

Decision Notice



Decision 257/2013 Mr N and Perth and Kinross Council

Breadalbane Academy Secondary School fund

Reference No: 201301011

Decision Date: 18 November 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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



Summary

On 6 February 2013, Mr N asked Perth and Kinross Council (the Council) for information about a school fund. The Council responded by providing information in relation to part of his request but stated that some of the information sought was not held.

Following an investigation, the Commissioner found that the Council had failed to conduct adequate searches for the information requested. She required it to do so and deal with any information identified in accordance with Part 1 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 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 6 February 2013, Mr N wrote to the Council requesting the following information, in relation to the Breadalbane Academy Secondary School fund:
 - a. All minutes of meetings held since January 2009;
 - b. All details of requests to the fund and an indication of what requests were agreed;
 - c. Detailed accounts of all expenditures as signed off by the auditors;
 - d. Details of the balance held in all bank accounts;
 - e. Details of discussions with accountants and auditors seeking to produce legal accounts;
 - f. Any other relevant documents connected to the fund.

This was identical to a request made by Mr N on 14 May 2012, which resulted in an application to the Commissioner and *Decision 004/2013*¹. In that decision, the Commissioner was satisfied that the Council was correct to respond to Mr N's request on the basis that the information was otherwise accessible to him (i.e. under section 25 of FOISA).

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2013/201201585.aspx>



2. The Council responded to the request of 6 February 2013 on 18 February 2013, providing information in response to points a. – d. of Mr N's request. In response to point e., the Council stated that discussions with accountants and auditors were not minuted, nor was this a requirement. "Not applicable" was the Council's response to point f.
3. On 19 February 2013, Mr N wrote to the Council, stating that he had not received a response to points e. and f. and requesting that these be addressed. On 26 February 2013, the Council notified Mr N that it did not hold information falling within the scope of either point.
4. Mr N specifically requested a review of this response on 28 February 2013 and this was acknowledged on 5 March 2013. On 26 March 2013, the Council wrote to Mr N with the outcome of that review. While confirming its earlier response in respect of point f., the Council identified two documents falling within the scope of point e., which it provided to Mr N subject to the redaction of personal data.
5. On 24 April 2013, Mr N 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 N made requests for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to those requests. The case was then allocated to an investigating officer.

Investigation

7. On 13 August 2013, the Council was notified in writing that an application had been received from Mr N and given an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA. In particular, it was asked to explain the searches carried out to establish whether any relevant information was held.
8. Submissions were received from the Council on 7 October 2013.
9. On 21 October 2013, the Council was asked to provide further submissions, specifically in relation to the searches it had conducted to support the contention that no further relevant information was held. On 31 October 2013, the Council was also asked if it wished to make any other comments, bearing in mind the Commissioner's decision on an identical request earlier in 2013.
10. The Council did not respond to either request. The Commissioner is therefore required to come to a conclusion on the submissions made by the Council on 7 October 2013.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr N and the Council. She is satisfied that no matter of relevance has been overlooked.

Information held by the Council

12. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.
13. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
14. Where an application is made to the Commissioner on the basis that the applicant believes there to be information held, or further information held, which has not been provided by the authority (but which should be provided in accordance with Part 1 of FOISA), the Commissioner must satisfy herself that adequate steps have been taken by the authority to identify all the information relevant to the request (or alternatively, be given a reasonable explanation as to why the information or further information is not held). A simple assertion by the authority that the information is not held will not be sufficient.
15. In response to the Commissioner's initial request for submissions, the Council stated, with respect to request e., that there had been no meetings with the auditor of the School fund. In relation to request f., the Council stated that any relevant correspondence would be held in a physical file of general correspondence. The Council stated that this was manually searched and no documents were found relating to the school fund.
16. To support the contention that no further information was held, the Council was asked to list:
- the members of staff consulted (and explain why they were considered relevant)
 - the sets of records or data resources that were included in its search
 - with respect to electronic searches, the search terms that were used (and whether these searches had included information held locally on personal computers used by key officials, networked resources and emails).
- The Council was also provided with specific examples of locations to search, extracted from the information provided to Mr N and which appeared to the investigating officer to be potential sources of further relevant information.
17. As highlighted above, the Council was asked if it wished to make any further comment in the light of the Commissioner's previous decision.



18. Having taken account of the limited submissions made by the Council (and the lack of evidence therein), the Commissioner is not satisfied that the Council took adequate steps to conclude that it held no information falling within the scope of points e. and f.
19. The Commissioner now requires the Council to undertake further searches, as outlined above and in the investigating officer's email of 21 October 2013, to satisfy itself – and her- that no further relevant information is held. Should further information be identified by the Council as a result these searches, the Commissioner requires that the information be provided to Mr N or that he be given an appropriate refusal notice in accordance with Part 1 of FOISA.
20. In all the circumstances of this case, the Commissioner has no basis for revisiting the conclusions reached in *Decision 004/2013*, in respect of Mr N identical request of 14 May 2012. Therefore, the Council is required to undertake the above searches only to the extent that information falling within the scope of points e. and f. was not considered in *Decision 004/2013* (i.e. the searches need not address information held before that previous request was received by the Council).

DECISION

The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr N. The Commissioner has not been provided with sufficient evidence to be satisfied that the Council has conducted adequate searches to identify and locate all the information falling within the scope of this request.

The Commissioner therefore requires the Council to conduct adequate searches for the information requested in points e. and f. of Mr N's request and, should further information be identified and located, make that information available to Mr N or give him an appropriate refusal notice in accordance with Part 1 of FOISA, by 6 January 2014.



Appeal

Should either Mr N or Perth and Kinross Council wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
18 November 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...