

Decision Notice



Decision 222/2013 Mrs Carol Flynn and Perth and Kinross Council

Surveillance at a meeting

Reference No: 201301701
Decision Date: 8 October 2013

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
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Summary

On 14 April 2013, Mrs Flynn asked Perth and Kinross Council (the Council) for information regarding the decision to conduct surveillance on her and her family. The Council responded by notifying Mrs Flynn that it did not hold the requested information. Following an investigation, the Commissioner accepted that the Council did not hold any relevant, recorded information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (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 14 April 2013, Mrs Flynn wrote to the Council requesting the details of the person who authorised the tape recording of the meeting with her and her family on 13 March 2013, and any minutes ordering the tape recording of that meeting.
2. The Council responded 10 May 2013. The Council stated that no surveillance had ever taken place and no meeting was ever held to discuss the matter, and so, in terms of section 17(1)(b) of FOISA, the information was not held.
3. On 13 May 2013, Mrs Flynn wrote to the Council requesting a review of its decision. Mrs Flynn considered that the Council held the information she had requested.
4. The Council notified Mrs Flynn of the outcome of its review on 30 May 2013, upholding its previous decision without amendment.
5. On 23 July 2013, Mrs Flynn wrote to the Commissioner, stating that she 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 Mrs Flynn 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. The investigating officer contacted the Council on 1 August 2013, 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. The Council was asked to explain why it was satisfied that there had been no surveillance of Mrs Flynn and her family, and no record of the decision to tape record the meeting in question. The Council was also asked for details of the searches that it had undertaken to identify the information covered by Mrs Flynn's request. .
8. The Council responded on 16 August 2013, describing the searches that had been undertaken and explaining why the Council considered that it did not hold any information covered by the request, as the Council understood it.

Commissioner's analysis and findings

9. 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 Mrs Flynn and the Council. She is satisfied that no matter of relevance has been overlooked.
10. 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 certain qualifying provisions which do not apply here. 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 the authority does not hold any information covered by the request, it is required to give the applicant notice in writing to that effect, under section 17(1) of FOISA.
11. The Commissioner notes that a Council employee tape recorded a meeting with Mrs Flynn and her family on 13 March 2013 and understands that Mrs Flynn is seeking information about the authorisation for the taping to be made.
12. In its submissions, the Council explained that it considered "surveillance" to be a matter controlled by the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA). Surveillance carried out under RIPSA must be authorised by designated senior officers who are at least at Head of Service level, and is normally considered by the Council only as a last resort.



13. The Council stated that it had not undertaken any directed surveillance (under RIPSA) of Mrs Flynn and her family. The Council explained that it maintains a register of all such surveillance and this is held in separate physical files for each authorisation in a central filing section. The Council confirmed that these files did not contain the information requested by Mrs Flynn.
14. The Council stated that, at the meeting referred to by Mrs Flynn, the Council employee had acted without authorisation in recording the meeting and so no information about authorisation was held. The Council also provided the Commissioner with copies of email correspondence from Council staff, confirming that the relevant individuals had searched their records and no information was held.
15. The Council commented further that it had apologised to Mrs Flynn and her family for recording the meeting, and confirmed that no surveillance authorisation existed.
16. The Commissioner has listened to the recording that was taken of the meeting, and has considered the Council's submissions including the copies of the emails provided. The Commissioner accepts that the Council has taken adequate, proportionate steps to establish that it does not hold any information falling within the scope of the request.
17. On the basis of the evidence presented to her, the Commissioner accepts that no "surveillance" (under RIPSA) took place. The Commissioner has also accepted the Council's explanation that a Council employee taped the meeting without authorisation and on her own volition, and that the Council does not hold any information showing that authorisation was sought or given for this action. Although Mrs Flynn is convinced that the taping was authorised, the Commissioner has found no evidence to support this conclusion. The Commissioner notes that the Council has apologised to Mrs Flynn on behalf of the employee who made the recording.
18. On the basis of the evidence provided, following investigation, the Commissioner is satisfied that the Council held no information falling within the scope of Mrs Flynn's request, and that it correctly gave her notice of this, in line with section 17(1) of FOISA.

DECISION

The Commissioner finds that Perth and Kinross Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mrs Carol Flynn.



Appeal

Should either Mrs Carol Flynn 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
8 October 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.
- ...
- (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.
- ...