



Scottish Information  
Commissioner

**Decision 047/2007 Mr J Thomson and Inverclyde Council**

*Engineer's structural report concerning a boundary wall*

**Applicant: Mr J Thomson**  
**Authority: Inverclyde Council**  
**Case No: 200600220**  
**Decision Date: 12 March 2007**

**Kevin Dunion**  
**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews  
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KY16 9DS



## **Decision 047/2007 Mr J Thomson and Inverclyde Council**

### ***Request for a copy of an engineer's structural report concerning Mr Thomson's boundary wall – information not held***

#### **Relevant Statutory Provisions and other Sources**

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Freedom of Information (Scotland) Act 2002: section 10(1) (Time for compliance), section 17 (Notice that information is not held), section 20(5) and 20(6) (Requirement for review of refusal etc.).

The full text of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

#### **Facts**

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Mr Thomson wrote to Inverclyde Council (the Council) requesting a copy of an engineer's report which concerned the rear grounds of his property, the rear wall and the adjacent street. The Council provided Mr Thomson with a report which had been created in December 1991 and concerned the street adjacent to his property.

Mr Thomson requested a review from the Council, stating that the report he had received was not the one he required. In Mr Thomson's letter he informed the Council that he required a survey/engineer's report dating from June 1994. In its response the Council informed Mr Thomson that it did not hold a survey report dating from June 1994 and that all relevant information concerning his request had been provided in the Council's earlier response.

Mr Thomson was dissatisfied with the outcome of the Council's review and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in concluding that the information requested by Mr Thomson was not held by the Council.



## Background

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1. Mr Thomson wrote to the Council on 23 February 2005, requesting a copy of the original engineer's report which concerned the rear grounds of his property, his garden wall and the adjacent street. In his letter Mr Thomson added that the 6-page report originated from the Structures Department in Paisley and that copies of the report had been sent to Inverclyde Design Department on several occasions.
2. The Council acknowledged receipt of Mr Thomson's request on 28 February 2005. In his letter the Managing Solicitor (Committees/Contracts) informed Mr Thomson that enquiries were being made about the report with the Head of Transportation and Roads Service and that a fuller response would follow.
3. On 4 April 2005, Mr Thomson wrote a reminder letter to the Council and asked to be advised of the Council's complaints procedure.
4. The Council acknowledged receipt of Mr Thomson's reminder letter on 21 April 2005. In its letter the Council apologised to Mr Thomson for not responding to him and stated that it would be in touch as soon as possible.
5. On 19 May 2005 the Council wrote to Mr Thomson in response to his letter of 23 February 2005. The Council provided Mr Thomson with a copy of a report that had been created by Strathclyde Regional Council in December 1991. The report concerned a retaining wall in the street which adjoined Mr Thomson's property. A memorandum which was dated 6 January 1992, from the Chief Engineer, New Works (Paisley), to the Area Engineer (Renfrew), was also provided to Mr Thomson. This set out the Chief Engineer's views and comments regarding the inspection of the retaining wall.
6. Mr Thomson wrote to the Council on 17 December 2005, requesting a review of its decision not to supply the information he had requested and referring to a report of June 1994.
7. On 20 January 2006, the Council responded to Mr Thomson's request for a review. In its letter the Council informed Mr Thomson that although it was under no obligation to respond to his request for review since the request was made outwith the timescale set out in section 20 of FOISA, it would on this occasion process Mr Thomson's request for a review.



8. The Council had carried out a review and informed Mr Thomson in its letter of 20 January 2006 that following several discussions with the relevant department it was satisfied that it did not hold a survey report dating from June 1994. The Council added that it was of the view that all relevant information concerning Mr Thomson's request was provided in its response of 19 May 2005.
9. Mr Thomson was dissatisfied with the outcome of the Council's review and applied to me for a decision on 24 January 2006. The case was then allocated to an investigating officer and Mr Thomson's application was validated by establishing that he had made a valid request for information to a Scottish public authority and had appealed to me only after asking the Council to review its response to his initial request.

## **The Investigation**

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10. The investigating officer wrote to the Council on 2 March 2006, giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was asked to provide its comments in terms of section 49(3)(a) of FOISA, along with supporting documentation for the purposes of the investigation.
11. The Council was asked to provide details of the steps it had taken in order to ascertain whether or not it held the information requested (i.e. the extent of any searches carried out and details of any data retention schedules that related to this type of information). The Council was also asked for details of any other organisation that was likely to hold such information.
12. On 13 April 2006 the Council contacted my Office by phone to explain that it was in the process of carrying out further searches of files which had been transferred to the Council from Strathclyde Regional Council at the time of the re-organisation of local authorities which had taken place in 1996.



13. On 5 June 2006 the Council wrote to my investigating officer to inform him that a document had been discovered which could be relevant to the investigation. The document was a copy of a report in a section of a legal file which had been inherited from Strathclyde Regional Council Legal Services. The report was not dated and referred to a different address from the one that Mr Thomson had identified. However, the report did appear to be relevant to Mr Thomson's request. Given its position in the file the Council suspected that it could be the report that Mr Thomson had referred to in his request for review. The Council added that, given the age of the report, it would be happy for the report to be made available to Mr Thomson. It was noted that a considerable number of hours had been spent searching the archived legal files and that the Council was certain that no other documentation existed in these files which fell within the scope of Mr Thomson's request.
14. On 9 June 2006, the Council sent Mr Thomson a copy of the undated report referred to in paragraph 13 above.
15. Mr Thomson contacted my Office on 14 June 2006, to state that he did not consider the report sent to him by the Council on 9 June to be the 1994 report he had requested. The investigation then centred on the adequacy of any searches that had been carried out by the Council in order to determine whether it held any more information which fell within the scope of Mr Thomson's request.

## **The Commissioner's Analysis and Findings**

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16. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Thomson and the Council and I am satisfied that no matter of relevance has been overlooked.
17. In its submissions to my Office, the Council's Head of Legal Services informed my investigating officer that one of the main difficulties in this case was that the preparation of the report which Mr Thomson referred to, if it ever existed, would have been carried out by Strathclyde Regional Council. At re-organisation in 1996, Strathclyde Regional Council appears to have disaggregated files for transfer to its successor authorities but also took the opportunity to dispose of files no longer considered current. The Council's Head of Legal Services stated that, to the best of her knowledge, there were no electronic databases transferred at reorganisation.



18. The Council's Transportation and Roads Service confirmed to the Head of Legal Services that they had manually searched the relevant files transferred to them. Following that confirmation, the Head of Legal Services searched the Council's legal files as she recalled that one of the Council's former employees had given advice regarding whether a report should be released following a request for the release of data under data protection legislation. It was through this search that the Council uncovered the undated report which it sent to Mr Thomson on 9 June 2006.
19. The Council thought it relevant to point out that Mr Thomson had considerable correspondence with Strathclyde Regional Council regarding the wall in question. That correspondence continued sporadically, for a few years, with Inverclyde Council post reorganisation. A few officers of the Council had some knowledge regarding this issue but most of that knowledge was unrecorded. Unfortunately, all of those officers had since left the Council's employment.
20. When it transpired that Mr Thomson was of the view that the undated report was not the one he required a further check was carried out by the Council's Transportation and Roads Service. The Acting Head of Service confirmed that he had personally checked through all of the documentation relevant to this case which had been transferred to the Council at re-organisation in 1996. The Council confirmed that it had released the only reports that could be located which might have been relevant to Mr Thomson's request and that it had checked through all of the relevant files where it believed such a report as that requested by Mr Thomson could be located.
21. Taking into account the Council's submission and the considerable efforts it has made to determine whether or not any further information is held which relates to Mr Thomson's request, I am satisfied that the Council has taken all reasonable steps to determine whether or not it holds the information requested. If neither of the reports which were supplied to Mr Thomson by the Council constituted the report that he required then, on the basis of the evidence provided and the extent of the searches carried out, I am satisfied that the report requested by Mr Thomson is not held by the Council.

### **Technical breach of FOISA**

22. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of a request for information to comply with that request.
23. In this instance the Council failed to respond to Mr Thomson's initial request for information within 20 working days. Mr Thomson submitted his initial request on 23 February 2005 and the Council's response was not issued until 19 May 2005, 58 working days after receipt of Mr Thomson's request. This was substantially in excess of the 20 working day timescale laid down by section 10(1) of FOISA.



24. In its submission to my Office the Council stated that the original request was not recognised as a request for information given that Mr Thomson had pursued a long correspondence with the Council and its predecessors in relation to the boundary wall in question. The request he submitted was the first piece of correspondence the Council had received from Mr Thomson following the introduction of FOISA.
25. The Council has provided me with assurances that processes and procedures are in place to deal with all freedom of information requests but in the case of Mr Thomson his correspondence had not been recognised as such due to human error which had been exacerbated by the long history of correspondence with this particular applicant. In the circumstances, I am satisfied with this explanation.
26. I was pleased, however, to note that the Council agreed to process Mr Thomson's request for review which had been submitted to the Council well outwith the 40 working day deadline for requesting a review as set out in section 20(5) of FOISA.

## Decision

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I find that Inverclyde Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in concluding that the information requested by Mr Thomson was not held by the Council and therefore was subject to section 17 of FOISA.

I find that the Council failed to comply with Part 1 of FOISA in failing to respond to Mr Thomson's initial request within the 20 working day period set out in section 10(1) of FOISA. I do not require any remedial action to be taken by the Council in respect of this breach.



## **Appeal**

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Should either Mr Thomson or Inverclyde Council wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**12 March 2007**





## APPENDIX

### Relevant Statutory Provisions

#### Freedom of Information (Scotland) Act 2002:

#### 10 Time for compliance

(1) ...a Scottish public authority receiving a request which requires it comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after –

(a) ...the receipt by the authority of the request;

#### 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.

(2) Subsection (1) is subject to section 19.

(3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.