



Scottish Information
Commissioner

Decision 212/2007 Ms X and East Dunbartonshire Council

Information relating to a property

Applicant: Ms X
Authority: East Dunbartonshire Council
Case No: 200600712
Decision Date: 8 November 2007

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Decision 212/2007 Ms X and East Dunbartonshire Council

Request for information relating to a particular property - not all relevant information identified by the Council at time of request - Commissioner required disclosure of the outstanding information.

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections: 1(1)(General entitlement); 14(2) (Vexatious or repeated requests).

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

Facts

Ms X requested information relating to a particular property from East Dunbartonshire Council (the Council). The Council responded by providing Ms X with copies of the repairs history associated with the property, but not all the specific information requested by Ms X. Ms X was not satisfied with this response and asked the Council to review its decision. The Council carried out a review and, as a result, notified Ms X that it would provide her with a copy of the buy-back survey as requested. Ms X remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Ms X's request for information in accordance with Part 1 of FOISA. He required the Council to provide a copy of one document falling within the scope of Ms X's request identified during the course of the investigation.



Background

1. Ms X wrote to the Council on 27 March 2006. In this correspondence, Ms X made a request for information relating to repairs carried out on a property following her occupation (which ended in March 2006). She also requested copies of surveys linked to the buy-back, carried out on the property prior to her occupation (which began in November 2003). Ms X expressed a particular interest in surveys which related to gas, electrical or dry rot defects.
2. On 20 April 2006, the Council wrote to Ms X in response to her letter of 27 March 2006. In this response, the Council provided Ms X with details of all reactive repair works recorded on Council systems in relation to the property from May 2002 to February 2006.
3. Ms X subsequently submitted two requests for review in relation to this response: the first on 22 April 2006 and the second on 28 April 2006. In this correspondence Ms X expressed dissatisfaction that the Council had failed to provide her with a copy of the buy-back survey or any surveys relating to the safety of gas appliances within the property. It should be noted that both of these requests for review related to the part of Ms X's request concerning surveys at the property prior to her tenancy. Ms X did not raise any dissatisfaction with the response provided in relation to the part of her request concerning repair works after her tenancy.
4. The Council responded to these requests for review on 17 May 2006. This response stated that the Council was not aware of Ms X's original request for a copy of a survey report, and that it was therefore treating the letter of 22 April 2006 as an initial request for the report. The Council went on to state that this report was enclosed with its letter.
5. On 19 May 2006, Ms X again wrote to the Council to express her dissatisfaction to the Council's response to her request. Ms X highlighted that the Council's response of 17 May 2006 had failed to enclose a copy of the buy-back report.
6. The Council, on 24 May 2006, acknowledged that it had erroneously failed to include the report. The Council apologised for this oversight and provided Ms X with a copy of the report.
7. Ms X submitted an application to me on 11 August 2006. In this application Ms X stated that she was dissatisfied with the Council's response, and indicated that she was applying for a decision from me in terms of section 47(1) of FOISA.



8. The application was validated by establishing that Ms X had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.
9. However, I would note that Ms X's application also asked me to confirm whether any gas safety records were legal as per health and safety legislation. My investigation can consider only whether the Council has complied with the provisions of Part 1 of FOISA in its handling of Ms X's information request. Therefore, I will not consider this additional matter any further in what follows.

The Investigation

10. On 14 August 2006, the Council was notified in writing that an application had been received from Ms X. The Council was asked to provide my Office with a range of information for the purposes of my investigation and was also provided with the opportunity to comment on the matters raised by Ms X and the application in general in terms of section 49(3)(a) of FOISA.
11. The Council responded on 29 August 2006, providing detailed background information and providing responses to the various questions raised in the investigating officer's letter of 14 August 2006.
12. In subsequent correspondence with the Council, the investigating officer sought further clarification on the information held by the Council that would fall under the scope of Ms X's request, and that provided to her in response to her request.

The Commissioner's Analysis and Findings

13. In coming to a decision on this matter, I have taken into consideration the submissions provided by both Ms X and the Council and I am satisfied that no matter of relevance has been overlooked.
14. There are two central issues to be addressed in relation to this case – firstly, the manner in which the Council dealt with Ms X's information request, and secondly whether the Council has supplied Ms X with all the information which fell within the scope of her request



15. It should be noted that Ms X has during the process made requests for information under both FOISA and the Data Protection Act 1998 (DPA). My remit in this decision is limited to the consideration of Ms X's initial request for information of 27 March 2006 and the subsequent requests for review under FOISA.

Information falling within the scope of Ms X's request

16. Ms X's initial request specifically sought two groups of information, firstly, information relating to repairs carried out on her property following her residency (which ended in March 2006) and secondly a copy of survey reports linked to the buy-back of the property prior to her occupancy (which began in November 2003). Ms X had a particular interest in surveys which related to any gas, electrical or dry rot defects found.
17. Ms X's subsequent requests for review expressed dissatisfaction only with the Council's response to the second element of her request which relates to information prior to her tenancy of November 2003.
18. One of the matters raised in Ms X's requests for review was the Council's failure to provide the buy-back survey she had requested. The Council's response stated that it enclosed this report but erroneously failed to provide it. However, the Council claimed that this report had not actually been sought in Ms X's initial request of 27 March, and so it was being provided in response to what it considered to be a new request.
19. I wish to note that I am satisfied that this report was clearly among the items that were requested by Ms X on 27 March 2006 and so it should have been considered when first responding to her request. However, I am satisfied that it was provided following the request for review (the stage at which a public authority has the opportunity to rectify any deficiencies in its initial response), despite the Council's assertion that it had not originally been sought. I will not consider this matter further in what follows. As noted in paragraph 5 above, following subsequent correspondence with Ms X, the Council acknowledged that it had failed to enclose a copy of the buy-back survey with its response to her request for review. The Council corrected this error as soon as it became apparent and I shall not consider this administrative oversight further in this decision.
20. Within her appeal to my Office, Ms X raised particular concerns that she had not been provided with surveys of gas, electrical, dry rot or environmental poisoning (i.e. asbestos and metal toxic waste)



21. Within its submissions to my Office the Council submitted that it had previously provided Ms X with copies of Asbestos reports in its correspondence of 4 January 2006. The Council supplied my Office with a copy of this correspondence. As I am satisfied that Ms X had been provided with a copy of these reports soon in advance of her information request of March 27, I will not consider this aspect of her request any further in this decision. I note in particular that the Council would have been entitled to claim that the part of Ms X's request relating to these items was a repeated request, in terms section 14(2) of FOISA.
22. With reference to Ms X's dissatisfaction regarding not being supplied with surveys relating to 'environmental poisoning', the Council submitted that there was no evidence of such problems at the property and therefore no such survey reports exist.
23. With respect to the Gas surveys requested by Ms X, the Council submitted that it provided Ms X's solicitors with copies of gas inspection certificates dated 5 June 2004, 14 July 2004, 5 August 2004 and 6 July 2005. These documents fall outwith the scope of Ms X's request because they post-date the commencement of Ms X's tenancy. However, the Council acknowledged that it had omitted to provide an earlier gas certificate of 30 September 2003.
24. This document clearly falls within the scope of Ms X's request as it is dated prior to her occupancy commencing in November 2003. Although the Council initially submitted to my Office that it has since provided Ms X with a copy of this report, the Council subsequently confirmed that it has not. By failing to provide a copy of this document, or to refuse to provide it on the basis of any provision within part 1 or 2 of FOISA, the Council failed to comply with Part 1 and particularly section 1(1) of FOISA. As the Council has not cited any exemptions under FOISA to withhold this information I require the Council to provide Ms X with a copy of the certificate dated 30 September 2003.
25. The Council also identified a "March-Out" report which was conducted following Ms X's departure from the property in question. This document contains details of the repairs required to the property following Ms X's residency. Again, this document clearly falls within the scope of Ms X's initial request under FOISA of 27 March 2006. However, as Ms X only appealed to my Office on the basis that she had not been supplied with surveys prior to her occupancy, this document falls outwith the scope of my investigation. However, this does not preclude Ms X from making a further request under FOISA for this particular report.



26. With the exception of the document identified by the Council dated 3 September 2003, having considered its search methodology and taking account of complex nature of Ms X's request and ongoing correspondence with the Council, I am satisfied that the Council has identified and supplied Ms X with all the information which falls within the scope of her request and subsequent appeal to my Office.

Decision

I find that East Dunbartonshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms X.

However, the Council failed to comply with Part 1 and particularly section 1(1) of FOISA by failing to provide a copy of one gas inspection certificate dated September 30 2003, or by citing any provision contained in either Part 1 or 2 of FOISA as a reason for its non-disclosure.

I now require the Council to provide Ms X with a copy of this document no later than 45 days after the date of intimation of this decision notice.

Appeal

Should either Ms X or East Dunbartonshire 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.

Kevin Dunion
Scottish Information Commissioner
8 November 2007



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.

14 Vexatious or repeated requests

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.