



Scottish Information
Commissioner

Decision 014-2006 – Mr Alexander Paterson and West Lothian Council

Request for housing department monitoring reports and report regarding the selling of goods from a specified property

Applicant: Mr Alexander Paterson
Authority: West Lothian Council
Case No: 200501981
Decision Date: 31 January 2006

Kevin Dunion
Scottish Information Commissioner

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Decision 014/2006 – Mr Alexander Paterson and West Lothian Council

Request for housing department monitoring reports and report regarding the selling of goods from a specified property – information not held (section 17) – failure to comply with section 19 (Content of certain notices).

Facts

In 2003 Mr Paterson complained to West Lothian Council (the Council) about the unkempt garden of a nearby property owned by the Council. The Council agreed that the property required attention and advised him that steps would be taken and the situation monitored.

Mr Paterson had also reported his suspicions that goods were being sold illegally from the property, and was advised that Customs and Excise had been asked to investigate, and that the local Housing Officer had been asked to carry out a neighbour investigation in order to determine whether there had been a breach of tenancy conditions.

After two years Mr Paterson was dissatisfied with the Council's progress in improving standards at the property, and requested copies of housing department monitoring reports in respect to the property. He also asked for information from the report about the alleged illegal selling of goods from the property.

The Council advised Mr Paterson that housing department monitoring reports were not held in respect of this particular property, as the officer responsible had not completed the log as procedure required. Neither did the Council hold a report about the selling of goods from the property, as the matter had been referred to Customs and Excise and no written report on the matter had been received by the Council. During the investigation the Council advised my Office that it did not hold any information about the neighbourhood investigation carried out by its own staff, as the same officer who had failed to complete the paperwork for the garden monitoring reports had also neglected to file reports about the neighbourhood survey.



Outcome

The Commissioner found that West Lothian Council was able to provide sufficient evidence and explanation to support its claim that it held neither monitoring reports on the condition of the garden, nor neighbour survey reports on the selling of goods from the property. Accordingly, he found that the Council had complied with Part 1 of the Freedom of Information (Scotland) Act (FOISA) by giving notice under section 17 of FOISA that it did not hold this information.

The Commissioner found that the Council's initial reply to Mr Paterson had not complied fully with the requirements of FOISA or with the Council's own procedures for dealing with information requests, and in particular was in breach of section 19 of FOISA.

Appeal

Should either Mr Paterson or West Lothian 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.

Background

1. On 10 March 2005 Mr Paterson wrote to West Lothian Council (the Council) asking for:
 - a) a copy of the Housing Department's monitoring reports in respect to a specified property
 - b) "details of and conclusion report in respect of the selling of goods" from the same property.
2. The Council replied on 5 April 2005. It informed Mr Paterson that monitoring reports would be withheld because the information related to another person, and that no details of any report about the selling of goods could be supplied as the Council was not the investigating authority regarding this allegation. (This reply varies considerably from the later response sent to Mr Paterson



after a review of the decision.)

3. Mr Paterson applied to me for a decision on the matter on 9 June, but was informed that his request was invalid as he had not asked the Council to review its decision. The Council had not provided any information about the right to ask for a review in its response of 5 April 2005.
4. Mr Paterson then asked the Council to carry out a review of its response to his request. His request was made outside the time scale allowed by the Act, but the Council complied, using the discretionary powers granted under section 20(6) of the Act.
5. In a letter dated 18 July 2005 the Council told Mr Paterson that, with regard to part a) of his request, no recorded information existed regarding the monitoring officer's visits to the property in question, even though this lack of recorded information was contrary to the Council's procedure for achieving its gardening maintenance standard.
6. With regard to part b) of his request, the Council informed Mr Paterson that it held no report about the selling of goods from the property. The matter had been referred to Customs and Excise. Any information held in connection with the investigations of Customs and Excise was received confidentially and was exempt under sections 35(1)(g) and 35(2)(a) of FOISA. Section 35(1)(g) allows public authorities to withhold information if its release would, or would be likely to, prejudice substantially the exercise of any of its functions for any of the list of purposes in section 35(2). Section 35(2)(a) states that one of these purposes is "to ascertain whether a person has failed to comply with the law".
7. The Council also informed Mr Paterson that it had decided to cite section 18 of FOISA in respect of part b) of his request, which allows authorities to refuse to confirm or deny whether information is held if the authority believes that the information, if held, would be exempt under one of a number of specified exemptions.
8. Mr Paterson appealed to me for a decision on 20 July. In his letter he expressed dissatisfaction with the Council's reply to both parts of his information request. His letter made it clear that part b) of his request referred to the local neighbour survey which, in 2003, the Council had confirmed was ongoing in relation Mr Paterson's complaint, rather than any report from Customs and Excise.
9. The case was allocated to an investigating officer.



Investigation

10. Mr Paterson's appeal was validated by establishing that he had made his request to a Scottish public authority (i.e. West Lothian Council), and had appealed me only after requesting the authority to review its response to his request.
11. A letter was sent on 29 July 2005, informing the Council that an appeal had been received and that an investigation into the matter had begun.
12. In relation to the request for monitoring reports, the Council was asked:
 - a) for copies of any recorded information relating to the monitoring of the property following Mr Paterson's 2003 complaint
 - b) for details of the recording procedures normally followed by the Council when monitoring the state of a property
 - c) whether there had been failures to follow these recording procedures while monitoring this property, and whether any records had been lost or destroyed outwith normal records management procedures.
13. In relation to the request for information on the selling of goods, the Council was asked for copies of any recorded information relating to action taken by the Council to conduct a survey in relation to the sale of goods at the specified property.
14. The Council was also asked for copies of any internal procedures of guidance available to staff dealing with requests for information under FOISA or the Environmental Information (Scotland) Regulations 2004.
15. In relation to part a) of Mr Paterson's request, the Council provided:
 - Confirmation that no monitoring reports existed in relation to the garden of the property in question.
 - Copies of all documents contained in the Council's Housing Department file for the property.
 - The Council's Garden Inspection Procedure document
16. In relation to part b) of Mr Paterson's request, the Council provided two internal documents showing that the Council had not carried out an investigation into the sale of goods at the specified property but had instead



referred the matter to Customs and Excise.

17. The Council also provided information in relation to procedures, guidelines and training for staff dealing with information requests.
18. At a later stage in the investigation the Council was asked to show how it had established that it held no information relating to the neighbour survey following the complaint about the selling of goods from the address in question. The Council provided templates of the documents that should have been completed and filed, and testimony from officers in the Housing Department to the effect that despite a full search in the relevant electronic and manual records, along with other places where the information might be found, there was no evidence that the responsible officer had completed any paperwork relating to the survey.
19. The Council confirmed that the same officer was responsible for the failure to complete the gardening monitoring report log (see paragraph 15). This information had been also included in the searches referred to in paragraph 18. The officer concerned had resigned prior to disciplinary action and was no longer employed by the Council.

The Commissioner's Analysis and Findings

The Housing Department monitoring reports for the property

20. The Council's Garden Maintenance Standard document outlines the procedure to be followed by Quality Assurance Officers carrying out garden inspections. After each inspection, officers should update the street inspection log.
21. The Council has informed me that no logs were kept by the officer responsible for monitoring the condition of the garden at the property following Mr Paterson's earlier complaint in January 2003. The files for neighbouring properties were searched in case any of the logs had been misfiled, but no logs were found. The failure to complete a log was contrary to Council procedure, but the officer responsible resigned before this issue was addressed.
22. I accept that, due to the failure of one of its officers to comply with the established procedure, the Council does not hold information which would normally be available about the inspections of the property in question. I note that from July 2005 the inspection logs have been completed according to the



Council's procedures; however, as this information post-dates Mr Paterson's request it cannot be considered within the scope of this decision notice.

23. I therefore uphold the Council's decision that with regard to the garden monitoring reports for the property, the information requested is not held.
24. However, I am concerned that the initial reply sent to Mr Paterson was clearly compiled on the assumption that the information was held, but without any attempt to examine the information and assess whether it might be possible to provide any of the contents, with (for instance) the redaction of third party personal data. This would have revealed that the information was not in fact held by the Council.
25. I also note that Mr Paterson was not informed of his right to ask for a review of the decision, or his right to appeal to me. This is contrary to the Council's own procedure which requires the Head of Service to reply to the applicant, giving grounds for refusal and appeal procedure. By failing to inform Mr Paterson of his rights of appeal the Council did not comply with section 19 of FOISA.
26. I would recommend that the Council review the training provided to its officers in dealing with information requests in order to ensure that the replies received by applicants fully comply with the requirements of FOISA and relate to the information actually held or not held by the Council.

Report in respect of the selling of goods from the property

27. Mr Paterson had previously complained to the Council that goods were being sold illegally from the property in question. In a letter of 25 February 2003 he was told that the Council had referred the matter to Customs and Excise to investigate, and that the local Housing Officer was carrying out an ongoing neighbour survey to determine whether there had been a breach of tenancy conditions at the property.
28. Mr Paterson's request of 10 March 2005 asked for "details of and conclusion report in respect of the selling of goods". The Council interpreted this as a request for any report from Customs and Excise held by the Council on the issue.
29. I accept that the terms of Mr Paterson's original request were rather ambiguous and could be interpreted as a request for a report on the Customs and Excise investigation. However, it is clear from the terms of Mr Paterson's application to me that he was looking for information about the neighbour survey carried out by the Council rather than the Customs and Excise investigation. I have therefore concluded that any information relating to the Customs and Excise investigation falls outside the scope of Mr Paterson's



request, and should not be considered within this decision notice.

30. The initial reply sent to Mr Paterson on 5 April 2005 informed him that the information requested would not be provided as his request related to another person, and because the Council was not the investigating authority in relation to the allegations.
31. When the Council reviewed Mr Paterson's request, it revised the basis of its decision to withhold the information. Mr Paterson was told that the Council did not hold a report from Customs and Excise on the selling of illegal goods at the property. The Council provided the investigating officer with a copy of an internal communication which supports this position, and I accept that such a report is not held by the Council.
32. It remains open to Mr Paterson to apply to Customs and Excise (now HM Revenue and Customs) for any report compiled by that authority on the investigation into the allegations about illegal selling of goods at the property.
33. With regard to information from the neighbour survey carried out by its own officer, the Council stated that no information was held. The officer concerned had not followed Council procedures, and as a result had not recorded any actions or outcomes relating to the neighbour survey into the alleged selling of goods from the address in question.
34. The Council provided testimony that officers had checked diaries from the period and discovered a note showing that the survey was carried out in February 2003, but no file notes were found. Officers had also carried out a search of the Council's Enquiry Tracking System (a computer based system) in which tenants' concerns about properties are usually noted along with follow-up actions and the response from the Housing department. Again, no information was found. A search had been carried out of the responsible officer's desk and files in case the information had either not been filed or misfiled, but no information was found there either.

Conclusion

35. I have found that the Council has provided sufficient evidence and explanation to support its claim that it does not hold information covered by Mr Patterson's request, i.e. the garden monitoring reports for the property, a report from Customs and Excise about the illegal sale of goods from the property, and records relating to the neighbourhood survey on the same issue. I note that some of this information would normally be held by the Council but that in this case a Council officer failed to create the relevant records.



Decision

I find that West Lothian Council generally dealt with Mr Paterson's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), by giving notice to Mr Paterson under section 17 of FOISA that most of the information he requested was not held by it.

However, as noted in paragraphs 24 – 25 above, the Council's initial reply to Mr Paterson did not meet the requirements of section 19 of FOISA or provide a response based on the information actually held (or not held) by the Council. While I do not require any remedial action to be taken by the Council in respect of this failure, I draw the Council's attention to the recommendation in paragraph 26 of this decision notice.

Kevin Dunion
Scottish Information Commissioner
31 January 2006