



Scottish Information
Commissioner

**Decision 040/2005 – Ms Elizabeth Marriott and Glasgow City
Council**

Request for a copy of a contract between Ms Marriott and Glasgow City Council

**Applicant: Ms Elizabeth Marriott
Authority: Glasgow City Council
Case No: 200501409
Decision Date: 19 October 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 040/2005 – Ms Elizabeth Marriott and Glasgow City Council

Request for a copy of a contract between Ms Marriott and Glasgow City Council – information not held

Facts

Ms Marriott asked Glasgow City Council (the Council) to provide a copy of a contract issued to her and signed by her in early 2003, regarding local history research to be carried out on the Ladywell and area in Glasgow.

The Council has stated that the information is not held and has described the searches carried out to support this statement.

Outcome

The Commissioner accepted that the Council had carried out sufficient searches of its records to establish that a copy of the contract in dispute is not held by the Council.

Appeal

Should either Ms Marriott or the 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 of receipt of this notice.



Background

1. On 31 March 2005, Ms Marriott wrote to the Council, asking for a copy of a contract issued in early 2003 by the Senior Project Manager, Land Services Department. According to Ms Marriott, this contract had been prepared for her in connection with research work to be carried out on the history, folklore and geography of the Ladywell area in Glasgow.
2. Ms Marriott explained that she had originally signed the contract, but had later been informed that further work would be added to the project remit without changing the offer or the deadline. She had asked for a revised contract but when, after some delay, a new contract was prepared, she found the terms unacceptable and did not sign it. In the meantime, she had destroyed her copy of the original contract.
3. Ms Marriott is currently involved in legal proceedings against the Council in relation to this matter.
4. In her request of 31 March 2005, Ms Marriott asked the Council to search its electronic systems and the personal computer of the Senior Project Manager, Land Services Department, for a copy of the contract.
5. The Council replied on 21 April 2005, informing Ms Marriott that it does not hold the contract in question.
6. Ms Marriott asked the Council to review this decision on 3 May 2005. The Council replied on 2 June 2005 upholding its reply and detailing certain searches that had been carried out, which had failed to locate a copy of the contract.
7. Ms Marriott then applied to me for a decision in an email dated 2 June 2005.
8. Ms Marriott has also applied to me for a decision relating to two other requests made to Glasgow City Council; these will be the subject of a separate decision notice.



Investigation

9. Ms Marriott's appeal was validated by establishing that she had made her request to a Scottish public authority (i.e. the Council), and had appealed me only after asking the authority to review its response to her request.
10. A letter was sent to the Council on 6 June 2005, informing the Council that an appeal had been received and that an investigation into the matter had begun.
11. In order to investigate the case, the Council was asked
 - a) For further details of the search carried out for the contract requested by Ms Marriott.
 - b) For details of the Council's normal practice when drafting and entering into contracts of this type.
 - c) Whether the Senior Project Officer had been asked about the contract.
 - d) For details of the Council's retention policy for this type of document
 - e) For details of any other documentation relating to the contract which may have been supplied to Ms Marriott in connection with her other information requests to the Council.
12. The Council provided the information requested above, which will be discussed in the next section of this decision notice. The Council also sent my Office copies of the documents supplied to Ms Marriott in response to another of her information requests, and copies of all remaining documents held by the Council which are in any way connected with its dealings with Ms Marriott, but which have not been disclosed to her.
13. The investigating officer wrote to the Council again, seeking further details about the searches carried out by the Council; this information was provided in the Council's reply of 22 September 2005. Further points relating to the investigation were clarified in telephone calls and email correspondence with Council staff.



The Commissioner's Analysis and Findings

14. The investigation focused on the question of whether the Council could provide sufficient evidence to show that the contract requested by Ms Marriott is not held by it.
15. The contract itself has not been discovered during this investigation, and nor were any references to it found in any document examined during the course of this investigation, apart from those disputing its existence. The earliest reference to funding for Ms Marriott's work on the Ladywell project was found in the minutes of the Parks and Facilities Committee meeting of 13 August 2003, at which the Director of Land Services was authorised to negotiate a commission with Elizabeth Marriott relating to the Ladywell project.
16. I note that the Senior Project Officer, who allegedly drew up the contract, has denied that the contract ever existed, whereas Ms Marriott has stated that she can produce witnesses to its existence. Ms Marriott's complaint to me centres on the claim by the Council that it did not hold the information requested. My investigation has therefore focused on the question of whether the Council held the contract on 31 March 2005, the date on which it was requested. Whether the contract was ever drawn up or ever held by the Council is relevant only in so far as establishing whether it was held on the date it was requested.

Manual filing system searches

17. In its letter of 29 June 2005, the Council stated that it operates on the basis of manual files, and described the searches that had been carried out among its paper-based records. These searches included the files held by several key officers involved in the discussions of the Ladywell Project, including those held by the Senior Project Officer.
18. At the investigating officer's request, the Council searched the Deed Safe where contracts held by the Legal Services Department would normally be stored. The Council confirmed that the contract was not found in the Deed Safe and that the files for Ms Marriott held by Legal Services had not been marked up to show that any documents had been stored in the Deed Safe, as would be normal practice.

Records Management procedures for Council contracts

19. The Council has confirmed that it would be normal practice for Council departments requiring a contract to be drawn up to contact the Corporate Law section of the Legal Services Department and that it would be extremely



unlikely for staff in another department to draft a contract, especially without obtaining legal advice from the Corporate Law section.

20. The Council pointed out that the contract prepared for Ms Marriott in January 2004 had been drafted by a Senior Solicitor in the Corporate Law section.
21. The Council supplied copies of the document retention policy for the Corporate Law Section. Contracts are kept for the duration of the contract plus five years, and accompanying files were kept for two years after being closed (since June 2005 this has been changed to three years after closure).
22. The Council has advised me that the only contracts held by individual departments are standard form contracts which the department has had signed.
23. The Land Services Department does not have a retention policy for physical files. The Council advised that any contracts stored within the Land Services Department would be kept for the duration of the contract plus an additional period of time, which would depend on the nature of the contract.

Conclusion

24. I am satisfied that the Corporate Law Section has adequate records management procedures in place, and that if the disputed contract had been prepared or stored in this department of the Council according to its normal practice, this would have been evident from the records kept.
25. It is disappointing that other departments in the Council do not operate under the same detailed retention policies as the Corporate Law Section, especially where official records such as contracts are stored within these departments. This may be something for the Council to address in future reviews of its records management policies and procedures.

Computer searches carried out by the Council

26. In a letter to my Office dated 29 June 2005, the Council provided details of the computer searches carried out within the Land Services Department and the Corporate Law Section of the Council. The Council listed the shared drives and personal drives searched, using the search term "Elizabeth Marriott". The contract requested by Ms Marriott was not found. The Council gave details of several documents containing the name "Elizabeth Marriott" which had been retrieved by the search, indicating that the contract would have been retrieved if it had been stored within these systems.
27. Further details of the computer searches were provided in response to the investigating officer's questions. It was established that the searches had



covered the file servers and computer drives where the contract or drafts of the contract were most likely to have been saved, bearing in mind that such documents would normally be held as paper records. However, it became apparent that some areas had been overlooked, which might usefully have been included in the search, such as email mailboxes, or the local drive and recycle bin of the Senior Project Manager's computer.

28. At the investigating officer's request, additional searches of these areas were carried out in early September 2005. The secretary who had worked for the Senior Project Officer in 2003 carried out a search of her own computer but did not find information relating to the contract. The local drive and recycle bin on the Senior Project Officer's computer was searched. No information relating to the contract was found in any of these locations.
29. The IT Systems Manager for Land Services searched the emails in the Senior Project Officer's mailbox but did not find any emails relating to the contract. He confirmed that under normal corporate practice any emails older than 6 months would be routinely deleted from the Exchange server.
30. The ICT Support Manager of the Chief Executive's department was asked about the possibility of searching the Council's email archives. He explained that although a corporate email archiving solution is currently being piloted, at present the use of email archives varies widely throughout the Council. He confirmed that the Senior Project Officer had not, however, used any email archives.

Is deleted information "held"?

31. In telephone calls and emails to my Office, Ms Marriott explained that she expected the search for the contract to include documents deleted from Council officer's computers.
32. It may be appropriate to comment here on the extent to which electronic data held on back-up or storage tapes or archives is "held" by public authorities in terms of FOISA.
33. In guidance provided on my website, I have made it clear that where a public authority has deleted an email or an electronic file which could now be retrieved only by an IT specialist, I take the view that the information is no longer held by the public authority. Emails in an electronic waste bin which has not been emptied, however, will be readily accessible and should therefore be disclosed.
34. In this case, the Council has provided me with considerable detail about the availability of back-up files from its computer systems and the technical issues



involved in locating specific data from those files.

35. I have been informed that back-up tapes for servers are kept for a maximum of one year and that back-up files within the Council for 2003 and 2004 are generally unavailable. Back-up tapes for the Trongate and Richmond file servers (where the Senior Project Worker's files were saved) are only kept for one month and are then re-used.
36. The Chief Executive's Department has advised me that there might be some back-up tapes still available for 2003/2004 for Legal Services. However, these tapes are not labelled with the last back-up dates or with any list of contents.
37. The Council has provided me with a list of technical issues which would have to be overcome in order to restore the data on any of its back-up tapes. To search those tapes for the specific information required to meet Ms Marriott's request would present such technical difficulties that, in effect, the information on the tapes is not "held" by the Council for the purposes of FOISA.
38. The Council was also asked about back-up data for email servers. IT staff explained that back-ups are taken every four weeks and kept for a year. However, as with the other back-up tapes, sufficient technical expertise would be required to restore the data to exclude it from the scope of this investigation.

Conclusion

39. I am satisfied that a full search has now been carried out of the existing data currently held in electronic format on the Council's computers and servers where the contract, or drafts of the contract, were most likely to have been saved. Given the technical difficulties in restoring data from back-up tapes of emails and other electronic files, I have not required the Council to extend its search to deleted files which have been removed from electronic waste baskets.

Impartiality and reliability of the search procedures

40. Ms Marriott has queried whether the searches for the contract should have been carried out by Council employees working in the Land Services Department, given the difficult relationship that has developed since their disputes over the Ladywell project. She is concerned that there has been no unbiased oversight of the search and has pointed out that it is in the interests of the Land Services Department to deny the existence of the contract.



41. Under section 65 of FOISA it is an offence for information which has been requested by an applicant to be destroyed or concealed with the intention of preventing its disclosure. I have not found any evidence that such an offence has occurred.
42. There is no guidance available to public authorities, either in FOISA or in the Scottish Ministers' Code of Practice on the discharge of functions by public authorities (Section 60 Code of Practice), to direct them in situations where there is a potential conflict of interest between the authority and the applicant.
43. The Land Services Department of the Council have an administrative and management structure in place to deal with freedom of information requests. Ms Marriott's request was considered in turn by three officers within the Land Services Department before the Senior Project Officer, named as the author of the contract, was contacted.
44. The Senior Project Officer prepared a summary of events relating to Ms Marriott's request, and commented that the contract had never existed. He was then asked whether the document requested was held anywhere in the Council. This email was copied to several other officers, one of whom replied that Ms Marriott had never mentioned its existence to him or made any such claim that it did exist before. The Senior Project Officer confirmed his statement that the contract had never existed.
45. On the basis of this advice, the Council informed Ms Marriott that the information was not held. When Ms Marriott asked for a review of that response, more extensive searches of computer and manual files were carried out by a number of Council staff. Most of these searches were carried out by officers not directly involved in the dispute with Ms Marriott but who mostly work within the Land Services or Legal Services Department.
46. It seems to me that the Council dealt reasonably with Ms Marriott's request, using established procedures through which several staff had oversight of her request and were involved in preparing the response.
47. With hindsight, in the interests of transparency, it might have been better for the Council to nominate officers from other departments to carry out the additional searches for the disputed contract when reviewing the response to Ms Marriott's request. Ms Marriott had initiated legal proceedings against the Council in March 2005, and it would have been preferable for the Council to make a clear demonstration of its impartiality when reviewing her request. However, I am satisfied that the majority of the searches undertaken were carried out by staff with no vested interest in finding or failing to find the disputed contract.



48. The Council has co-operated fully with the investigating officer in carrying out additional searches when requested and I have not considered it necessary for the investigating officer to make an independent search of the Council's files. Any such search would not have included deleted data saved on back-up tapes, for the reasons detailed above.

Conclusion

49. After considering the evidence presented by the Council regarding its records management arrangements and the searches carried out by its officers, I am satisfied that the Council does not hold a copy of the contract.

Decision

I find that Glasgow City Council has dealt with Ms Marriott's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002.

Kevin Dunion
Scottish Information Commissioner
19 October 2005