



Scottish Information
Commissioner

**Decision 172/2006 Mr Matthew Goundry and South
Lanarkshire Council**

*Report detailing options for preventing further disturbances in an
area of East Kilbride*

**Applicant: Mr Matthew Goundry
Authority: South Lanarkshire Council
Case No: 200600891
Decision Date: 18 September 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 172/2006 Mr Matthew Goundry and South Lanarkshire Council

Request for report prepared by South Lanarkshire Council in conjunction with Strathclyde Police on disturbances in an area of East Kilbride. Information not held (section 17).

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 17 (Information not held).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Goundry had been in correspondence with South Lanarkshire Council (the Council) about anti-social behaviour in the vicinity of his home. A letter from the Council confirmed that Police and Community Wardens had been asked to patrol the area around his home for a period of two months, and to report back on their findings and to provide recommendations to address the problems he had raised.

Several months later Mr Goundry made a request for the report referred to in the Council's letter. The Council informed him that it did not hold the information requested, and that Community Wardens and the Police had found nothing to report in respect of anti-social behaviour in the area concerned.

Mr Goundry did not accept this reply as he had alerted the Council to at least one incident in which the police had been involved in the intervening period, and had received an email from a Council official confirming that the Anti Social Investigation team had been asked to carry out an investigation in response to his concerns.



Background

1. During 2004 and 2005 Mr Goundry had been in correspondence with the Council about anti-social behaviour in the area where he lived. On 6 September 2005 he made an information request for a copy of a report detailing suggestions for preventing further disturbances. He had previously been told such a report was to be produced by the Council in conjunction with community police.
2. The Council replied on 30 September 2005 and informed Mr Goundry that it did not hold the information he had requested. The Council updated Mr Goundry on the monitoring arrangements that had been put in place following a meeting with him on 1 July 2005.
3. On 13 October 2005 Mr Goundry sent the Council an email which disputed the statements made in its reply of 30 September. Mr Goundry advised the Council that, during a meeting with him, the Council's Housing Officer had stated that he would ask for a report on the anti-social behaviour from the community wardens and the community police, and that this had also been stated in an email from the Housing Officer dated 31 July 2005. He attached several emails which he believed would prove that the report he had asked for did exist.
4. The Council replied on the same day, advising Mr Goundry that it intended to treat his email of 13 October as request for information under Section 1 of FOISA, rather than a request for review. However, Mr Goundry challenged this decision on 19 October 2005, and the Council replied later than day, accepting that he had made an information request in his email of 6 September 2005. Accordingly, the Council treated his email of 13 October 2005 as a request for review.
5. On 22 November 2005 the Council wrote to Mr Goundry with the findings of its review panel. The review panel had also found that the information requested was not held by the Council. It acknowledged that the refusal notice issued (the letter of 30 September 2005) could have been more explicit and had not distinguished between the formal refusal to disclose information and the provision of an update on a number of other related matters.
6. Mr Goundry applied to me for a decision in a letter dated 13 April 2006. This letter was received by my Office on 8 May 2006. The case was allocated to an investigating officer. After receiving further information from Mr Goundry, his application was validated on 31 May 2006 by establishing that his request had been made to a Scottish public authority, and he had appealed me only after requesting the authority to review its response to his request.



The Investigation

7. The Council was advised that an investigation had begun, and was invited to comment on matters raised by the applicant and on the application as a whole in terms of section 49(3)(a) of FOISA. It was asked to explain how it had established that the information requested by Mr Goundry was not held, and to provide details of the extent and nature of the search carried out. The Council was advised that Mr Goundry had supplied my Office with a letter from a Council Officer, dated 17 May 2005, which shows that community police and wardens had been asked to report back on the anti-social behaviour in the area and to provide recommendations to address the problems.
8. In its response, the Council provided details of the searches carried out to locate information relating to Mr Goundry's request, including systems searched, keywords used, and officers contacted.
9. The Council also stated that the Council Officer who had written to Mr Goundry on 17 May 2005 had advised that his letter was not meant to imply that the Council had agreed to provide a detailed report, and that there was no report on file in respect of his request for information from the police or community wardens. The officer confirmed that he had received verbal feedback from the Community Warden Supervisor that the Community Wardens were not aware of any incidents occurring in the vicinity of Mr Goundry's home. He had received a note from the Police confirming that there had been no incidents around the block where Mr Goundry lived; however, this note could not now be traced. The Council stated that Mr Goundry had been advised of these outcomes in its letter of 30 September 2005.
10. The Council provided a copy of an email sent from a Community Wardens Team Leader on 16 September 2005, which stated that the community warden responsible for the area around Mr Goundry's home had no anti-social behaviour to report apart from a litter problem. I note that this post-dates Mr Goundry's request of 6 September 2005.
11. The Council was asked whether the requests for Police and Wardens to patrol the area around Mr Goundry's home for two months and then to report back on their findings had been made verbally or in writing. The Council confirmed that the requests had been made verbally and there was no written record of the requests.



The Commissioner's Findings and Analysis

12. The investigation into this case focused on the apparent disparity between the contents of the letter sent to Mr Goundry on 17 May 2005, and the Council's statement that no report into the anti-social behaviour affecting the area around his home existed.
13. On the one hand, Mr Goundry had been informed that the Police and Community Wardens were patrolling the area around his home, and that this arrangement would continue for a period of two months. The letter of 17 May 2005 stated, "I have asked the Police and Wardens to report back on their findings and to provide recommendations to address the problems you have raised." Mr Goundry believed that this statement implied the creation of a written report.
14. However, the Council has advised that no such interpretation was intended by the author of the letter, and that no written report was created following the two month monitoring period. In support of its position the Council has provided the statement of the officer concerned and a detailed description of the searches carried out on various databases and filing systems for information which might be relevant to Mr Goundry's request.
15. I believe that Mr Goundry's interpretation of the Council's letter of 17 May 2005 is entirely understandable and that, on the basis of the information in that letter, it was reasonable for him to expect that a written report would have been created and held by the Council.
16. As noted above in paragraph 13, no written record was made of the requests to the Police and the Community Wardens regarding the monitoring of the situation around Mr Goundry's home, so it is impossible now to establish exactly what information the Police and the Community Wardens were asked to supply, or whether this request was made with reference to the intention to produce a written report from the information supplied.
17. I have found that there is no paper trail to record the actions taken by the Council following Mr Goundry's meeting with the Council Housing Officer. I accept that the Council has demonstrated that scarcely any recorded information is held in relation to the anti-social behaviour monitoring carried out around Mr Goundry's home, and that in respect of Mr Goundry's information request, no such report was created.
18. I therefore accept that the Council was correct to advise Mr Goundry that the information he requested was not held, in terms of section 17 of FOISA.



Decision

I find that the Council generally dealt with Mr Goundry's request in accordance with Part 1 of FOISA, in that it was correct to state that the information requested was not held.

Appeal

Should either Mr Goundry or South Lanarkshire Council wish to appeal against the Commissioner's 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 of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
18 September 2006



APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002:

1 General entitlement

(1) A person who request information from a Scottish public authority which holds is it 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.