

Decision Notice



Decision 051/2012 Mr Barrie Redington and North Lanarkshire Council

Photographs

Reference No: 201200192
Decision Date: 26 March 2012

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Margaret Keyse

Acting Scottish Information Commissioner

Kinburn Castle
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Summary

Mr Redington requested from North Lanarkshire Council (the Council) photographs held relative to a specific site. The Council responded by informing Mr Redington that it did not hold the information. Following a review, when the Council confirmed no information was held, Mr Redington remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the Council held no information falling within the scope of the request. She did not require the Council to take any action.

Relevant statutory provisions and other sources

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.

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. Mr Redington has been in correspondence with the Council over a period of time regarding the demolition of the former Satchwell Sunvic factory at Watling Street, Motherwell. During this correspondence, Mr Redington had been provided with two photographs taken after the demolition had taken place. On 23 November 2011, Mr Redington wrote to the Council and asked to be provided with any further photographs held by the Council and taken at the time of demolition.
2. The Council responded on 21 December 2011, informing Mr Redington (in terms of section 17 of FOISA) that it did not hold the photographs requested, other than those previously provided.



3. On 21 December 2011, Mr Redington wrote to the Council requesting a review of its decision. He informed the Council that he had been informed by a photographer that a large quantity of photographs had been provided to the Council.
4. The Council notified Mr Redington of the outcome of its review on 24 January 2012. The Council maintained that it held no information falling within the scope of Mr Redington's request.
5. On 26 January 2012, Mr Redington 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 Redington had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 9 February 2012, the investigating officer notified the Council in writing that an application had been received from Mr Redington, giving it an opportunity to comment 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 identify and locate the information Mr Redington had requested.
8. The Council responded on 27 February 2012, making reference to previous communications between it and Mr Redington. The Council also provided submissions in support of its position that it did not hold any further information.
9. The relevant submissions obtained from Mr Redington and the Council will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Redington and the Council and is satisfied that no matter of relevance has been overlooked.



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, subject to certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. 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 in writing to that effect.
12. In his application to the Commissioner, Mr Redington indicated that he did not accept the Council's contention that it did not hold the photographs he had requested. He stated that he had been in contact with a photographer, who had stated that he had provided the photographs to the Council at the time. He believed, therefore, that the Council should still hold the photographs requested.
13. The Council provided a background to Mr Redington's request, explaining that, in response to a previous request, he had been provided with the only two relevant photographs held by the Council. The Council further explained that at the time any photographs would have been taken (circa 1994), there was no legal obligation on the Council to retain any information of this kind. It explained that Part 11A of the Environmental Protection Act 1990, which imposes a duty on local authorities in respect of contaminated land – and retention of appropriate information in fulfilment of that duty – was not enacted until the year 2000.
14. In its submissions to the Commissioner, the Council explained (with details) that it had carried out specific searches and enquiries to confirm that no further relevant information was held. The Commissioner notes the steps taken by the Council in this connection and she is satisfied (taking account of the resources searched, the officials consulted and the reasons provided by the Council) that these were adequate in the circumstances.
15. Having considered all relevant submissions and the terms and context of Mr Redington's request, the Commissioner accepts that the Council does not hold any information which fell within the scope of his request, in addition to that provided to him earlier. She is therefore satisfied that the Council was correct to give Mr Redington notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

DECISION

The Commissioner finds that North Lanarkshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Redington.

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and North Lanarkshire Council



Appeal

Should either Mr Redington or North Lanarkshire 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
Acting Scottish Information Commissioner
26 March 2012



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.
- ...