



Scottish Information
Commissioner

**Decision 138/2007 Mr Ernest Smith and South
Lanarkshire Council**

*Request for information regarding the removal and replacement of
play equipment*

**Applicant: Mr Ernest Smith
Authority: South Lanarkshire Council
Case No: 200601497
Decision Date: 13 August 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 138/2007 Mr Ernest Smith and South Lanarkshire Council

Request for information regarding the removal and replacement of play equipment – information released by South Lanarkshire Council – after an investigation the Commissioner found that the Council had provided all information that was held on the matter.

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002: sections 1(1) (General entitlement).

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

Facts

Mr Smith requested all the information regarding the removal and replacement of play equipment in the estate where he lived which was held by South Lanarkshire Council (the Council). The Council withheld one document under section 36(2) of the Freedom of Information (Scotland) Act 2002 (FOISA) and withheld sections of other documents under section 38(1)(b) of FOISA and released all other information it held on the removal and replacement of the play equipment. Mr Smith was dissatisfied with this response and asked the Council to review its decision. The Council released further information it had previously withheld under section 36(2) of FOISA, but otherwise upheld its original decision to withhold sections of some of the documents disclosed on the grounds that these were exempt under section 38(1)(b) of FOISA. Mr Smith considered that the Council had not provided him with all of the information it held regarding the removal and replacement of the play equipment and asked the Commissioner to investigate this matter.

Following an investigation, the Commissioner found that the Council had dealt with Mr Smith's request for information in accordance with Part 1 of FOISA, and that it had provided all information that was held on the removal and replacement of the relevant play equipment.



Background

1. On 8 June 2006, Mr Smith wrote to the Council requesting all the information it held on the removal and replacement of the play equipment in the estate in which he lived. In his request Mr Smith asked 14 separate questions regarding the removal and replacement of the play equipment.
2. On 6 July 2006, the Council provided Mr Smith with a number of documents in response to his request for information. The Council withheld some information on the grounds that it was exempt from disclosure under the terms of section 36(2) of FOISA. Some information contained within documents disclosed was also withheld on the grounds that it was exempt under the terms of section 38 of FOISA.
3. On 11 July 2006, Mr Smith wrote to the Council requesting a review of its response. In particular, Mr Smith indicated that he believed that the Council had not provided him with all relevant information in response his request and identified questions that he considered were still unanswered.
4. On 16 August 2006, the Council responded to Mr Smith's request for review. The Council released information (copies of survey responses) it had withheld under section 36(2) of FOISA, but upheld its original decision to withhold sections of some of the released documents under section 38(1)(b) of FOISA. This exemption was also applied to personal information contained in the survey responses now disclosed.
5. On 5 October 2006, Mr Smith wrote to my Office, stating that he was dissatisfied with the outcome of the Council's review because he believed that he had not been supplied with all information held by the Council on the removal and replacement of the play equipment, and applying to me for a decision in terms of section 47(1) of FOISA.
6. Mr Smith's application for decision did not express dissatisfaction with the Council's application of the exemption in section 38(1)(b) to some sections of the documents supplied to him. Rather, he indicated that he expected the Council to hold a range of further information on the matter of the removal of the relevant play equipment.
7. The application was validated by establishing that Mr Smith had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.



8. On 1 November 2006, the Council was notified in writing that an application had been received from Mr Smith and was asked to provide my Office with specified items of information required for the purposes of the investigation. The Council responded on 6 December 2006 with the information requested and the case was then allocated to an investigating officer.

The Investigation

9. On 18 January 2007, the investigating officer emailed the Council to seek detailed submissions from the Council on the steps taken to locate the information that Mr Smith had requested, and to confirm whether the Council's position remained that all information relating to the removal and replacement of play equipment had been provided.
10. The Council responded on 2 February 2007 and confirmed that its position was that it had released all the information it held on the removal and replacement of the play equipment to Mr Smith. The only information that had been withheld was third party information under section 38(1)(b) of FOISA, which had been redacted from the released documents. The Council also confirmed that it carried out extensive searches of its paper records, IT system and checked verbally with colleagues for any further information it held on the removal and replacement of the play equipment.
11. In further communications, the Council confirmed that although all relevant information held at the time of Mr Smith's request had been disclosed to him, one job sheet had been completed regarding the removal and replacement of the play equipment after his request for information had been received . Although FOISA only requires a public authority to provide information in response to a request the information that is held at the time of the request, a copy of the job sheet was sent to Mr Smith by the Council on 11 April 2007.
12. In communications with Mr Smith, the investigating officer sought to determine what matters he believed to be outstanding and what further information he believed to be held by the Council with regard to the removal and replacement of the play equipment.



The Commissioner's Analysis and Findings

13. 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 Smith and the Council and I am satisfied that no matter of relevance has been overlooked.
14. In this decision, I must consider the matter raised in Mr Smith's application to my Office; whether the Council holds additional information regarding the removal and replacement of the play equipment that it has not released to him, other than sections within the released documents that were withheld by the Council under the terms of section 38(1)(b) of FOISA..
15. Under section 1(1) of FOISA a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority. However, the requirements under FOISA only extend to recorded information held by a Scottish public authority.
16. In its email to my Office, dated 2 February 2007, the Council stated that it had provided all recorded information it held on the removal and replacement of the play equipment to Mr Smith, except for sections of some documents which had been withheld under section 38(1)(b) of FOISA. The Council confirmed that in order to identify information held, it made searches of records held by those departments that would be involved in the removal and replacement of this equipment. In particular it had checked
 - verbally with employees
 - e-mails
 - the Council's IT system and
 - the relevant works files (paper) within the office.
17. One item of information that Mr Smith identified that he considered the Council should have held in relation to the removal and replacement of the play equipment was job sheets. At the time of Mr Smith's request, the Council did not hold job sheets: however, the Council confirmed that one job sheet had been completed subsequent to Mr Smith's request for information. The Council has since provided a copy of this job sheet to Mr Smith. Because this information was not held by the Council when Mr Smith's information request was first received, the Council has not breached part 1 of FOISA by failing to supply this in the first instance.



18. My remit as the Scottish Information Commissioner extends to the consideration of whether a public authority holds the information an applicant has requested. I cannot comment whether a public authority should have recorded more information about a particular event. Consequently in this instance, I cannot comment on whether the Council should hold further recorded information or the way in which it acted in the removal and replacement of the play equipment.
19. Taking into account the Council's submissions and the steps it has taken to determine whether or not additional information exists or is held by it, I am satisfied that the Council has provided all information that falls within the scope of Mr Smith's information request. I find that in doing so, it acted in accordance with Part 1 of FOISA.

Decision

I find that South Lanarkshire Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mr Smith's request.

I have found that the Council took appropriate steps to identify and provide all information that it held on the subject of the removal and replacement of the play equipment concerned (subject to the removal of information considered exempt under the terms of section 38(1)(b) of FOISA) and in so doing, it complied with the requirements of section 1(1) of FOISA.

Appeal

Should either Mr Smith or the 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 of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
23 August 2007



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.