

# Decision Notice



Decision 093/2009 Mr Thomas Gatley and Renfrewshire Council

Monitoring Officer's Report

Reference No: 200900569

Decision Date: 3 August 2009

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Kevin Dunion**

Scottish Information Commissioner

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



## Summary

Mr. Thomas Gatley (Mr Gatley) requested from Renfrewshire Council (the Council) a copy of all Monitoring Officer's Reports relating to a specific housing policy from 1995 to 1996 inclusive. In responding, the Council identified drafts of a Monitoring Officer's Report, but advised Mr Gatley that it could not locate the final version. Following a review, Mr Gatley remained dissatisfied that a finalised copy of this particular report had not been provided and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Gatley's request for information in accordance with Part 1 of FOISA, by providing him with a notice under section 17 of FOISA that it did not hold the information requested.

## Relevant statutory provisions and other sources

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is 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 21 January 2009, Mr Gatley wrote to the Council requesting that it provide a copy of all "Monitoring Reports" relating to a specific housing policy from 1995 to 1996 inclusive.
2. The Commissioner understands this request to relate to reports by the Council's Monitoring Officer. A Monitoring Officer is a statutory appointee whose role includes a duty to report on any proposal, decision or omission by a Local Authority, or any committees or officer(s) of the Local Authority, which they believe has contravened any enactments, rules of law, codes of practice or any maladministration or injustice as mentioned in the Local Government (Scotland) Act 1975. In what follows, the type of report requested by Mr Gatley will be referred to as a Monitoring Officer's Report.



3. The Council responded on 18 February 2009 stating that, having understood from a telephone discussion that Mr Gatley's information request was restricted to a report by a particular Council officer, it did not hold any Monitoring Officer's Reports authored by that officer during the specified period.
4. On 19 February 2009, Mr Gatley emailed the Council to advise that it had misunderstood his information request and that he was not looking for Monitoring Officer's Reports by this particular officer but for any Monitoring Officer's Reports regarding housing from 1995 -1996.
5. The Council responded to Mr Gatley on 20 February 2009 stating that it could not trace any Monitoring Officer's Reports written within the specified period, but advising that it had managed to locate two draft copies of a Monitoring Officer's Report from within that period, and an internal memorandum referring to this. The Council had also identified a letter referring to the Council having discussed the Monitoring Officer's Report at a meeting on 15 February 1996. The Council explained that, despite further investigations, it had been unable to identify a final version of the relevant report.
6. On 23 February 2009, Mr Gatley wrote to the Council requesting a review of its decision. In this email he also asked the Council for copies of the documents referred to in its previous response, and these were subsequently provided.
7. The Council notified Mr Gatley of the outcome of its review on 20 March 2009. In responding, the Council confirmed that it had been unable to locate the report identified in its response of 20 February 2009. Having provided all of the documents referred to in that response, the Council stated that it was unable to provide him with any further information in respect of the matter.
8. On 24 March 2009, Mr Gatley wrote to the Commissioner, stating that he 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. Mr Gatley specified that he was dissatisfied with the Council's failure to provide him with a finalised copy of the particular Monitoring Officer's Report for which drafts had been identified and provided.
9. The application was validated by establishing that Mr Gatley had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the public authority to review its response to that request. The case was then allocated to an investigating officer.



## Investigation

---

10. The investigating officer subsequently contacted the Council, 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 justify its position that it did not hold a finalised copy of the Monitoring Officer's Report requested by Mr Gatley, and to provide details of the searches it had carried out to determine whether this information was held. The Council was also asked to confirm that it was relying on section 17 of FOISA.
11. The Council responded to these points on 19 May 2009 and confirmed that it was relying on section 17 of FOISA.
12. Further information and clarification was sought from both the Council and Mr Gatley on matters arising during the course of the investigation. The investigating officer wrote to the Council asking it to carry out further particular searches around specifically dated Committee meeting minutes, arising from sight of the documents already provided to Mr Gatley. The Council carried out these additional searches, but submitted that no further relevant information could be located.
13. The investigating officer also asked the Council if the author of the Monitoring Officer was still in its employ and whether it would be feasible to ask him about a finalised version of the Monitoring Officer's Report. However, the Council responded that this person had left the employ of the Council a number of years ago and that pursuing him for comment at this stage would be excessive.
14. Mr Gatley also provided the investigating officer with supplementary documentation which he had received from the Council and which indicated that the Monitoring Officer's Report sought may have existed at some point in the past.

## Commissioner's analysis and findings

---

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

### Section 17 – Notice that information is not held

16. Section 17(1) of FOISA states that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that it does not hold the information.
17. In order to determine that the Council was correct to rely on section 17(1) of FOISA, stating that it did not hold the information Mr Gatley requested, the Commissioner must be satisfied that the Council did not, at the time of Mr Gatley's request, hold the information in question.



**Whether the information requested by Mr Gatley is held by the Council**

18. The Council submitted that it did not hold a finalised copy of the Monitoring Officer's Report which Mr Gatley sought. It submitted that it had searched extensively, both in paper files and in electronic files for the Monitoring Officer's Report and that these searches had involved staff in Housing & Property Services, Corporate Services and Education & Leisure Services (particularly libraries staff), solicitors, the Head of Legal Services, Committees Services officers, the Council Archivist, administrative officers and housing officers. A second search was also carried out of the archived minutes and agendas of the period in question and searches were also carried out in the miscellaneous and policy committees' minutes/agendas.
19. The Council explained that a file was identified in the Legal Services department which contained the drafts of the Monitoring Officer's Report and an indication that a Report was being prepared by a specific individual. Copies of all these documents had already been provided to Mr Gatley.
20. It was also submitted by the Council that it should be borne in mind that the information requested related to a period of 13-14 years prior to the date of the information request and that that fact, along with the fact that the Council underwent re-organisation in 1996, made it possible that documents may have been mislaid or destroyed.
21. At the request of the investigating officer, a third and final search was also carried out, but no further documents were found.
22. The Council reiterated that it had already released to Mr Gatley all of the documentation it could find in relation to the Monitoring Officer's Report.
23. From examining the documents already provided to Mr Gatley by the Council, the Commissioner concluded that these documents supply evidence of the existence of the following:
  - a. a version of the Monitoring Officer's Report drafted on 4 January 1996 (supplied to Mr Gatley).
  - b. a further version of the Monitoring Officer's Report drafted on 16 January 1996 (supplied to Mr Gatley).
  - c. a further version of the Monitoring Officer's Report being "dated 19 January [1996]" (referred to in an internal memo supplied to Mr Gatley).
  - d. a version of the Monitoring Officer's Report being noted at a Council meeting on 15 February 1996 (referred to in a letter disclosed to Mr Gatley, but unclear whether the version considered was one of those identified above or a fourth version).



24. In his submissions, Mr Gatley provided the investigating officer with a copy of the front page of a report from the Council's Director of Administration to the Housing Committee, dated 26 February 1996, which he asserted was the first page of the finalised version of the Monitoring Officer's Report he was seeking, the page having apparently been provided to a third party by the Council. There was, however, no clear evidence to indicate whether or not this page was indeed from a finalised version of the specific Monitoring Officer's Report.
25. Mr Gatley also asserted that draft copies of documents are not noted by councils; therefore there must have been a finalised copy of the Monitoring Officer's Report in order for it to have been noted at the Committee meeting of 15 February 1996.
26. However, the Commissioner, when he is considering the application of section 17(1) of FOISA, is not investigating whether the requested information ever existed, whether the public authority ever held it, or whether it was under an obligation to hold it. He is instead required to consider whether, as a matter of fact, the public authority held the information at the time of the applicant's request.
27. The Council has not denied that a finalised version of the Monitoring Officer's Report may have existed at some point in time. However, despite extensive searches being carried out, it could not be located. The Council detailed the searches carried out and the personnel involved, and the Commissioner accepts that reasonable efforts have been made to locate the Monitoring Officer's Report.
28. Having considered the submissions made by the Council and its explanation of the steps taken to ascertain that all relevant information has been supplied to Mr Gatley, the Commissioner is satisfied that the Council has carried out a thorough search for any relevant information, that it has already provided Mr Gatley with all the information it holds in relation to the Monitoring Officer's Report, and that, on balance of probabilities, there are no other documents held which would satisfy Mr Gatley's request.
29. The Commissioner accepts that the Council does not (and did not at the time of Mr Gatley's request) hold any other documentation which would fall within the scope of the request and therefore concludes that the Council was correct in informing Mr Gatley that it did not hold the requested information.
30. Therefore the Commissioner finds that the Council complied with Part 1 of FOISA in responding to Mr Gatley's request.

## DECISION

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

Decision 093/2009  
Mr Thomas Gatley  
and Renfrewshire Council



## **Appeal**

---

Should either Mr Gatley or Renfrewshire 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**  
**3 August 2009**



## 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.

##### 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.