

Decision Notice



Decision 121/2010 Mr Andrew Sharp and West Lothian Council

Information relating to Council funding

Reference No: 201000568
Decision Date: 14 July 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr Andrew Sharp requested from West Lothian Council (the Council) information concerning money set aside by the Leader of the Council for specified purposes. On receiving no response from the Council, Mr Sharp requested a review of the decision not to respond to his request. The Council then responded by advising Mr Sharp that budgetary decisions are taken by the full Council rather than the Leader of the Council.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Mr Sharp's request for information in accordance with Part 1 of FOISA. He found that the Council complied with Part 1 of FOISA by providing information in response to Mr Sharp's request. However, the Commissioner found that the Council had failed to respond to Mr Sharp's information request within the statutory timescale. As the Council will be undergoing a Good Practice assessment by the Commissioner's staff, on this occasion the Commissioner has not required the Council to take any remedial action in response to Mr Sharp's application.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 10(1) (Time for compliance)

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 9 February 2010, Mr Sharp emailed the Council requesting the following information:
"How much has P. Johnston "laid aside" for junkets, both home and abroad and employees' meals, celebrating success in the period 2010/11."
2. The Commissioner understands "P Johnston" to refer to Councillor Peter Johnston, the Leader of the Council.
3. As the Council had not responded to his request for information, Mr Sharp requested a review of its failure to respond on 10 March 2010.



4. The Council notified Mr Sharp of the outcome of its review (which in the circumstances was the provision of a response to the request of 9 February 2010) on 18 March 2010. The Council advised Mr Sharp that Councillor Johnston does not lay aside Council funding for any purpose, and that its budget is decided by the full Council. The Council directed Mr Sharp to the part of its website where information concerning the Council budget could be viewed.
5. On 31 March 2010, Mr Sharp 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.
6. The application was validated by establishing that Mr Sharp 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

7. 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 whether it wished to rely on the provisions of section 17 of FOISA (Notice that information is not held) or the exemption in section 25 of FOISA (Information otherwise accessible) in relation to the information requested by Mr Sharp.
8. The Council provided submissions in response, which are considered, where relevant, in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Sharp and the Council and is satisfied that no matter of relevance has been overlooked.
10. In his application to the Commissioner, Mr Sharp has expressed dissatisfaction with the Council's response to his request and has stated that the Council has not answered his specific question.



11. The Council's response to Mr Sharp's request for review advised him that Councillor Johnston does not lay aside Council funding for any purpose. The Council went on to explain that its budget is determined by the full Council. The Council also provided Mr Sharp with a link to the Committee information pages of its website where submission documents for its 2010/11 revenue budget could be viewed.
12. In its submissions to the Commissioner, the Council stated that it considered this was a full response to Mr Sharp's request. As such, the Council did not consider it was appropriate to respond to the request in terms of section 17 of FOISA (Notice that information is not held) or section 25 (Information otherwise accessible).
13. The Commissioner has considered the terms of Mr Sharp's request and the response provided by the Council. Given that Mr Sharp has specifically requested information concerning money laid aside by the Leader of the Council and, given the Council's explanation that its budget is determined by the full Council (as opposed to the Leader of the Council), the Commissioner is satisfied that the response provided by the Council on 18 March 2010 was correct and fulfilled the requirements of section 1(1) of FOISA.

Failure to comply with timescales in FOISA

14. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
15. The Council failed to respond to Mr Sharp's request within this timescale, and only responded once Mr Sharp had requested a review of its failure to respond.
16. The Commissioner therefore finds that the Council failed to respond to Mr Sharp's request for information of 9 February 2010 within the 20 working days allowed under section 10(1) of FOISA and thereby failed to comply with Part 1 of FOISA.
17. The Commissioner notes that the Council subsequently apologised to Mr Sharp for its failure to respond and provided a response to his request for review.
18. Although the Commissioner does not require the Council to take any remedial action in relation to the technical breach of FOISA identified in this decision notice, it should be noted that his staff will be carrying out an assessment of the Council's compliance with good practice under his Enforcement Strategy during the current financial year.



DECISION

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

The Commissioner finds that by providing information in response to Mr Sharp's request, the Council complied with section 1(1) of FOISA.

However, the Commissioner also finds that the Council failed to comply with Part 1 of FOISA by failing to respond to Ms Sharp's request for information within the timescales laid down by section 10(1) of FOISA. The Commissioner does not require the Council to take any action in respect of this breach in response to this particular application.

Appeal

Should either Mr Sharp 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
14 July 2010



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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

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