

Decision Notice



Decision 022/2011 David Smith and Dundee City Council

Programme of works

Reference No: 201000583

Decision Date: 04 February 2011

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Kevin Dunion

Scottish Information Commissioner

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Summary

Mr Smith requested from Dundee City Council (the Council) certain information pertaining to a specified programme of works. The Council responded by stating it did not hold the information he had requested. Following a review, Mr Smith remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the Council disclosed certain information, the Commissioner found that the Council had failed to identify information which could reasonably be considered to fall within the scope of Mr Smith's request and to deal with that information in accordance with Part 1 of FOISA. He required the Council to provide Mr Smith with a response to his request which complied with Part 1 of FOISA, in relation to the information it held.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (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 1 December 2009, Mr Smith wrote to the Council requesting certain information:

"Subject:- E.M.C. Programme at [specified street]"

With reference to the above programme, would you please supply the following information.

1. Dates when the work was carried out by the appropriate tradesmen, i.e., painters, plasterers, blacksmiths.
2. Materials used, Quantity and price.
3. Labour charges As per the appropriate trades.
4. Ceiling repair on second floor. By what means was the ceiling reached.



5. Full description of water testing of rainwater gutters and downpipes.”
2. The Council responded to Mr Smith’s request on 5 January 2010, stating that it did not hold records of the information he had requested.
3. On 29 January 2010, Mr Smith wrote to the Council requesting that it review his request.
4. The Council notified Mr Smith of the outcome of its review on 24 February 2010, upholding its earlier decision and indicating that (having contacted its Director of Housing) the reviewer was satisfied that the Council did not hold records of the information Mr Smith had requested. The Council also sent a further letter to Mr Smith dated 10 March 2010, the terms of which are identical to those of the letter of 24 February 2010.
5. On 15 March 2010 Mr Smith wrote to the Commissioner, stating that he was dissatisfied with the outcome of both 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 Smith 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. On 13 May 2010, the Council was notified in writing that an application had been received from Mr Smith and given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). In particular, the Council was asked to explain the steps taken to establish whether it held information which fell within the scope of Mr Smith’s request.
8. Following the Council’s initial response, further information and clarification was sought from the Council on a number of occasions. In the course of the correspondence, it became apparent that the Council had interpreted Mr Smith’s request as relating to his own property only. The Council provided the investigating officer with information held in respect of the programme which had included addresses at the street specified in Mr Smith’s requests. A copy of a standard procedure for water testing of rainwater gutters was identified in the course of the investigation and provided to Mr Smith.
9. The submissions received from both the Council and Mr Smith, insofar as relevant, will be considered fully in the Commissioner’s analysis and findings below.



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the information identified during the course of the investigation and the submissions made to him by both Mr Smith and the Council and is satisfied that no matter of relevance has been overlooked.

Information held by the Council

11. Where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information.
12. In order to determine whether the Council dealt with Mr Smith's request correctly, the Commissioner must be satisfied as to whether, at the time it received his request (see section 1(4) of FOISA), the Council held any information which would fall within the scope of the request.
13. The Council provided submissions in response to the questions put by the investigating officer on this matter. The Council originally explained that it did not keep records of the information requested by Mr Smith.
14. In his application to the Commissioner, Mr Smith questioned how the Council could manage to pay the Contractors (Dundee Contract Services) or a Council department without some means of breaking down labour charges and materials used, plus costs, as per normal business practice. He also faxed a copy of an "Advice Note" from the Council dated 29 September 2008, which identified his share of the cost of the relevant works.
15. As indicated above, it became apparent during the investigation that the Council had interpreted Mr Smith's request as relating to his own property only. It also became apparent that information relating to costs was held at the level of the programme including that property, which the Council acknowledged it could identify (while pointing out that work carried out under the programme was cyclical in nature and therefore could have been carried out over more than one period). From the submissions obtained from the Council, the Commissioner accepts that it would not hold information sufficiently specific to meet point 4 in Mr Smith's request. He is also satisfied, having considered those submissions and the terms of the request, that the information on water testing of rainwater gutters disclosed to Mr Smith in the course of the investigation was the only information held by the Council which could reasonably be expected to meet point 5 in Mr Smith's request.



16. Given the terms of the request, the Commissioner is satisfied that there was no reasonable basis for restricting Mr Smith's request to a particular property. While the request specifies a particular street, and the programme of works in question covered a number of streets including that specified, the Commissioner does not believe it would have been reasonable in this case to expect the applicant to have known (and as a result specified) the precise extent of the programme. He identified a programme by reference to a particular street, from which the Commissioner considers that it would have been appropriate to conclude that he was interested in the programme which included that street. He did not refer to a specific property and in the circumstances the Commissioner can see no reasonable basis for restricting the scope of the request to any particular property in the named street, even if Mr Smith could be considered to be more directly interested in that property than in others.
17. In relation to the programme as a whole, the Council advised that tradesmen involved in works of this kind recorded the hours worked each day on a specified programme, but not linked to specific operations or addresses. The hours would be summed up by trade for the programme, to form a monthly valuation submitted to the Council's Architectural Services section. This monthly valuation would also incorporate the cost of materials purchased against the project, but again these would not be recorded against individual properties.
18. The Council was asked to provide the investigating officer with information it held relating to the programme referred to in Mr Smith's request, including the monthly valuations referred to in the previous paragraph. Following further discussions, this was supplied.
19. Having examined the information provided by the Council, it is clear to the Commissioner that a substantial proportion relates to the programme specified in Mr Smith's request. From that information, however, the Commissioner takes the view that only the monthly valuation sheets referred to in paragraph 17 above, in relating to the cost of work done by particular trades and the cost of materials used for that work, contain information falling within the scope of the first three points in Mr Smith's request. Having found that this information was held, the Commissioner must find that the Council was not entitled to give Mr Smith notice in terms of section 17(1) of FOISA. He also finds that in failing to deal with this information in accordance with Part 1 of FOISA, the Council breached section 1 of FOISA: he now requires the Council to deal with the information in accordance with Part 1, that is by giving Mr Smith the information (either free of charge or for a fee charged in accordance with section 9 of FOISA), or by refusing to do so under an exemption in Part 2 of FOISA or in terms of either section 12 (excessive cost of compliance) or 14 (vexatious or repeated requests).



DECISION

The Commissioner finds that Dundee City Council (the Council) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Smith. He considers that it held information falling within the scope of Mr Smith's request and therefore was not entitled to respond to the request by giving him notice in terms of section 17(1) of FOISA.

The Commissioner therefore requires the Council to respond to Mr Smith's request (in relation to the information it holds which falls within the scope of the request, as specified in paragraph 19 of this decision) in accordance with Part 1 of FOISA, that is in one of the ways specified in paragraph 19 of this decision. The Commissioner requires the Council to take and complete this action by 22 March 2011.

Appeal

Should either Mr Smith or Dundee City 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
04 February 2011



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.

...

- (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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

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.

...