

Decision Notice



Decision 240/2011 Ms Donna Barlow and Glasgow City Council

Alteration to football pitches

Reference No: 201101671

Decision Date: 24 November 2011

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

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



Summary

Ms Barlow requested from Glasgow City Council (the Council) information as to when alterations had been made to specific football pitches. The Council responded by directing Ms Barlow to another agency. Following a review, as a result of which the Council stated that it did not hold the information, Ms Barlow remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation the Commissioner found that the Council had failed to deal with Ms Barlow's request for information in accordance with Part 1 of FOISA, by incorrectly stating, in terms of section 17 of FOISA, that it did not hold information falling within the scope of Ms Barlow's request. However, he was satisfied that the Council had, by the end of the investigation, identified all the information falling within the scope of the request, and that reasonable searches had been undertaken by the Council to identify the information held.

Given that the information was provided to Ms Barlow during the investigation, 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 18 April 2011, solicitors acting on behalf of Ms Barlow wrote to the Council and made a number of requests for information relating to Mount Vernon Park and the football pitches there, including confirmation of the date the football pitches were moved to their current location and orientation.
2. Subsequent references to correspondence to and from Ms Barlow should be read as including correspondence to and from her solicitors on her behalf.



3. The Council responded on 10 May 2011 and informed Ms Barlow that the orientation of the football pitches had been changed approximately three years previously. The Council referred Ms Barlow to Glasgow Life, who might be able to confirm the date when the pitches were first at the current location.
4. On 20 June 2011, Ms Barlow wrote to the Council requesting a review of its decision. She informed the Council that, having made enquiries with Glasgow Life, she had been informed that the work to move the pitches had been undertaken by the Council. She asked again to be provided with the exact date the works were undertaken.
5. The Council notified Ms Barlow of the outcome of its review on 28 June 2011. The Council confirmed that it did not hold any information falling within the scope of the request. The Council later informed Ms Barlow that the arrangements had been made verbally during a telephone conversation and again confirmed that no written information was held.
6. On 3 September 2011, Ms Barlow wrote to the Commissioner, stating that she 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 Ms Barlow 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 September 2011, the investigating officer notified the Council in writing that an application had been received from Ms Barlow, 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 to explain the steps it had taken to identify and locate the information Ms Barlow had requested.
9. The Council responded on 14 October 2011, and again on 23 November 2011, indicating that having carried out further searches it transpired that it did hold information falling within the scope of Ms Barlow's request (in that it held a record relating to the installation of the goalposts). The Council provided the information it held to Ms Barlow. The Council also provided submissions in support of its position that it did not hold any further information.
10. Ms Barlow confirmed receipt of the further information provided by the Council, but was not satisfied that this met her request. She expected further relevant information to be held.
11. The relevant submissions obtained from Ms Barlow and the Council will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

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

Information held by the Council

13. 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), 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). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
14. In her application to the Commissioner, Ms Barlow indicated that she did not accept the Council's contention that no information was held. Having been told that the arrangements had been made verbally in a telephone call, she believed that there should be some record of the fact that the verbal request had been made.
15. The Council advised that during the investigation it had carried out further searches of its records and retrieved certain relevant information. The Council accepted that the information should have been located at an earlier stage, explaining that a change of staff had led to unfamiliarity with the way in which details of historic jobs were recorded.
16. The Council advised that it did not hold any further information, in addition to that located and provided to Ms Barlow during the course of the investigation. Ms Barlow, however, still expected further information to be held.
17. Having considered all relevant submissions, the Commissioner accepts, on the balance of probabilities, that the Council carried out adequate searches for the information in the course of the investigation and that it does not hold any further information falling within the scope of Ms Barlow's request. Having considered the Council's submissions and the information located, the Commissioner does not consider it reasonable in the circumstances to expect that any further information would be held.
18. However, the Commissioner also finds that the Council failed to comply with Part 1 (and in particular section 1(1)) of FOISA, by incorrectly notifying Ms Barlow when dealing with her request that it did not hold the information requested.



DECISION

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Barlow. In particular, he finds that the Council incorrectly notified Ms Barlow that it did not hold the information she had requested.

Given that he is satisfied that during the investigation the Council provided Ms Barlow with any relevant information it held, the Commissioner does not require the Council to take any action.

Appeal

Should either Ms Barlow or Glasgow City 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
24 November 2011



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.

...