

Decision Notice



Decision 089/2012 Ms Fiona Townsley and Perth and Kinross Council

Information relating to a caravan site

Reference No: 201101469
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Summary

Ms Fiona Townsley requested from Perth and Kinross Council (the Council) a range of information relating to Double Dykes caravan site. The Council disclosed some information, and gave notice that it did not hold some of the information and that other information was exempt from disclosure under section 38(1)(b) of the Freedom of Information (Scotland) 2002 (FOISA). Following a review of its handling of this request, the Council upheld its decision in full.

Within her request for review concerning the first request, Ms Townsley made further requests for other information relating to the caravan site. The Council provided information for one part of this request, but notified her that it considered it was not obliged to respond to the other parts of this request because they were vexatious requests in terms of section 14(1) of FOISA. This decision was also upheld upon review. Following this, Ms Townsley applied to the Commissioner for a decision in connection with both of her requests for information.

Following an investigation, the Commissioner found, in relation to the first request, that the Council had correctly notified Ms Townsley that it did not hold some of the requested information. However, she found that the Council had breached Part 1 of FOISA by incorrectly applying the exemption in section 38(1)(b) to the information that had been withheld, and by failing to provide reasonable advice and assistance in line with the duty in section 15(1) of FOISA. The Commissioner required the Council to disclose the withheld information, and to provide certain advice and assistance to Ms Townsley to rectify these breaches.

In relation to the second request, the Commissioner found that the Council had dealt with Ms Townsley's request for information in accordance with Part 1 of FOISA, having concluded that the Council was entitled to refuse the relevant parts in terms of section 14(1) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(a) and (2)(e)(ii) (Effect of exemptions); 3(2)(a)(i) (Scottish public authorities); 14(1) (Vexatious or repeated requests); 15 (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 38(1)(b), (2)(a)(i) and (b) and (5) (definitions of "data protection principles", "data subject" and "personal data") (Personal information)

Data Protection Act 1998 (the DPA) section 1(1) (definition of "personal data") (Basic interpretative provisions); Part 1 of Schedule 1 (The data protection principles – the first data protection principle) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data – condition 6)



Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data recital 26

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Appendix 1 forms part of this decision.

Background

First information request

1. On 12 April 2011, Ms Townsley wrote to the Council requesting a range of information regarding the Double Dykes caravan site. Her letter included a number of requests for information which were organised into three parts. These are reproduced in full (subject to minor modifications, which do not affect the substance of the requests) in Appendix 2 to this decision. Appendix 2 forms part of this decision.
2. The Council responded on 18 May 2011. It notified Ms Townsley (in terms of section 17(1) of FOISA) that it did not hold the information requested in Parts 1 and 2 of her request, and in questions 2, 7, 7a, 8, 8a, 9 and 9a within Part 3. In response to Part 1, the Council indicated that the relevant information was the property of the Double Dykes Tenants Association. In response to the question in Part 2 (“what is the Council going to do about doubling up on certain pitches?”), the Council explained that it did not hold any recorded information, but tenants are generally reminded verbally of their responsibilities in relation to this matter amongst others.
3. Responding to the remaining questions within Part 3, the Council disclosed information in response to questions 1, 3, 4, 5, 6, 8c and 9c. The Council withheld the information (relating to numbers of complaints) sought by questions 7b, 7c, 8b and 9b under section 38(1)(b) of FOISA, on the grounds that the information was personal data of third parties, disclosure of which would disclose the first data protection principle. It indicated that the number in each case was less than five. In response to questions 10 and 11, the Council provided Ms Townsley with a webpage address for the information and advised her that the information was otherwise accessible and so exempt from disclosure under section 25(1) of FOISA.
4. On 4 June 2011, Ms Townsley wrote to the Council requesting a review of its decision in relation Parts 1 and 2 of her request (in response to which the Council had indicated that it did not hold any information was) and in relation to questions 7 through to 9c (in response to which the Council had provided some information, withheld some information, and indicated that some was not held).



5. The Council advised Ms Townsley on 29 June 2011 that her review request in relation to Part 2 was not a valid request for review and would be treated as a new request for information. On that particular point, Ms Townsley had commented that doubling up on pitches was a breach of the tenancy agreement and verbal reminders were being ignored, and asked what action the Council intended to take to enforce the tenancy agreement. This point is addressed further in this decision in the consideration of the second information request below.
6. The Council notified Ms Townsley of the outcome of its review on 27 July 2011. It upheld its previous decision in response to the questions in Part 1 and questions 7 through 9c of Part 3 of Ms Townsley's request without amendment.

Second information request

7. Ms Townsley's request for review dated 4 June 2011 also included a number of new requests for information, which are set out in full in Appendix 2 of the decision. Since they were made in the context of the request for review in relation to some parts of the first request, these are set out under the headings from that request to which they relate.
8. The Council responded to the second request on 30 June 2011. It provided a copy of the site accounts for 2010-11 in response to question 9, but notified Ms Townsley that it considered the remaining requests to be vexatious in terms of section 14(1) of FOISA, and that it was therefore not obliged to comply with the request.
9. The Council explained in relation to questions 1 to 5 that, having examined its responses to previous information requests, it had concluded that all relevant information had already been disclosed, and there was no additional relevant information that the Council could provide. In relation to questions 6 to 8, 10 and 11, the Council commented that it understood that the subjects within these questions had already been thoroughly addressed within the responses to previous requests and also within the Council's complaints procedure.
10. On 1 July 2011, Ms Townsley wrote to the Council requesting a review of its decision to treat all parts of her second information request, other than question 9, as vexatious.
11. The Council notified Ms Townsley of the outcome of its review on 27 July 2011. It upheld without amendment its previous decision that all parts of the second request other than question 9 were vexatious.
12. On 4 August 2011, Ms Townsley wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's reviews in relation to both of her requests and applying to the Commissioner for decisions in terms of section 47(1) of FOISA.
13. The application was validated by establishing that Ms Townsley had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to the requests. The case was then allocated to an investigating officer.



Investigation

14. The investigating officer initially contacted Ms Townsley to check and confirm the scope of her application to the Commissioner. It was confirmed that Ms Townsley required the Commissioner to come to a decision on the following parts of her requests:
 - a. First Request:
 - Part 1 — Questions 1 to 4
 - Part 3 — Questions 7 to 9c.
 - b. Second Request: questions 1 to 8, 10 and 11
15. On 13 September 2011, the Council was notified in writing that an application had been received from Ms Townsley. The Council was asked to supply any information withheld from Ms Townsley. It was also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
16. The Council responded with submissions addressing each of the requests and issues under consideration in this case.
17. During the investigation, Ms Townsley was also invited to comment on the matters to be considered in the case.
18. The submissions received from both parties are summarised (where relevant) in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

19. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Ms Townsley and the Council and is satisfied that no matter of relevance has been overlooked.

First information request - information not held

20. The Council responded to a number of the questions in Mrs Townsley's first information request by notifying her that it did not hold the relevant information.
21. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received.



22. Section 3(2)(a)(i) of FOISA states that information is held for the purposes of FOISA if it is held by a public authority otherwise than on behalf of another person.
23. Where a Scottish public authority receives a request for information that it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant that it does not hold the information. It is appropriate to give such a notice in cases where either the requested information is simply not held, or where the information is held on behalf of another person, and so is not held for the purposes of FOISA.
24. In order to determine whether the Council dealt with these parts of Ms Townsley's request correctly, the Commissioner must be satisfied as to whether, at the time it received her request, it held (in its own right, and not on behalf of another person or organisation) any information which would address these requests. The Commissioner has considered this question in relation to Parts 1 and 3 of this request in turn below.

Part 1 – information relating to a Tenants Association meeting

25. In Part 1 of her first request, Mr Townsley requested:
Regarding the minutes of the 4 November 2010:
 - 1 4.3 What is this section referring to, the child protection issues?
 - 2 5.0 – can I have a copy of the plans for the community garden area, and I would also like to know if there is going to be a place where the children from the portacabin can go outside in summer time to play or have lessons in the community garden?
 - 3 5.1 — what happened to the Christmas tree [...] How much money was spent on the Christmas tree, lights and decorations and where did this funding come from?
 - 4 Can I also have a copy of the accounts for Double Dykes tenants association?
26. In response, the Council advised Ms Townsley that the information was the property of the Double Dykes Tenants' Association (the Tenants Association) and that the Council did not hold this information.
27. During the investigation, the Council clarified that it simply did not hold the information requested in questions 1, 2 and 3. It explained that it did physically hold the accounts requested in question 4, but that it held this information on behalf of the Tenants Association, and so it was not held by the Council for the purposes of FOISA.
28. The Council explained that the Tenants Association is an independent tenants' group supported by the Perth & Kinross Tenants' and Residents' Foundation and by the Council under the terms of the Council's Tenant Participation Strategy. It noted that the Chair of the Tenants' and Residents' Foundation and two members of Council staff attend meetings of the Tenants Association. The Council advised that the Tenants Association is responsible for its own accounts and meetings and, although notes of the meetings are taken and circulated by one of the Council officers in attendance, the Tenants Association is responsible for the contents.



29. The Council recognised that it held the minutes referred to in Ms Townsley's request, but maintained that the questions Ms Townsley raised concerned the activities of the tenants and the Tenants Association rather than activities of the Council. It explained that, although one of the regular Council attendees takes notes of the meeting, once circulated, their notes are destroyed.
30. The investigating officer requested, and the Council conducted, further searches for the information sought in questions 1, 2 and 3. In response, the Council reported that the employees who attended the meeting had thoroughly searched both their electronic and paper files, but did not identify any information that would address these parts of Ms Townsley's request.
31. The Council also commented that, while it held a copy of the accounts requested in question 4, and a Council officer was assisting the Tenant's Association with its finances, the accounts were the responsibility of the Tenants Association. The Council considered that it held them solely on behalf of the Tenants Association.
32. The Commissioner is satisfied with the submissions provided by the Council of the searches it has undertaken for the information sought in questions 1 to 3. The Commissioner is satisfied that these searches were adequate, and that no recorded information which would address the questions in Ms Townsley's request has been located.
33. The Commissioner has considered the nature of the Council's involvement in the Tenants Association meeting, and the fact that the Council provides support, but does not have any direct influence over, the meetings or actions of the Tenants' Association. She has also had regard to the subject matter of Ms Townsley's questions, noting that while these topics might have been discussed at the meeting, the Council's limited role means that it would not be expected that it would record or hold further details in relation to the matters or activities discussed. In all the circumstances, the Commissioner is satisfied that the Council does not hold (in the simple sense) – and did not at the time when it received Ms Townsley's request – the information sought in questions 1, 2 and 3.
34. Regarding the accounts sought in question 4, the Commissioner recognises that Council does physically hold the information, and also that the Council provides assistance to the Tenants Association with respect to its finances. However, she also notes that the Tenants Association is distinct from the Council, and is responsible for the accounts under consideration.
35. Having considered the facts in this case the Commissioner is satisfied that the accounts requested by Ms Townsley are held on behalf of the Tenants' Association and not in the Council's own right. In the circumstances, given the terms of section 3(2)(a)(i) of FOISA, the Commissioner finds that Council does not hold this information for the purposes of FOISA.
36. Therefore, the Commissioner has concluded that the Council was correct to notify Ms Townsley in terms of section 17 of FOISA that it did not hold the information sought in Part 1 (and each of questions 1 – 4) of her first information request.



Part 3 – complaints

37. Within part 3 of her first request, Ms Townsley made a series of requests about numbers of complaints received. In response to the requests set out below, the Council advised Ms Townsley that the information was not held by the Council because it does not record verbal complaints:
- 7 How many tenants over the last five years have made complaints to the council regarding site management verbally?
 - 7a Relating to question 7 how many complaints have there been in total?
 - 8 How many tenants over the last five years have made complaints to the council regarding site conditions verbally? i.e. litter, roads, grass areas, chalets, pitches, drainage.
 - 8a Relating to the question 8 how many complaints have there been in total?
 - 9 How many tenants over the last five years have made complaints to the Council regarding anti-social behaviour verbally?
 - 9a Relating to the question 9 how many complaints have there been in total?
38. In relation to these requests, the Council explained during the investigation that it had no record of verbal complaints made by residents of Double Dykes caravan site made prior to 2010. However, following additional searches, it identified that the manager at the site had kept a daily log of events on the caravan site from April 2010, which was provided to the investigating officer. This activity log included details of most verbal complaints made by the tenants to the site manager. The Council advised that if it was clear that the tenant did not want the complaint treated officially it would not be recorded.
39. The Council noted that, within this log, complaints were recorded as descriptions giving the gist of what was said, rather than giving any systematic description or categorisation. The Council advised that it had undertaken an analysis of the verbal complaints recorded within the activity log from April 2010 to October 2011, and provided the investigating officer with this summary. The summary was in the form of a table which had been divided up into monthly totals and categorised under a number of headings. Those categories did not match those set out in Ms Townsley's request (site management, site conditions and anti-social behaviour).
40. Although the Council confirmed that it held some information about verbal complaints, it still maintained that it did not hold the information Ms Townsley sought, as it had been categorised differently from that requested.
41. The Commissioner has considered the Council's submissions and, in particular, whether the information identified during the investigation would meet the terms of Ms Townsley's information request. She has concluded that it would not, firstly, because the fact that the log started only in April 2010 meant that it would not provide the number of verbal complaints, or the total number of complaints including verbal complaints, on the relevant subjects over a five year period.



42. However, if the information contained in the log would allow the number of verbal complaints received in each of the relevant categories over a shorter period, then it may be that the information was held nonetheless, but only across a shorter period.
43. Having regard to that information, the Commissioner does not consider that its content allows the number of verbal complaints on the subjects specified by Ms Townsley to be established for the period from April 2010 onwards. This is because the narrative description of the matters raised does not expressly indicate whether either the person making any complaint or the manager recording them considered the complaint to relate to one or more of the three categories specified in Mrs Townsley's request. Given the specific text recorded, the Commissioner does not consider any such classification could be made at a later date.
44. The Commissioner is therefore satisfied that the log identified during the investigation does not contain the information requested by Ms Townsley regarding the number of verbal complaints made over a five year period or in total concerning site management, site conditions, and anti-social behaviour.
45. The Commissioner is also satisfied, from the submissions provided by the Council and the nature of the information requested, that it does not hold any further recorded information about verbal complaints over the relevant period, beyond than that contained in the log.
46. As the Commissioner is satisfied that the Council does not hold the information sought by parts 7, 7a, 8, 8a 9 and 9a of Ms Townsley's request (and that it did not when it received the request), the Commissioner is satisfied that the Council was correct to notify Ms Townsley of that fact in terms of section 17(1) of FOISA.
47. Although satisfied that the Council does not hold the information sought by Ms Townsley in questions 7, 7a, 8, 8a, 9 and 9a of her request, the Commissioner considers it would have been helpful for the Council to offer advice and assistance to Ms Townsley in relation to this part of her request.
48. Section 15(1) of FOISA states that a public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who makes, or proposes to make a request for information to it. Section 15(2) makes clear that where a public authority conforms to the code of practice issued in terms of section 60 of FOISA ("the Section 60 Code"¹) shall be taken to comply with the duty under section (1).
49. The Section 60 Code makes clear that a public authority should be flexible in offering advice and assistance and they should take into account the circumstances of each individual case; noting, for example, that private individuals may be more likely to need assistance than large organisations or other public authorities (paragraph 1.3).

¹ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



50. In this particular case, the Commissioner considers that it would have been reasonable for the Council to provide, along with its response to Ms Townsley, some explanation of the nature and limitations of the information it held in relation to verbal complaints. Such advice could have assisted Ms Townsley in understanding why the Council was unable to provide the particular information she requested, and assist her in deciding whether she wished to make a further information request to establish the nature and content of the information recorded in the log maintained by the site manager.
51. The Commissioner recognises that a central reason why the Council did not provide such advice and assistance in this instance was that it did not identify the information it held within the site manager's log until the investigation commenced. The Council has since apologised for this omission, and the Commissioner recognises that a factor contributing to that omission was that the information was not held on Council office premises at the point when Ms Townsley's request was received.
52. In the circumstances, the Commissioner will not issue any formal finding in relation to the Council's compliance with the duty to provide advice and assistance in relation to Ms Townsley's requests for information concerning verbal complaints. However, should Ms Townsley wish to make further requests relating to the number or nature of verbal complaints recorded in relation to the relevant site, the Commissioner recommends that the Council remains alert to this duty, and considers whether there is assistance it might offer Ms Townsley to assist her in understanding the nature and extent of the information held on this subject.

First information request – information regarding written complaints

53. Within part three of Ms Townsley's first request, questions 7b, 7c, 8b, 8c, 9b, and 9c mirrored those asked in relation to verbal complaints (discussed above) but asked about written complaints:
- 7b Relating to the questions 7 how many tenants over the last five years have made complaints about site management to the Council in writing?
 - 7c Relating to the question 7b how many written complaints have there been in total?
 - 8b Relating to the question 8 how many tenants over the last five years have made these complaints in writing to the Council?
 - 8c Relating to the question 8b how many written complaints have there been in total?
 - 9b Relating to the question 9 how many tenants over the last five years have made these complaints in writing to the Council?
 - 9c Relating to the question 9b how many written complaints have there been in total?



54. The Council provided Ms Townsley with the total number of written complaints about site conditions and anti-social behaviour, as requested in questions 8c and 9c. The Council refused to provide the total number of complaints about site management (7c) or the number of tenants making complaints on any of the specified subjects over the last five years (7b, 8b, 9b) on the basis that this information was exempt from disclosure section 38(1)(b) of FOISA. The Council stated, however, that the number in each case was less than five.
55. During the investigation, the Council provided the numbers it held for each of the above questions, noting that it had excluded Ms Townsley's complaints from the totals in each case.
56. In her discussions with the investigating officer, Ms Townsley expressed dissatisfaction with the numbers disclosed to her in response to questions 8c and 9c as she considered that the Council had miscalculated the number of written complaints. Ms Townsley provided details of her own complaints and copies of Council meeting minutes in which the number of complaints about the caravan site had been noted. Ms Townsley requested that the Commissioner verify the numbers disclosed and withheld with respect to this part of her request.
57. Ms Townsley's concerns were shared with the Council, and the Council was asked to comment on how it records complaints and to provide verification of the numbers provided. In response, the Council advised that it had created a central database to log written complaints, but in practice each department kept its own records. In the case of the Housing and Community Care department, an individual records written complaints in an excel spreadsheet.
58. The Council explained that the numbers provided were obtained by reviewing information held about individual complaints and counting those that appeared to match Ms Townsley's classes. The Council maintained that this amounted to the creation of new information, but indicated that it was trying to assist Ms Townsley with her request. The Council noted that the numbers provided were dependant on the interpretation of the meaning of the class descriptions by the person undertaking the exercise.
59. The Commissioner has noted these comments and has considered whether the Council actually held the specific information requested in the parts of Ms Townsley's request concerning written complaints at the time when it was received. On reflection, she does not consider that compiling numbers relating to those complaints within the categories requested by Ms Townsley amounts to the creation of new information. While she accepts that the assessment of the complaints was a subjective task, it was one undertaken based on the content of the complaint submitted by Ms Townsley to the Council. In this respect, the information available to address these requests is different from that held in relation to verbal complaints, since the latter does not provide a direct record of the views of the complainant or the nature of their complaint.
60. The task of compiling the numbers of relevance to Ms Townsley's request is akin to placing each of those letters of complaint into piles based on whether they raised matters which could be considered to relate to site management, site conditions or anti-social behaviour, and then counting the letters to establish the number falling into each category firstly across a five year period, and then across all records held.



61. She notes that the Council's understanding of the categories of complaints of interest to Ms Townsley could have been enhanced by asking what she meant by each of those categories. The fact that the Council did not do so before responding to her request, providing some of the information she requested, suggests that the subjects she raised were understandable to the Council and could be applied to the actual complaints held.
62. In response to questions regarding the disparity between the numbers provided by Ms Townsley and those disclosed by the Council, the Council explained that unless a complaint is very serious the first contact is not treated as a formal complaint and it would expect the service complained to try and resolve the issue informally at first. In addition, the Council advised that it differentiated between complaints about the Council and other complaints, such as neighbour complaints or noise complaints. The Council commented that neighbour complaints are recorded in a completely separate system which had not been referred to in responding to the request, the subsequent review or the application to the Commissioner. The Council also noted that questions 9 through 9c were interpreted as being about complaints to the Council, rather than about reports of anti-social behaviour.
63. It should be stressed that the remit of the Commissioner extends to deciding whether a Scottish public authority has complied with Part 1 of FOISA in responding to an information request. When information is supplied by a Scottish public authority in response to a request and the requester is dissatisfied because he or she believes that the information is misleading, inaccurate, contains errors, or is otherwise deficient, this is not something that the Commissioner can address in terms of FOISA. These issues may still be relevant to the Commissioner's investigation, but only insofar as they might suggest the existence of other, more complete, more accurate, information which has not been identified or supplied by the authority in response to the request. Consequently, the points made by Ms Townsley in relation to inconsistencies with the number of written complaints have only been considered by the Commissioner for this purpose.
64. In considering all the submissions provided by the Council, along with the explanation of how complaints are recorded, the Commissioner is satisfied on balance of probabilities that the information disclosed by the Council, and provided to the Commissioner to allow her consideration of the withheld information, reflects all written complaints which have been considered by the Council as complaints.
65. The role of the Commissioner in issuing a decision is to consider whether a public authority has complied with Part 1 of FOISA. It is not the role of the Commissioner to assess the extent or suitability of records held by a public authority, but to ensure that the authority deals appropriately with a request relative to the recorded information held by it.
66. The Commissioner considers that the reason for the disparity identified by the Council is likely to have arisen because that the Council does not appear to categorise as complaints certain types of communications that may fall within a lay person's understanding of the term "complaint".



67. Having recognised that the Council has applied a particular interpretation and understanding of the term “complaint” when identifying the information of interest to Ms Townsley, the Commissioner considers once again that it would have been reasonable for the Council to provide advice and assistance to Ms Townsley in terms of section 15(1) of FOISA in relation to the information considered and disclosed in response to this group of questions. It would have been helpful, for example, for the Council to explain what it records and considers to be a complaint, and how and where different types of communications that may fall within a lay understanding of “complaints” are recorded by the Council.
68. Such advice could have assisted Ms Townsley in understanding the nature of the information that the Council had considered and provided in response to these requests, and so determine whether she needed to make a further request to identify other types of communications which she considered to be complaints, but which were not either treated as such by the Council or had not been understood to fall within the scope of her request.
69. Having considered all of the above the Commissioner has concluded in relation to these parts of Ms Townsley’s first request (regarding which the Council was aware of the nature and extent of potentially relevant information when it responded to Ms Townsley) that the Council failed to meet the duty to provide advice and assistance in line with section 15(1) of FOISA.
70. The Commissioner has considered the information identified by the Council as representing the numbers of complaints in the categories specified in Ms Townsley’s request in what follows, but she requires the Council to provide advice and assistance about its understanding of the terms “complaint”, and the way in which it records and identifies complaints, and other types of communications that might fall within a lay person’s understanding of that word.
71. The advice and assistance given should be sufficient to enable Ms Townsley to understand what information was considered by the Council to fall within the scope of the requests under consideration, and to consider whether she wishes to make a further request for information regarding “complaints” of other types, such as reports of anti-social behaviour or neighbour or noise complaints.

Personal information - Section 38(1)(b) of FOISA

72. As noted above, the Council disclosed the number of written complaints requested in questions 8c and 9c of Ms Townsley’s request and, as discussed above, the Commissioner is satisfied that these numbers represent the information that the Council holds which would address this request, as the Council understood the term. As no information is being withheld in relation to these questions they will be excluded from consideration below.
73. The Council withheld the numbers of complainers and written complaints requested in questions 7b, 7c, 8b and 9b of Ms Townsley’s first request under section 38(1)(b) of FOISA. Section 38(1)(b), read in conjunction with section 38(2)(a)(i) or (b), exempts information from disclosure if it is “personal data” as defined by section 1(1) of the DPA and if disclosure of the information would contravene one or more of the data protection principles set out in Schedule 1 to the DPA.



74. This particular exemption is an absolute exemption, so is not subject to the public interest test laid down by section 2(1)(b) of FOISA.

Are the statistics personal data?

75. The Commissioner will first consider whether the numbers in question comprise personal data. If the numbers do not comprise personal data, it will not be exempt under section 38(1)(b) of FOISA.
76. "Personal data" is defined in section 1(1) of the DPA as data which relates to a living individual who can be identified a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in the Appendix). The DPA gives effect to Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (the Directive) and so the DPA should, if possible, be interpreted in a manner which is consistent with the Directive.
77. In considering the definition of "personal data", the Commissioner has also taken account of the opinions delivered by the House of Lords in *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47², by the High Court of England and Wales in *Department of Health v Information Commissioner* [2011] EWHC 1430 (Admin)³ and by the Court of Session in *Craigdale Housing Association and others v Scottish Information Commissioner* [2010] CSIH 43⁴.
78. The Council's main argument was that the numbers were personal data on the basis that there is other information in the public domain (other than that which to Ms Townsley has direct access) which would lead to the identification of the individuals who had submitted the written complaints.
79. In considering this matter, the Council excluded Ms Townsley's complaints from the totals, on the basis that she would know how many complaints she had made, and so the remaining number would enable her to identify other complainants. The Council's argument is therefore the same, whether the total number of complaints including those made by Ms Townsley is considered, or the number excluding those is considered.
80. The Commissioner has noted the approach taken by the Court of Session in the *Craigdale Housing Association* case. The Court of Session referred to Recital 26 of the Directive, which states that, when determining whether a person is identifiable, account should be taken of all the means likely reasonably to be used to identify the data subject. As noted by the Court of Session, the test is therefore whether disclosure of the information would lead to the identification of an individual or whether there is other information in the public domain which, when taken with the information, would reasonably allow for such identification.

² www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080709/comm-1.htm

³ www.bailii.org/ew/cases/EWHC/Admin/2011/1430.html

⁴ www.scotcourts.gov.uk/opinions/2010CSIH43.html



81. Guidance entitled "Determining what is personal data⁵" which has been issued by the (UK) Information Commissioner (who is responsible for enforcing the DPA throughout the UK) states that, in considering whether a person can be identified, it should be assumed that it is not just the means reasonably likely to be used by the ordinary man in the street to identify a person, but also the means which are likely to be used by a determined person with a particular reason to want to identify the individual.
82. The Commissioner therefore considered whether the numbers requested by and withheld from Ms Townsley, together with other information already in the public domain (or as a result of action likely to be taken by a determined person to identify the individuals if the numbers were to be disclosed) would reasonably allow the individual who wrote the complaints to be identified. If disclosure of the number would reasonably allow for identification, then the number comprises personal data and cannot be disclosed unless there is a condition in Schedule 1 to the DPA which would permit it to be disclosed. If disclosure of the number would not reasonably allow for identification, then the number does not comprise personal data and the exemption in section 38(1)(b) would not apply.
83. The Council's submissions emphasised that that there are only 20 pitches on the Double Dykes caravan site, and so the possibility of identification of individuals within that small population is greater as compared with a larger population. The Council went on to comment that the nature of the population must also be taken into consideration, as the tenants live in relatively close proximity to each other in a small community and many tenants are inter-related and most have some degree of familiarity with events on the site.
84. The Council has not provided any submissions on the possibility of identification by the wider populous outside the caravan site, though the Commissioner must consider this point also when coming to a decision as to whether the numbers requested are personal data.
85. The Commissioner notes the circumstances that exist on the caravan site which mean that a small number of residents are likely to know each other well, and to be familiar with events taking place and issues that may lead to complaints.
86. However, Ms Townsley sought the number of tenants making written complaints on the specific subjects over a five year period, and the number of complaints across any longer period covered by the Council's records. As the information relates to written complaints, the circumstances of a complaint are different from one which may have been made verbally and perhaps publicly. When choosing to write a letter of complaint, an individual can do so in private if they wish, without sharing their concerns or the fact of their complaint with other site residents or with anyone else other than the Council.

5



87. The information under consideration in this decision would not directly indicate in relation to any of the categories of complaints, who had made a complaint, what it was about (other than the general category), or when it was made. Considering such numbers on their own merits, it is difficult to conclude that disclosure of such numbers would identify any individual making a complaint, unless it was already known to the people concerned that they had made a complaint.
88. The Council has not provided detailed submissions as to why the disclosure of these numbers would lead to the identification of a specific individual. The submissions from the Council highlight the fact that some of the people on the caravan site may already suspect that an individual wrote a letter of complaint to the Council, but the Council has not shown how disclosure of the numbers actually requested by Ms Townsley would lead to the identification of the individual who had submitted a written complaint, who was not previously identifiable. In other words, the Council has not shown why disclosure of the actual numbers of complainants or of written complaints would "unlock" the numbers and permit identification of any of the individuals represented in the numbers.
89. The Commissioner accepts that, where a person already knows that an individual has written a complaint to the Council, disclosure of the numbers in question could permit that person to confirm that the individual is one of those person(s) referred to in the numbers. However, this in itself does not make the number personal data; it is not the disclosure of the number which would identify the individual.
90. In addition, as noted above, the Council has explained that it applies a particular understanding of what is to be considered a complaint, and the Commissioner has recognised that this may differ from a lay person's view of what constitutes a complaint. This observation makes it less likely again that it would be possible to use the withheld numbers to identify any person who had made a particular type of written complaint to the Council, as opposed to raising concerns of a different nature via one of the other channels that members of the public might consider to be "complaints".
91. The Commissioner concludes that the Council has failed to demonstrate that disclosure of the number of written complaints sought in requests 7b, 7c, 8b and 9b would be the decisive factor leading to the identification of one or more individuals, or would make identification possible where it was previously impossible. As such, the Commissioner must conclude that the disclosure of the statistics would not identify an individual who had made a complaint and that the numbers are not, therefore, personal data, as defined by section 1(1)(a) of the DPA.
92. Having come to this conclusion, the Commissioner finds that the exemption in section 38(1)(b) of FOISA cannot apply to the withheld information and requires the Council to disclose the numbers requested by Ms Townsley in questions 7b, 7c, 8b and 9b of her first request. She therefore finds that the Council breached section 1(1) of FOISA by withholding the information sought by these parts of her request.
93. The Commissioner requires the Council to disclose the information sought by these parts of her request (the total numbers of complaints in each case, including any made by Ms Townsley) to Ms Townsley.



Second Request - vexatious requests

94. In response to Ms Townsley's second request (set out in Appendix 2 in full), the Council provided the information sought by question 9, but refused to address the remaining questions (1 to 8, 10 and 11) on the basis that they were vexatious.
95. Under section 14(1) of FOISA, a public authority is not obliged to comply with an information request if the request is vexatious. If the Council was correct in its application of section 14(1), it would be under no obligation to comply with the relevant parts of Ms Townsley's request (although it would remain under an obligation to, for example, notify Ms Townsley that it was not complying with his request and why).

The Council's submissions

96. The Council provided a range of documents to support its consideration that the relevant parts of Ms Townsley's second request were vexatious. These documents included a list of 164 written communications from Ms Townsley to the Council's Housing & Community Care Services since 2006 (with 40% being written in 2011) on a range of subjects regarding the Double Dykes caravan site. These written communications included nine requests for information since 2009, which contained 175 separate questions. In addition, the Council supplied a list of over 200 telephone calls received from Ms Townsley between January and September 2011.
97. The Council commented that it should be clear from these documents that Ms Townsley has a long history of contact with the Council which had grown significantly in the recent past. The Council noted that it reached a stage in June 2011 where the Council wrote to Ms Townsley indicating that it considered she had been placing unreasonable demands on Council officers by repeatedly requesting information through email, letter and phone calls which had taken a great deal of limited resources which was required to support other members of the public. The Council had restricted Ms Townsley's contact with the Council, by asking her to correspond with one named officer in the Council.
98. The Council submitted that, considering the second request in the light of this history of communications, it had the effect of harassing the Council. It submitted that the request contained questions which were:
- a. closely aligned to previous requests and communications with the Council;
 - b. designed to obtain information previously withheld;
 - c. related to information supplied by means other than the FOI process and
 - d. repetitious and all related to site management.



99. The Council maintained that it had shown considerable patience in dealing with Ms Townsley and did not impose the restricted contact arrangements lightly. It added that it considered that it had attempted to respond correctly to her information requests, but considered that, whilst the nature and volume of her requests continues as it has done, it was reasonable to consider them to be vexatious. It commented also that the nature and volume of Ms Townsley's contact had been the cause of stress for Council employees
100. In further submissions, the Council asked the Commissioner to note the nature of the requests judged to be vexatious. It noted that points 4 and 5 ask for parts of the tenancy agreement, and highlighted that Ms Townsley had a copy of the tenancy agreement, and she had also been given an audio copy in 2011. It noted that the other points seek clarification on site accounts, which had also been given to her. The Council added also that it was debatable whether these points were actually requests for information in terms of FOISA.

Ms Townsley's submissions

101. In her application, Ms Townsley highlighted her interest and activities to undertake research and engage with public authorities and the Gypsy Traveller community in relation to site management issues, discrimination and access to services affecting that community.
102. She maintained that her requests had serious purpose and value, as the information was required to assist in her research and training on services provided to Gypsy Travellers. She provided a table documenting her requests to a number of public authorities on the subject, and indicated that the only way to obtain such information or clarify how a service works is by submitting information requests.
103. Ms Townsley commented that it was appropriate to obtain as much information as possible to build a picture of what is happening within the Gypsy Traveller community, and to see how local authorities and other organisations provide services to this community. Ms Townsley went on to explain that it was important to understand how councils identify where there is need for new site provision or if councils are ignoring the problem of doubling up of pitches or overcrowding on sites.
104. In further submissions, Ms Townsley explained the purpose of the various other parts of her second request. In relation to the questions concerning the content of the tenancy agreement, she stated that the Council had said it had the discretion whether or not to implement the tenancy agreement. She maintained that, if this was the case, there should be relevant information within the tenancy agreement, and she felt it was important for tenants to be aware that the Council has such discretion.
105. Regarding the parts of the request relating to rents, expenditure and site accounts, Ms Townsley maintained that tenants have a right to know where the rent money goes and how much is left over at the end of the year. She indicated that she wanted to see whether the level of rent is justified, to inform her consideration of whether to appeal future rent rises.



The Commissioner's view

106. The Commissioner has considered all of the submissions made by both the Council and Ms Townsley, and also had regard to her published guidance on the application of section 14(1) of FOISA⁶. This states:

“There is no definition of “vexatious” in FOISA. The Scottish Parliament acknowledged that the term “vexatious” was well-established in law and opted to give the Commissioner latitude to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.”

107. The Commissioner's general interpretation, as set out in her guidance on section 14(1), is that a request is vexatious where it:

- would impose a significant burden on the public body; and
- does not have a serious purpose or value; and/or
- is designed to cause disruption or annoyance to the public authority; and/or
- has the effect of harassing the public authority; and/or
- would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

108. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requester, she also acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of the request and surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a particular request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.

109. Notwithstanding the Commissioner's general approach is as set out in paragraph 107 above, she recognises that each case must be considered on its merits, and in all the circumstances of the case. She does not exclude the possibility that, in any given case, a request may not involve a significant burden, but one or more of the other listed factors may be of such overwhelming significance that it would be appropriate to consider the request vexatious in the absence of a significant burden. She also recognises that other factors may result in a request being judged vexatious.

Consideration in the context of previous correspondence

110. The Commissioner recognises that the parts of Ms Townsley's request that are under consideration here may not appear to be vexatious when viewed in isolation. However, she is aware that, in some cases, the vexatious nature of a request will only emerge after considering the request within its context, for example, in relation to previous or ongoing correspondence with the applicant. The Council has argued that, in this case, Ms Townsley's request must be considered in the context of her wider pattern of communications with the Council.

⁶ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.asp>



111. When considering this point, the Commissioner has considered the First Tier Tribunal (Information Rights) ruling *EA/2011/0079*⁷, *Alan Dransfield and the Information Commissioner*. In paragraph 36 of this ruling, the Tribunal draws a distinction between prolonged correspondence on a single issue, and ongoing correspondence on a variety of different issues, and the relevance of these two types of correspondence when considering whether an information request is vexatious. The Tribunal considered that prolonged correspondence on a single subject is a 'valid' consideration, while considering correspondence on a variety of issues risks crossing the line from treating the request as vexatious, to treating the requester as vexatious. (Although the Tribunal case was decided in relation to the Freedom of Information Act 2000 and not FOISA, the Commissioner considers that the comments of the Tribunal are equally valid in relation to this current application.)
112. Given the content of the request under consideration in this decision, and the comments received from Ms Townsley and the Council, the Commissioner is of the view that the nature and purpose of Ms Townsley's second request is such that it can only be seen as a continuation of the correspondence between her and the Council over a number of years. It raises questions related to her concerns about the management of the caravan site that have been ongoing for a considerable period.
113. When assessing this request, therefore, the Commissioner considers it to be reasonable to have regard to the wider context of Ms Townsley's history and pattern of communications with the Council.

Whether the request imposed a significant burden

114. The Commissioner's briefing on section 14 of FOISA indicates that a request will impose a significant burden on a public authority where dealing with it would require a disproportionate amount of time and the diversion of an unreasonable proportion of its financial and human resources away from its core operations.
115. The Commissioner has considered carefully the submissions and supporting information provided by the Council, which was intended to show that the requests under consideration imposed a significant burden when considered as part of Ms Townsley's wider pattern of communications with the Council.
116. Having reviewed the details of Ms Townsley's communications with the Council as communicated by the Council, and also to some extent by Ms Townsley, it is clear that these communications were not all requests for information, but they relate in general to the management of the Double Dykes caravan site. Ms Townsley's information requests are complex, involving multiple parts, and referring back to previous correspondence and responses.

⁷ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i573/20110920%20Decision%20EA20110079.pdf>



117. The Commissioner accepts that the cumulative effect of this correspondence, particularly given the volume of correspondence over 2011, was such that it would require a disproportionate amount of time and the diversion of an unreasonable proportion of the Council's resources to address Ms Townsley's communications. In this context, the Commissioner accepts that responding to the parts of Ms Townsley's second request that the Council has judged to be vexatious would impose a significant burden on the Council.
118. The Commissioner next considered whether any of the other factors listed in her guidance on section 14 (see above) can be identified in this case: in other words, whether it could be shown that Ms Townsley's requests lacked serious purpose or value; were designed to cause disruption or annoyance to the Council; had the effect of harassing the Council; and/or would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

Has the effect of harassing the public authority

119. The Commissioner accepts in good faith that Ms Townsley did not submit her second request with the purpose of harassing the Council. However, for the purpose of establishing that a request is vexatious, it is relevant to consider whether a request has the effect of harassing an authority, whether or not that was the intention of the applicant.
120. The Commissioner accepts, given the volume and nature of communications and the requests for information that Ms Townsley has submitted to the Council, that their cumulative effect could reasonably be perceived as harassing for the staff trying to respond, and contributing to feelings of stress.
121. She has reached this conclusion having had particular regard to the manner in which Ms Townsley has made, in effect, multiple focussed requests within a single request for information. She has also noted that the requests under consideration in this case were prompted by Ms Townsley's dissatisfaction with the responses supplied to her previous requests, and its response to her concerns about the management of the Double Dykes caravan site. She considers that had the Council attempted to address the requests under consideration, that response would have been likely to prompt further requests continuing the pattern of burdensome request making.

Do the requests have serious purpose and value?

122. The Commissioner recognises that Ms Townsley has a genuine ongoing concern about the management of the Double Dykes caravan site, and the wider needs of the Gypsy Traveller community. In this context, the Commissioner accepts that there is a serious purpose underlying Ms Townsley's request for information.



123. However, the Commissioner questions whether the purpose of some of the requests under consideration was genuinely to seek further recorded information, rather than to further highlight and pursue her ongoing concerns with the Council. For example, question 1 asks what the Council intends to do to enforce the tenancy agreement with respect to the issue of doubling up on pitches. As such, it appears to be a request for action, or assurances, as much as a request for further recorded information.
124. The requests which asked the Council to provide content of the tenancy agreement have an appearance of rhetorical questions, particularly when considered in the context of Mr Townsley's concerns about whether the Council is properly enforcing that agreement, of which she already has a copy. The Commissioner considers that the questions regarding the site's accounts could generally be answered by reference to the accounts (which were available to Ms Townsley) or by reference to previous communications with the Council.
125. In the circumstances, the Commissioner considers that, while Ms Townsley's concerns about the management of the Double Dykes site are serious and genuine, she considers the contribution that any recorded information provided in response to her second request could make to addressing those concerns would be limited.
126. It appears unlikely in the circumstances that resolution of Ms Townsley's concerns would be brought any closer by the provision of a response to the request under consideration, and the Commissioner accepts that doing so would be likely to have the effect of prolonging yet further correspondence on matters which the Council has attempted to address over an extended period.

The Commissioner's conclusion

127. Having considering the matter in some detail, the Commissioner has concluded that the parts of Ms Townsley's second information request that the Council has judged to be vexatious, viewed objectively, and in the context of Ms Townsley's wider communications with the Council, imposed a significant burden on the Council and had the effect of harassing the Council. She considers that the particular requests under consideration were of limited value in addressing the matters of concern to Ms Townsley given the nature of the requests and the information previously supplied to her by the Council. As a consequence, she concludes that the relevant parts of the second request would cause disruption and annoyance to the Council, and would be judged by a reasonable person to be disproportionate.
128. Clearly, the provisions of section 14(1) of FOISA should not be used to shield a public authority from probing requests or to protect it from genuine matters of interest. However, in this case the Commissioner does not find any grounds for believing that the Council is seeking to rely on section 14(1) for such a reason.
129. The Commissioner has therefore found that the Council was not obliged to comply with parts 1 to 8, 10 and 11 of Ms Townsley's second information request, on the grounds that these requests were vexatious in terms of section 14(1) of FOISA.



DECISION

The Commissioner finds that Perth and Kinross Council (the Council) partially failed to comply with Part 1 of Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with Ms Townsley's first information request. However, she found that the Council complied with Part 1 of FOISA in dealing with Ms Townsley's second information request.

First information request

The Commissioner finds that, by notifying Ms Townsley that it did not hold the information sought by questions 1 to 4 within Part 1 of this request, and questions 7, 7a, 8, 8a, 9 and 9a within Part 3, the Council complied with Part 1 of FOISA.

She finds that the Council wrongly applied the exemption in section 38(1)(b) of FOISA to the information sought by questions 7b, 7c, 8b, and 9b within Part 3 of this request, and so it breached Part 1 and section 1(1) of FOISA by refusing to provide this information.

The Commissioner also finds that the Council failed to comply with Part 1 and section 15(1) of FOISA when responding to requests 7b, 7c, 8b, 8c, 9b and 9c within Part 3 of this request, by failing to offer advice to Ms Townsley about the Council's understanding of the term "complaint", and so the nature and extent of the information that was provided to and withheld from her.

The Commissioner requires the Council to provide Ms Townsley with the number of written complaints requested in the questions 7b, 7c, 8b and 9b within Part 3 of this request by 2 July 2012. The Commissioner also requires the Council to provide advice and assistance to Ms Townsley in line with paragraphs 70 and 71 above within the same timescale.

Second information request

The Commissioner finds that the Council complied with Part 1 of FOISA when it refused to respond to requests 1 to 8, 10 and 11 on the basis that these requests were vexatious in terms of section 14(1) of FOISA.

Decision 089/2012
Ms Fiona Townsley
and Perth and Kinross Council



Appeal

Should either Ms Fiona Townsley or Perth and Kinross 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
18 May 2012



Appendix 1

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.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
- (a) the provision does not confer absolute exemption; and
- ...
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
- ...
- (e) in subsection (1) of section 38 –
- ...
- (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.



3 Scottish public authorities

...

- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-
 - (a) by the authority otherwise than-
 - (i) on behalf of another person;

...

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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.

...



38 Personal information

(1) Information is exempt information if it constitutes-

...

(b) personal data and either the condition mentioned in subsection (2) (the "first condition") or that mentioned in subsection (3) (the "second condition") is satisfied;

...

(2) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998 (c.29), that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles; or

...

(b) in any other case, that such disclosure would contravene any of the data protection principles if the exemptions in section 33A(1) of that Act (which relate to manual data held) were disregarded.

...

(5) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to that Act, as read subject to Part II of that Schedule and to section 27(1) of that Act;

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...



Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

Schedule 1 – The data protection principles

Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...

Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...



Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Recital 26

Whereas the principles of protection must apply to any information concerning an identified or identifiable person; whereas, to determine whether a person is identifiable, account should be taken of all the means likely reasonably to be used either by the controller or by any other person to identify the said person; whereas the principles of protection shall not apply to data rendered anonymous in such a way that the data subject is no longer identifiable....



Appendix 2 – Ms Townsley’s information requests

First request – 12 April 2011

Part 1 - Tenant Association related

Regarding the minutes of the 4 November [2010]⁸

- 1 4.3 What is this section referring to, the child protection issues?
- 2 5.0 – can I have a copy of the plans for the community garden area, and I would also like to know if there is going to be a place where the children from the portacabin can go outside in summer time to play or have lessons in the community garden?
- 3 5.1 — what happened to the Christmas tree [...] How much money was spent on the Christmas tree, lights and decorations and where did this funding come from.
- 4 Can I also have a copy of the accounts for Double Dykes tenants association?

Part 2 - Not Tenant Association related

- 1 What is the Council going to do about Double up on [four specified] pitches?

Part 3 - Double Dykes Caravan Site

- 1 Over what length of time was there consultation on the tenancy agreement?
- 2 How many meetings were there between tenants and the Council regarding the tenancy agreement?
- 3 How many tenants are still signed up to the sample/draft tenancy agreement?
- 4 Is the tenancy agreement a secure tenancy agreement?
- 5 Does the Council have the discretion to implement or not the tenancy agreement to how they see fit regardless of the content of the tenancy agreement?
- 6 Does the Council provide the tenancy agreement in audio?
- 7 How many tenants over the last 5 years have made complaints to the Council regarding site management verbally?
 - 7a Relating to the question 7 how many complaints have there been in total?

⁸ Ms Townsley’s request erroneously referred to 2011.



- 7b Relating to the questions 7 how many tenants over the last 5 years have made complaints about site management to the Council in writing.
- 7c Relating to the question 7b how many written complaints have there been in total?
- 8 How many tenants over the last 5 years have made complaints to the Council regarding site conditions verbally? i.e. litter, roads, grass areas, chalets, pitches, drainage.
 - 8a Relating to the question 8 how many complaints have there been in total?
 - 8b Relating to the question 8 how many tenants over the last 5 years have made these complaints in writing to the Council.
 - 8c Relating to the question 8b how many written complaints have there been in total?
- 9 How many tenants over the last 5 years have made complaints to the Council regarding anti social behaviour verbally?
 - 9a Relating to the question 9 how many complaints have there been in total?
 - 9b Relating to the question 9 how many tenants over the last 5 years have made these complaints in writing to the Council.
 - 9c Relating to the question 9b how many written complaints have there been in total?
- 10 I would like a copy of the Council's [Local Housing Strategy] interim report
- 11 I would like a copy of the Council's current Race Equality Scheme?

Second request –4 June 2011 (made within the request for review concerning the first request – numbering has been added)

Part 2 - Not Tenant Association related

- 1 The Council says “tenants are generally reminded of their responsibility in relation to this matter [doubling up on pitches]”. Doubling up on pitches is a breach of the tenancy agreement. The verbal reminder is being ignored, what action does the Council intend on taking to enforce the tenancy agreement?
- 2 How many letters each year for the last 5 years has the Council sent to tenants in relation to doubling up on pitches?
- 3 How many verbal reminders have tenants on Double Dykes received in each year for the last 5 years in relation to doubling up on pitches?



Part 3 - Double Dykes Caravan Site

- 4 Can I have a copy of where it says within the terms of the tenancy agreement the Council has the discretion to implement the agreement or not.
- 5 Could I also have a copy of the part where it says in law a supposed legal and binding documents gives one party the discretion whether or not to implement the agreement.
- 6 From Double Dykes site accounts, is there money left over at the end of the year? If yes how much?
- 7 Does Perth and Kinross Council contribute towards the running cost of Double Dykes caravan site?
- 8 Does the rents on Double Dykes meet the cost of running the site?
- 9 I would like a copy of the site accounts for 2010-2011.
- 10 In the site accounts for 2008-2009 it says rent under 'property cost' at 2,085 what is this rent charge for?
- 11 Has Perth and Kinross Council provided funding for Double Dykes tenants association in the last 3 years? If yes how much? What was funding for?