

Decision Notice

Decision 247/2014: Mr Thomas Meechan and East Dunbartonshire Council

Maintenance and complaints records pertaining to a specified address

Reference No: 201402013

Decision Date: 27 November 2014



Summary

On 6 February 2014, through his solicitors, Mr Meechan asked East Dunbartonshire Council (the Council) for information pertaining to a specified address. The Council told Mr Meechan it did not hold this information, and explained why. Following an investigation, the Commissioner accepted that the Council did not hold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 2014, solicitors acting on behalf of Mr Meechan wrote to the Council asking for the following information –
 - i) Documents (including, but not limited to, inspection logs, inspection diarised entries, reports of inspections) showing or tending to show all inspections undertaken on the grounds and garden of [specified address] during the period 1 July 2011 to 1 September 2012.
 - ii) Documents (including but not limited to, work orders, permits, reports, logs, invoices or similar) showing the nature and extent of any repair or other maintenance work undertaken on grounds and garden of [specified address] during the period 1 July 2011 to 1 September 2012.
 - iii) All documentation showing complaints made to the Council regarding the condition of the grounds and garden of [specified address].
 - iv) All documentation confirming the duties owed by tenants who are registered disabled.
2. Subsequent references to correspondence with Mr Meechan should be read as including correspondence with his solicitors acting on his behalf.
3. On receiving no response, Mr Meechan wrote to the Council on 2 May 2014, requesting a review in respect of its failure to respond.
4. Following an application to the Commissioner and Decision 149/2014, the Council notified Mr Meechan of the outcome of its review on 10 July 2014. It provided Mr Meechan with information based on the recollections of a Housing Officer (which, in any event, related to a period after that specified in the request). The Council stated that it did not carry out annual inspections of gardens and so did not hold any relevant information.
5. On 12 August 2014, Mr Meechan wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Meechan acknowledged that the Council did not carry out routine inspections but noted that his request also extended

to maintenance work and complaints. He expected relevant records to be held by the Council, noting that he had made complaints himself prior to 2013.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Meechan 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. The case was allocated to an investigating officer and, on 29 August 2014, the Council was notified in writing that Mr Meechan had made a valid application.
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 asked specific questions. In particular, the Council was reminded that Mr Meechan had asked for information about maintenance work and complaints, not just inspection records. It was asked to provide details of the searches it had carried out to identify and locate any information falling within the scope of the request.
9. The investigating officer also asked Mr Meechan for details of the complaints he had made. He could only recall complaints made by telephone and could not remember the dates. The Council confirmed (from personal recollections of staff) that contact with Mr Meechan had been via telephone calls (which it did not record) and visits to the address in question.

Commissioner's analysis and findings

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

Whether information held

11. 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.
12. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect. In this case, the Council advised Mr Meechan that it did not hold any information falling within the scope of his request.
13. The standard of proof in considering whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
14. The Commissioner notes the submissions from Mr Meechan, who believes that the Council should hold information relating to maintenance records and records of complaints pertaining to the specified address.
15. The Council submitted that it had involved its Housing, Local Neighbourhood Services and Legal Services departments in searching for any relevant information. In the course of the

review, it had also spoken to Mr Meechan's solicitors, with a view to clarifying what specific information was being sought.

16. In particular, the Council explained, the local Housing Officer's IBM Notes email system was searched, using both the address in question and also the names of the residents. A search of archived emails was also conducted. The paper Housing file for the address was also located and searched. It provided copies of emails relating to the searches.
17. The Council explained its archiving and retention policies. It submitted that the information sought by Mr Meechan, if held, would likely be located in the Housing file for the address in question, in a section relating to common housing repairs. Such information was routinely destroyed two years after the date of the last action.
18. The Commissioner acknowledges, therefore, that it is at least possible that information falling within the scope of Mr Meechan's request was destroyed before the request was received by the Council. She also notes the common understanding of both parties that matters falling within the scope of this request have been addressed verbally. The Council has acknowledged that it does not record telephone conversations.
19. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted Mr Meechan's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held and which fell within the scope of the request. She is satisfied (although she acknowledges that the review outcome could have made this clearer) that these steps addressed the full request and not simply that part relating to inspections.
20. On the balance of probabilities, therefore, the Commissioner is satisfied that the Council did not hold the information requested by Mr Meechan and was correct to give him notice to that effect, in terms of section 17(1) of FOISA.

Decision

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

Appeal

Should either Mr Meechan or the 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

27 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.

...

(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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info