation to Mr McParlane's fourth request, the Council explained that, at the time of the review, Mr McParlane had qualified his original request by clarifying the matters that he wished to know about the grant funding. As a result, he had been supplied with any information held and informed that no further information was held by the Council. The Council detailed the searches carried out to locate any relevant information. Again, noting the nature of the request (even after clarification), the Commissioner is satisfied in the circumstances that adequate searches were carried out and that nothing further of relevance was held by the Council.
19. In relation to request (v), the Council confirmed that it had searched the relevant files but found no information relating to the comments alluded to by Mr McParlane. The individual in question could not recall making the remark. In the circumstances, the Commissioner would regard the steps taken to locate this information as appropriate.
20. Having considered all the submissions made by the Council, the Commissioner is satisfied that the Council carried out adequate searches to ascertain what information was held, and taking account of the information provided in response to his request for review, considers the Council was correct to respond to his requests in terms of section 17(1) of FOISA.



DECISION

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

The Commissioner does not require South Lanarkshire Council to take any action.

Appeal

Should either Mr McParlane 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
Head of Enforcement
28 July 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.

...