

Decision Notice



Decision 142/2010 Mr John Breslin of the Sunday Post and Moray Council

Lost and stolen council property

Reference No: 201001395

Decision Date: 19 August 2010

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

John Breslin, a reporter with the Sunday Post (Mr Breslin) requested from Moray Council (the Council) details of property belonging to the Council being lost or stolen during the financial year 2009/10. The Council responded by indicating in accordance with section 17(1) of FOISA that it did not hold the information requested. Following a review, Mr Breslin remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that, by issuing a notice in terms of section 17 of FOISA stating that it did not hold the information requested, the Council had dealt with Mr Breslin's request for information in accordance with Part 1 of FOISA. 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) and (4) (General entitlement) and 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.

Background

1. On 3 July 2010, Mr Breslin wrote to the Council requesting the information relating to the number of items belonging to the Council that were reported as lost or stolen during financial year 2009/10, including details of what each item was and how much it cost.
2. The Council responded on 6 July 2010, notifying Mr Breslin in accordance with section 17 of FOISA that following a search of paper and electronic records it had established that it did not hold the information requested.



3. On 6 July 2010, Mr Breslin wrote to the Council requesting a review of its decision. In particular, Mr Breslin informed the Council that he had previously received information on the same subject from other Councils. He also explained that as Council property was purchased with public funds he believed that the Council had a duty to record incidents involving the loss or theft of Council property. He argued that the Council would require such information in any case to submit insurance claims.
4. The Council notified Mr Breslin of the outcome of its review on 8 July 2010. It upheld its earlier decision that it did not hold the requested information, and explained that it did not have a statutory duty to maintain such records, and not all local authorities have the same systems for recording such losses.
5. The Council also indicated that reports relating to incidents older than six months, if there had been any such incidents, may have been destroyed as the retention period for such reports, contained in the Council's records retention policy was six months. The Council also informed Mr Breslin that it was not insured for losses by theft, and the excess on its insurance policy meant any such losses would have to be met by the Council. The Council also confirmed that it had contacted all service managers who confirmed that they did not hold any records of recent losses.
6. On 8 July 2010, Mr Breslin 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 Breslin 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. The investigating officer subsequently contacted the Council on 16 July 2010, 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. The Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested. In particular, the Council was asked to explain the nature of the searches undertaken by it in arriving at the position that it did not hold any information falling within the scope of Mr Breslin's request.
9. The Council responded on 10 August 2010, confirming its position that it did not hold any information falling within the scope of Mr Breslin's request and providing an explanation of its records management procedures and the searches undertaken when researching the request. Further background information was provided in response to follow-up questions from the investigating officer.



10. The submissions made by both the Council and Mr Breslin, insofar as relevant, will be discussed further in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

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

Section 17 (Notice that information is not held)

12. Where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information.
13. In order to determine whether the Council dealt with Mr Breslin's request correctly, the Commissioner must be satisfied as to whether at the time it received his request, the Council held any information which would fall within the scope of the request.
14. The Council provided detailed submissions in response to the questions put by the investigating officer on this matter. The Council explained that, in accordance with its Financial Regulations, responsibility for the security of Council assets was devolved to individual chief officers, who also had the autonomy to deal with losses or thefts in the most appropriate manner such as reporting the matter to the police, submitting an insurance claim (where cover was in place) or providing a replacement from existing budgets.
15. It also advised on the searches which it had undertaken, and the consultations that had taken place with all sections and departments in order to identify if any information falling within the scope of Mr Breslin's request was held.
16. The Council explained that when a request for information was received, the Information Coordinator passed details of the request to FOI liaison officers in each of its six departments who had responsibility for researching and retrieving relevant information held by individual departments or specialist sections within a department. The information, if held, was passed to the Information Coordinator who had responsibility for compiling a response to the applicant. The Council confirmed that all FOI liaison officers, a total of 16, confirmed to the Information Coordinator that no information was held falling within the scope of Mr Breslin's request.
17. The Council also confirmed that when conducting its review the Communications Officer had re-contacted all FOI liaison officers to confirm the nature and result of their searches for the information and had also contacted other key personnel to confirm that no relevant information was held.



18. The Council further commented that it was not legally required to maintain lists of lost or stolen property and, given the very low instance of such events, senior Council officers had not identified an operational need to do so.
19. The investigating officer also asked the Council to outline the procedures for reporting the loss or theft of Council property. The Council confirmed that it did not have a formal policy or procedure for reporting such incidents, although employees were expected to notify their supervisor when a lack of equipment prevented them from carrying out their duties. The Council clarified that such reports were informal and there was no requirement to retain them as formal records.
20. The Council also rectified an error in its response to Mr Breslin's request for review, clarifying that the six month retention period, referred to in paragraph 5 above, related to ephemera, and any formal report submitted regarding the theft or loss of property would be retained for a longer period. The Council confirmed that no such reports were held by it falling within the scope of Mr Breslin's request.
21. Having considered all the submissions he has received, the Commissioner is satisfied that adequate steps have been taken by the Council to determine whether it held the information in question. The Commissioner accepts that there is no statutory requirement to maintain a list of lost or stolen Council property and that the Financial Regulations create the relevant responsibilities relating to the control and management of Council assets.
22. The Commissioner is satisfied that the information sought by Mr Breslin's information request was not held by the Council at the time it received Mr Breslin's information request. He is therefore satisfied that the Board was correct to have given Mr Breslin notice in terms of section 17(1) of FOISA. He has therefore concluded that the Board complied with Part 1 of FOISA in responding to Mr Breslin's request.

DECISION

The Commissioner finds that Moray Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr John Breslin of the Sunday Post.



Appeal

Should either Mr Breslin or the 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
19 August 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.
...
- (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.
...