

Decision Notice



Decision 123/2008 Mr R D Milne and Perth and Kinross Council

Inter-office memos, letters and emails relating to inspection

Reference No: 200800923

Decision Date: 29 September 2008

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Kevin Dunion

Scottish Information Commissioner

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Summary

Mr Milne requested from Perth and Kinross Council (the Council) the name of a Clerk of Works, details of an investigation and copies of inter-office memos, letters and emails, all relative to specific incidents. The Council responded by providing the name of the Clerk of Works and advised that it did not hold the remaining information. Following a review, Mr Milne remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the Council held no further information pertinent to Mr Milne's request for information and found that the Council had dealt with the request in accordance with Part 1 of FOISA.

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. Mr Milne had been in correspondence with the Council in relation to complaints regarding the condition of the tenement property in which he lived and in a letter dated 8 January 2008 he was informed that a Councillor had advised a Clerk of Works of the state of a path left by plasterers and of icicles reported on an outlet pipe. The letter concluded that the Clerk of Works intended to inspect the property that day.
2. On 29 January 2008, Mr Milne wrote to the Council requesting the name of the Clerk of Works together with a copy of "the substance of his investigation" and all inter-office memos, letters and emails relevant to the matter.
3. The Council responded on 18 February 2008, providing Mr Milne with the name of the Clerk of Works and his comments on what had taken place, but also giving notice in terms of section 17(1) of FOISA that no further relevant information was held.



4. On 29 March 2008, Mr Milne wrote to the Council requesting a review of its decision. In particular, Mr Milne drew the Council's attention to his belief that his request for information had been misinterpreted and that the information supplied was false.
5. The Council notified Mr Milne of the outcome of its review on 25 April 2008, maintaining reliance upon section 17(1) of FOISA in that no information was held. The Council did not accept that the request had been misinterpreted or that the information supplied was false.
6. On 22 June 2008, Mr Milne 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.
7. The application was validated by establishing that Mr Milne 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

8. On 23 July 2008, the Council was notified in writing that an application had been received from Mr Milne and given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). It was asked to respond to specific questions on the application. In particular, the Council was asked to justify its position that the information in question was not held.
9. The Council responded on 22 August 2008, outlining what steps had been taken to establish that no information was held.
10. In correspondence, Mr Milne commented upon various aspects of the content of the letters and other information he had received from the Council. However, it was explained that the Commissioner could only investigate whether the Council had dealt with his request in terms of Part 1 of FOISA (basically, whether it had taken reasonable steps to identify and provide such relevant information as it held).

Commissioner's analysis and findings

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



12. In his application to the Commissioner, Mr Milne stated that he was dissatisfied with the Council's response and that the Council had misrepresented his request and had supplied him with false information. While noting Mr Milne's points in this regard, the Commissioner has considered the content of the Council's responses to Mr Milne's request for information and request for review in the context of the request itself and the correspondence which led to it and can see no basis for concluding that the request was misrepresented or, for that matter, misinterpreted. It is not the function of the Commissioner to assess the accuracy of any information held by a Scottish public authority, and, in any event, Mr Milne's concern about false information appears to relate to the Clerk of Works' comments or (possibly) to other information supplied to him otherwise than in response to his information request. In this connection, the Commissioner's only concern is whether there is any discrepancy between the information supplied to Mr Milne and any relevant recorded information held by the Council.
13. In order to determine whether the Council was correct to give Mr Milne notice under section 17(1) of FOISA to the effect that the majority of the information requested was not held, the Commissioner must establish whether the Council holds (or held at the time of Mr Milne's request) information which would address his request.
14. The Council provided the Commissioner with details of the steps it took to answer Mr Milne's request for information, and, in particular, the steps taken to establish whether the information requested was actually held. The Council confirmed that although no recorded information was held, Mr Milne was supplied with the Clerk of Works' recollection of what had taken place. The Clerk of Works (or Senior Maintenance Inspector) had confirmed that no information was held and explained why this was the case. In the circumstances, the Commissioner is satisfied with this explanation.
15. Having considered all the submissions made by the Council and Mr Milne, the Commissioner is satisfied that the Council does not (and did not at the time of Mr Milne's request) hold recorded information falling within the terms of the request other than that already provided to Mr Milne.
16. The Commissioner is therefore satisfied that the Council correctly notified Mr Milne in terms of section 17(1) of FOISA that the information requested was not held. He does not require any action to be taken by the Council in response to this decision.

DECISION

The Commissioner finds that Perth and Kinross Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Milne, by giving him notice in terms of 17(1) of FOISA that it did not hold the information requested.



Appeal

Should either Mr Milne or Perth and Kinross 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 Investigations
29 September 2008



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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