

# Decision Notice

---

**Decision 175/2014 Mr Edwin Lawrence and South Ayrshire Council**

---

**Breakdown of costs**

Reference No: 201400942

Decision Date: 8 August 2014



Scottish Information  
Commissioner

## Summary

On 9 January 2014, Mr Lawrence asked South Ayrshire Council (the Council) for a breakdown of the costs of a building project at New Bridge Street, Ayr. The Council provided some information to Mr Lawrence, but withheld other information on the basis that disclosure would substantially prejudice the contractor's commercial interests.

During the investigation, the Council informed the Commissioner that it did not in fact hold a further breakdown of the costs. The Commissioner accepted that this was the case, but found that the Council had failed to give Mr Lawrence proper notice of this.

## Relevant statutory provisions

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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 9 January 2014, Mr Lawrence wrote to the Council and requested a breakdown of costs of the ongoing works in New Bridge Street, Ayr, specifically:
  - a) the monthly cost of scaffolding at the buildings;
  - b) the average monthly cost of salaries for labour at the buildings;
  - c) the average monthly cost of materials being used;
  - d) any other significant costs - for instance, management, administration and legal.
2. The Council responded on 5 February 2014. It provided Mr Lawrence with the average monthly payment made to the contractor over the ten months of the contract, but stated that any further breakdown would be exempt from disclosure under section 33(1)(b) of FOISA as it would prejudice substantially the contractor's commercial interests. The Council also provided management, administration and other miscellaneous costs for the period of the contract.
3. The following day, Mr Lawrence wrote to the Council requesting a review of its decision. He did not believe the Council had demonstrated that the contractor's commercial interests would be substantially prejudiced. He also argued that it was in the public interest that the information, particularly the cost of the scaffolding, be disclosed.
4. The Council notified Mr Lawrence of the outcome of its review on 6 March 2014. It upheld its original decision, explaining in more detail why it believed that disclosure would prejudice the contractor's commercial interests. Given Mr Lawrence's concerns regarding the cost of the scaffolding, the Council gave him some background information about the scaffolding.

5. On 29 April 2014, Mr Lawrence 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 Lawrence made a request 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 that request.

## **Investigation**

---

7. On 28 May 2014, the Council was notified in writing that an application had been received from Mr Lawrence and was asked to provide the Commissioner with the information withheld from him. The Council responded to the effect that it did not hold the relevant information, and that the information was held by the contractor. The case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain the steps it had taken to establish that it held no information falling within the scope of Mr Lawrence's request.
9. The Council provided submissions in support of its position that it did not hold the information. It acknowledged that a response in terms of section 17(1) of FOISA (see below) would have been appropriate in the circumstances and apologised for any misunderstanding.

## **Commissioner's analysis and findings**

---

10. 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 Lawrence and the Council. She is satisfied that no matter of relevance has been overlooked.

### **Information held by the Council**

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. These qualifications do not apply in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
13. In its correspondence with the investigating officer, the Council explained that the contract had been awarded in line with the relevant EU requirements, using a standard form of building contract and a bill of quantities. Following this method, the Council explained, it did not hold any information in addition to what had already been provided to Mr Lawrence.
14. The Council provided details of the searches and enquiries it had undertaken to ascertain whether it held the information requested, with supporting evidence. These included searches of its financial ledgers and of electronic records relating to work of this kind and the

officers concerned. The conclusion of all of these searches and enquiries was that the information was not held.

15. Having considered all relevant submissions and the terms of Mr Lawrence's request, the Commissioner accepts that (during the investigation) the Council took adequate, proportionate steps to establish whether it held any information falling within the scope of that request. She also accepts that it was reasonable in all the circumstances for the Council to conclude that it did not hold any relevant information.
16. Given that no such information is (or was) held by the authority, the Council had a duty to issue a notice in writing to that effect, to comply with the terms of section 17(1) of FOISA. Given that the Council failed to provide such a notice to Mr Lawrence, the Commissioner finds that the Council failed to comply with the requirements of section 17(1).
17. The Commissioner is concerned that it appears to have taken the Council until an application was made to the Commissioner before it took the appropriate steps to determine whether it held the requested information. While no useful purpose would be served by requiring the Council to take any specific action in this case, the Commissioner would urge the Council to ensure that, in response to future information requests, it takes reasonable steps to establish whether it actually holds any relevant information before purporting to withhold that information from requesters.

## **Decision**

The Commissioner finds that South Ayrshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to notify Mr Lawrence, in line with section 17(1) of FOISA, that it did not hold information falling within the scope of his request.

## **Appeal**

---

Should either Mr Lawrence or South Ayrshire 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**  
**8 August 2014**

## 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.

...

#### 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.

...

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

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