

Decision Notice

Decision 239/2014: Mr N and Perth and Kinross Council

School Fund

Reference No: 201400695

Decision Date: 19 November 2014



Scottish Information
Commissioner

Summary

On 6 February 2013, Mr N asked Perth and Kinross Council (the Council) for information about the Breadalbane Secondary School Fund. This request was examined in Decision 257/2013 with the Commissioner requiring the Council to conduct adequate searches for parts of the request.

The Council conducted searches from which it identified further information not previously disclosed to Mr N. It released the information, but Mr N contended that the searches were deficient as he believed more information was held.

The Commissioner finds that the Council carried out proportionate searches, capable of identifying any further information it held, and that this information was given to Mr N.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 6 February 2013, Mr N made a request for information to the Council, in several parts, all relating to the Breadalbane Academy Secondary School fund. This decision notice covers only two parts of the request, for the following information:
 - details of discussions with accountants and auditors seeking to produce legal accounts; and
 - any other relevant documents connected to the fund.
2. Following an investigation by the Commissioner which resulted in Decision 257/2013, the Council carried out additional searches and released additional information to Mr N on 10 January 2014. It withheld some information under exemptions in FOISA.
3. On 31 January 2014, Mr N wrote to the Council requesting a review of its decision, on the basis that it had failed to disclose all the information he was seeking. He also challenged the Council's application of exemptions.
4. The Council notified Mr N of the outcome of its review on 26 February 2014. It adhered to its position that it held no further relevant information, but cited section 25 of FOISA in relation to audited accounts for the period 1 January 2009 to 31 July 2010 (as information Mr N could reasonably obtain other than by requesting it under FOISA). It also reviewed its application of exemptions.
5. On 22 March 2014, Mr N wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr N stated he was dissatisfied with the outcome of the Council's review because the Council failed to provide all the information he required. Specifically, he expressed his concern as to the adequacy of the searches carried out in response to Decision 257/2013.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr N made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 23 June 2014, the Council was notified in writing that Mr N had made a valid application. The case was then allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and, in particular, to provide details of the searches conducted.
9. Mr N did not challenge the Council's application of section 25 of FOISA in relation to some information. In any event, the audited accounts (to which the Council applied section 25) were referred to in a part of the request which is not the subject of this present decision and therefore cannot be considered further here.
10. Mr N also questioned the Council's application of section 38(1)(b) of FOISA, but only on the basis that this was contrary to Decision 257/2013. The Commissioner does not accept this contention (Decision 257/2013 only required the Council to carry out further searches, not necessarily to disclose everything so identified) and sees no basis for considering section 38(1)(b) further in this decision.

Commissioner's analysis and findings

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

Whether more information was held by the Council

12. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.
13. Where an application is made to the Commissioner on the basis that the applicant believes there to be further information held in addition to that identified and located by the authority, the Commissioner must satisfy herself that adequate steps have been taken by the authority to identify all the information relevant to the request (or, alternatively, be given a reasonable explanation as to why no further information is held). It is not sufficient for an authority simply to assert that the information is not held.
14. The Council explained in its submissions the resources searched (and why), who conducted the searches and what search terms and parameters were used. The Council submitted that no other possible location was known which might contain relevant information.
15. Having considered the submissions from the Council and from Mr N, the Commissioner is satisfied that the searches conducted by the Council following Decision 257/2014 were proportionate in the circumstances and would have been capable of identifying any further relevant information, if held. On the balance of probabilities, she is satisfied that the Council holds no further relevant information, in addition to that provided to Mr N already.

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 responding to the information request made by Mr N.

Appeal

Should either Mr N or Perth and Kinross Council wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement

19 November 2014

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.

...

(6) This section is subject to sections 2, 9, 12 and 14.

...

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