

Decision Notice



Decision 173/2010 Mr David Cuthbert and Perth and Kinross Council

Community engagement exercise

Reference No: 201000496
Decision Date: 6 October 2010

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Scottish Information Commissioner

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Summary

Mr Cuthbert asked Perth and Kinross Council (the Council) to provide all documentation associated with the community engagement exercise carried out in and around Kinross during 2009. In response, the Council provided a substantial amount of information. Mr Cuthbert was not satisfied, believing that the Council was likely to hold other information covered by the terms of his request. Following a review, the Council provided him with some additional information. Mr Cuthbert remained dissatisfied and applied to the Commissioner for a decision.

During the Commissioner's investigation, some additional information was retrieved and provided to Mr Cuthbert.

The Commissioner found that the Council had failed to comply fully with regulation 5(1) and (2) of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with Mr Cuthbert's request. However, given the further searches carried out during the investigation and the outcome of these, the Commissioner did not require the Council to take any further action in relation to this matter.

Relevant statutory provisions and other sources

The Environmental Information (Scotland) Regulations (the EIRs) 5(1) and (2) (Duty to make available environmental information on request)

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 16 December 2009, Mr Cuthbert sent the Council the following request for information:

"I would like to see all notes, summaries, reports, letters, emails and other documents written, developed or drafted during and subsequent to the community engagement exercise (including the World Café) carried out by Perth and Kinross Council in and around Kinross during 2009."



2. The Council responded on 22 January 2010. It provided 3 zip files containing a substantial number of documents, including emails, letters, briefing notes, meeting notes and publicity material. The Council advised that it had dealt with Mr Cuthbert's request under the EIRs and that some information had been withheld under two exceptions in the EIRs (regulations 11 (Personal data) and 10(4)(d) (Material in the course of completion)).
3. On 23 January 2010, Mr Cuthbert requested a review of the Council's response. He did not seek a review of the decision to withhold information under the exceptions cited, but queried whether all information covered by his request had been provided. He listed several examples of information which he believed to be missing.
4. On 29 January 2010, the Council wrote to Mr Cuthbert to ask if he could provide any further details of the information he believed to be missing. Mr Cuthbert responded on the same day, providing additional details.
5. On 2 March 2010, the Council issued its review response to Mr Cuthbert, which addressed each of the queries raised in his request for review. The Council found that some of the information believed to be missing had, in fact, been provided with its initial response. In relation to other parts of Mr Cuthbert's complaint, the Council provided some additional information identified as falling within the scope of his request, and explained why it did not hold other information.
6. On 5 March 2010, Mr Cuthbert wrote to request a decision from the Commissioner. He believed that the Council had failed to identify and provide all information covered by his request, particularly in relation to one set of minutes and email correspondence. Mr Cuthbert raised concerns about the Council's deletion of information in relation to its responsibilities under Freedom of Information law.
7. The application was validated by establishing that Mr Cuthbert 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 allocated to an investigating officer.

Investigation

8. On 10 March 2010, the Council wrote to Mr Cuthbert to advise that it had discovered that 7 documents had been omitted from the information originally sent to him, as the result of technical errors. The Council provided the 7 files in question and apologised for its mistake.
9. On 22 March 2010, the investigating officer wrote to ask Mr Cuthbert whether, following the Council's letter of 10 March, he still required a decision from the Commissioner.



10. On 11 April 2010, Mr Cuthbert wrote to advise that although some parts of his application to the Commissioner were now satisfied, he still believed that the information supplied to him was incomplete. He provided a list of the Council officers and Councillors known to have been involved with the community engagement exercise, and pointed out that only 4 of these appeared to have any email records relating to the exercise.
11. On 16 April 2010, the investigating officer invited the Council to provide any comments it wished to make on Mr Cuthbert's application, as required by section 49(3)(a) of FOISA. The Council was also given a copy of Mr Cuthbert's list of Council officers, and was asked to confirm whether these officers' email accounts were included in the searches previously carried out in relation to Mr Cuthbert's request. The Council was asked to provide details of those searches.
12. On 14 May 2010, the Council advised that through further searches it had retrieved a significant number of additional emails which appeared to fall within the scope of Mr Cuthbert's request. This information was sent to Mr Cuthbert on 15 June 2010, after certain personal data had been redacted. The Council apologised for not identifying this information earlier.
13. On 28 June 2010, the investigating officer asked Mr Cuthbert whether he was now satisfied with the information provided. On 5 July 2010, Mr Cuthbert advised that he wished to challenge the redaction of personal information relating to himself, under regulation 11(2) of the EIRs. He also listed information which still appeared to be missing, and listed certain Council officers for whom no email correspondence had been supplied.
14. The Council was asked to comment on Mr Cuthbert's response (8 July 2010). The Council responded on 12 July 2010. It agreed to carry out some further searches, but also disputed that some of the "missing" information would fall within the scope of Mr Cuthbert's request. In relation to the information redacted under regulation 11(1) of the EIRs (i.e. Mr Cuthbert's own personal data), the Council agreed to provide Mr Cuthbert with another set of documents with this information restored. This was sent to Mr Cuthbert on 3 September 2010.
15. On 6 September 2010, the Council provided Mr Cuthbert with a small amount of information retrieved from searches carried out in relation to his email of 5 July 2010.
16. Following discussion with the investigating officer, Mr Cuthbert agreed that the case should now be brought to a conclusion and that the Commissioner should issue a Decision Notice.

Commissioner's analysis and findings

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



18. The Commissioner is satisfied that the Council has now carried out the searches required to retrieve all information covered by the terms of Mr Cuthbert's request.
19. The Commissioner finds that by failing to identify all relevant information falling within the scope of the request at the time of its response to Mr Cuthbert's request or his request for review, the Council failed to comply with regulations 5(1) and (2) of the EIRs. Regulation 5(1) requires a Scottish public authority that holds environmental information to make it available when requested by any applicant, while regulation 5(2)(a) states that this must be done as soon as possible and in any event no later than 20 working days after the date of receipt of the request. Regulation 5(2)(b) lists the regulations to which regulation 5(1) is subject.
20. The Council has accepted that the searches carried out in relation to Mr Cuthbert's request were not sufficiently thorough and that it failed to identify a quantity of information which fell within the scope of his request.
21. The Commissioner notes that the Council initially identified and provided a substantial amount of information in relation to Mr Cuthbert's request. However, he finds that the Council's approach failed to identify all information covered by that request. The Commissioner would remind the Council that Scottish public authorities must ensure that all information covered by the terms of an information request is identified and considered, in order for their response to comply with regulation 5(1) of the EIRs or (as appropriate) Part 1 of the Freedom of Information (Scotland) Act 2002.
22. The Commissioner believes that this is understood by the Council, as demonstrated during the investigation of this case. The Commissioner is satisfied that, by the end of the investigation, the Council had carried out searches which were sufficient to retrieve any relevant recorded information covered by the terms of Mr Cuthbert's request. He accepts that the Council does not hold any further information which falls within the scope of Mr Cuthbert's request.
23. This being so, and because Mr Cuthbert has now received the information to which he is entitled, the Commissioner does not require the Council to take any further action in relation to this matter.



DECISION

The Commissioner finds that Perth and Kinross Council (the Council) partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Cuthbert.

The Commissioner finds that the Council complied with regulation 5 by providing some information to Mr Cuthbert in response to his request and following his requirement for a review of its original decision.

However, the Commissioner finds that by failing to identify and provide certain information that fell within the scope of Mr Cuthbert's request, the Council breached regulations 5(1) and (2) of the EIRs.

As the Council has now identified and provided all information covered by the terms of Mr Cuthbert's request, the Commissioner does not require the Council to take any action in relation to this breach in response to this particular application.

Appeal

Should either Mr Cuthbert 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 Enforcement
6 October 2010



Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.
- (2) The duty under paragraph (1)-
 - (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and
 - (b) is subject to regulations 6 to 12.