

# Decision Notice



Decision 103/2012 Mr Stuart Benzie and Aberdeenshire Council

Rationalisation of primary schools

Reference No: 201200919  
Decision Date: 29 June 2012

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Rosemary Agnew**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

Mr Stuart Benzie requested from Aberdeenshire Council (the Council) information regarding the rationalisation of primary schools in the Aberdeenshire area. The Council provided Mr Benzie with some information and disclosed further information in response to its request for review. Mr Benzie remained dissatisfied, believing that further relevant information was held, and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Benzie's request for information in accordance with Part 1 of FOISA, by disclosing all the information it held that fell within the scope of his request. She did not require the Council to take any action.

## Relevant statutory provisions

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

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

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1. On 12 September 2011, Mr Benzie made an information request to the Council through the Whatdotheyknow<sup>1</sup> website (the website), with reference to the following text within a report<sup>2</sup> considered by Council's Education, Learning and Leisure Committee at its meeting of 19 May 2011 (in point 2.4.2):

"It is suggested that any individual school operating below 66% capacity within a town whose primary schools overall are operating below 75% capacity should be carefully scrutinised in order to identify whether any meaningful merger proposals could be brought forward."

He asked the Council:

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<sup>1</sup> [www.whatdotheyknow.com/request/aberdeenshire\\_primary\\_school\\_mer](http://www.whatdotheyknow.com/request/aberdeenshire_primary_school_mer)

<sup>2</sup> [www.aberdeenshire.gov.uk/committees/files\\_meta/802572870061668E8025788E00322EB8/\(09\)%20School%20Estate%20Review%20Strategic%20Considerations.pdf](http://www.aberdeenshire.gov.uk/committees/files_meta/802572870061668E8025788E00322EB8/(09)%20School%20Estate%20Review%20Strategic%20Considerations.pdf)



“In order to avoid confusion could the Council provide a list of primary schools which fall into the definition of “within a town” providing in effect a list of schools for each town?”

2. The Council responded to this request on 3 October 2011 via the website. It advised Mr Benzie that the definition of a town was taken to be the 17 major settlements in Aberdeenshire which currently host an academy. The Council also provided Mr Benzie with a list of these 17 major settlements and the primary schools located within each of the towns.
3. Mr Benzie subsequently sought clarification as to whether this the definition of a town was included within the report to which his request referred, and indicated that it was his understanding that the lists of schools associated with each town constituted the schools to be grouped together for the purposes of merger consideration when a roll in a school drops below 66%. The Council responded by indicating that its definition of a town in terms of the settlements hosting an academy was not set out within the relevant report. It also clarified that the lists of schools given were simply those within the settlements, and not those which should be grouped together when rolls drop below 66%.
4. On 9 November 2011, Mr Benzie submitted a request for review of the Council's handling of his request, again via the website. Mr Benzie commented that he was seeking to clarify which schools were to be included together for review purposes when an individual school roll fell below 66%, and so the information provided did not meet his request. Mr Benzie also commented that the Council's definition of what is considered to be a town is not widely accepted.
5. The Council notified Mr Benzie via the website of the outcome of its review on 7 December 2011. The Council upheld its previous decision, advising Mr Benzie that it had provided him with all the information that it held and which fell within the scope of his request. To assist him further, the Council provided Mr Benzie with a link to a webpage<sup>3</sup> in which the current capacities and rolls for primary schools were documented and a list of primary schools and their projected roll.
6. On 6 May 2012, Mr Benzie emailed 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.
7. The application was validated by establishing that Mr Benzie 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.

<sup>3</sup> [http://www.aberdeenshire.gov.uk/parents/carers/information/school\\_roll.asp](http://www.aberdeenshire.gov.uk/parents/carers/information/school_roll.asp)



## Investigation

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8. On 22 May 2012, the Council was notified in writing that an application had been received from Mr Benzie. The case was then allocated to an investigating officer.
9. The investigating officer initially sought and obtained clarification from Mr Benzie regarding the information he wished to access from the Council.
10. The investigating officer subsequently 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. In particular, the Council was asked for background information regarding its primary school rationalisation programme and whether any further information relating to the groupings of primary schools for the purposes of considering merger proposals where a school roll fell below 66%, beyond that disclosed to Mr Benzie, was held by the Council.
11. The Council responded to the investigating officer's questions and provided detailed submissions to support its responses to Mr Benzie.
12. The relevant submissions received from both the Council and Mr Benzie will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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

### Information held by the Council

14. 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).



15. According to a reasonable, plain reading of Mr Benzie's information request, it seeks a list of primary schools falling within the definition of "within a town" in the context of the particular reference set out in paragraph 1 above. The Council's response provided such a list, based on the definition of town which it has adopted and explained to Mr Benzie. It noted that it considered a town to be a settlement which hosts an academy, and the primary schools within that town to be those associated with that academy. In addition, the Council has directed Mr Benzie to information confirming the current and projected roll of each school.
16. Having considered Mr Benzie's comments, it is clear that what he was intending his request to be for was a list of schools grouped to show which schools "within a town" would be grouped together for the purposes of considering whether schools should be merged. The Council's response did not provide such a list, and it has maintained that no such list of groupings is held.
17. The focus of this case has therefore been to establish whether the Council holds further information that would address the specific purpose of Mr Benzie's request, by identifying groupings of schools which would be considered to be "within a town" and so suitable for merger consideration where one of their rolls falls below 66%, and the roll across the group is collectively below 75%.
18. The Commissioner notes that Mr Benzie expressed dissatisfaction in his request for review with the Council's definition of a town in this context. As his request for information simply asked for a list of schools falling within the Council's definition of a town, and did not ask for further information about the basis of that definition, this matter will not be considered any further in the Commissioner's decision. The Commissioner's role is to determine only whether the Council acted in accordance with FOISA when handling Mr Benzie's information request, and whether it took reasonable steps to locate any relevant recorded information on the matters he has specified.
19. The Council has provided detailed background information about the proposal set out in paragraph 1. It highlighted that, in April 2011, the Council had approved two proposals for the merger of rural primary schools which would have resulted in the closure of two schools. At that time, the Council had an Interim Director of Education, Learning and Leisure in post prior to a new post-holder assuming the post in June 2011.
20. The Council explained that the paper referred to in Mr Benzie's requests had been tabled by the Interim Director of Education, Learning and Leisure on 19 May 2011 at the first meeting following the decision to close the two schools. The report was seeking approval in principle for several strategic parameters to be used to determine which schools might be candidates for future rationalisation. This included the proposal that any school with a school roll less than 66% within a town whose primary schools overall were operating below 75% capacity be carefully scrutinised to identify whether any meaningful merger proposals could be brought forward.



21. The Council emphasised that the report only sought approval in principle for the strategic parameters (including that of interest to Mr Benzie). It explained that these were consulted on over the summer of 2011, with the intention that a further report would be presented to the Council's Education, Learning and Leisure Committee meeting in October 2011, setting out the outcome of the consultation and identifying a number of schools which should be scrutinised in the context of the strategic parameters.
22. The Council went on to note that Mr Benzie's request was received on 12 September 2012, by which time he might have assumed that Council Officers had been working through the summer and that plans for submissions to the October meeting were well advanced.
23. It explained, however, that matters had moved on in the meantime. In particular, in the summer of 2011, the Government rejected the Council's plans to close two schools<sup>4</sup> and then set up the Commission on Rural Schools and imposed a moratorium on school closures for at least a year. The Council commented that these actions effectively nullified the Council's Education, Learning and Leisure Committee decision of May 2011. The Council also explained that when the new Director of Education, Leisure and Learning came into post in June 2011, she decided to take advantage of the moratorium to reconsider how the Council might rationalise its school estate. As a result of this, a completely new consultation process was agreed in August 2012.
24. Having set out this context and background information, the Council explained that, although it might have been the intention of Council officers to prepare the type of "hit list" of school groupings that Mr Benzie expected to be held, this was overtaken by events and never followed through. It stated that, accordingly, there was no such list of schools being considered for merger at the date of his request (or subsequently).
25. Having considered all relevant submissions and the terms and context of Mr Benzie's request, the Commissioner accepts that the Council does not hold any further information which falls within the scope of his request.
26. In reaching this conclusion, she has taken into consideration the fact that that the proposal referred to by Mr Benzie was a strategic one, which was never put into practice given developments that followed in the months after its approval by the Council's Education, Learning and Leisure Committee. She appreciates that Mr Benzie might have expected that, by the time of his request, the Council would have identified what that proposal would mean in practice, and for which groups of schools. However, she is satisfied by the Council's explanation as to why no such groupings were identified.
27. In the circumstances, the Commissioner considers that the information provided by the Council in response to Mr Benzie's request was the only information held by the Council which would address its terms. She finds that the Council complied with Part 1, and in particular section 1(1) of FOISA in responding to Mr Benzie's request.

<sup>4</sup> <http://www.scotland.gov.uk/Topics/Education/Schools/Buildings/changestoschoolestate/schoolsact>



## **DECISION**

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

## **Appeal**

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Should either Mr Benzie or Aberdeenshire 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**  
**29 June 2012**



## Appendix

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### 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.
- ...