

Decision Notice



Decision 022/2013 Ms Laura Cregan and East Lothian Council

Information relating to property repairs

Reference No: 201202075

Decision Date: 20 February 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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Summary

Ms Laura Cregan asked East Lothian Council (the Council) for information about the steps it took to trace the co-owner of a specified property, along with information on how the cost of repairs to the property were apportioned between the two owners. The Council provided Ms Cregan with some information about the first part of her request, but advised her that it did not hold information covered by the second part of her request.

Following an investigation, the Commissioner found that the Council had correctly notified Ms Cregan that it did not hold some of the information she requested. However, by failing to advise Ms Cregan that its response to the first part of her request was not based on recorded information, and that it did not hold any recorded information relating to this part of her request, the Commissioner finds that the Council failed to comply with section 17(1) of FOISA.

Relevant statutory provisions

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.

Background

1. On 3 August 2012, Ms Cregan wrote to the Council asking a number of questions which included requests for the following information:
 - a) The steps the Council had taken to inform the co-owner of a specified property about the improvement works it was undertaking to the property, following the death of the other co-owner.
 - b) A list of the works that were included in the surveyor's interim evaluation at the time of the co-owner's death, and how they were apportioned between both co-owners at that time.



2. The Council responded on 3 September 2012. It provided Ms Cregan with some information regarding request a). In response to request b), the Council notified Ms Cregan that it did not hold any of the surveyor's calculations for interim evaluations. It noted that a list of finalised works with certified costs had already been released under FOISA.
3. On 10 September 2012, Ms Cregan wrote to the Council requesting a review of its decision. In particular, Ms Cregan noted that the Council had provided no details of the steps it had undertaken in response to request a) and she queried its response to request b).
4. The Council notified Ms Cregan of the outcome of its review on 12 October 2012. The Council upheld its previous decision with regard to request a), providing some further clarification. With respect to request b), it confirmed that it did not have information which set out a list of works related to each interim evaluation and how these were apportioned between owners.
5. On 14 October 2012, Ms Cregan 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 Ms Cregan 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 subsequently contacted the Council on 13 November 2012, 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 for details of searches it had undertaken to determine that information was not held, and for further explanation of its position regarding its response to requests a) and b).
8. The Council responded to this letter on 5 December 2012.
9. The relevant submissions received from both the Council and Ms Cregan 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 withheld information and the submissions made to her by both Ms Cregan and the Council and is satisfied that no matter of relevance has been overlooked.



Request a)

11. The question for the Commissioner to consider, in relation to request a), is whether the Council provided Ms Cregan with all information covered by the terms of her request, in compliance with section 1(1) of FOISA.
12. In its review outcome, the Council advised Ms Cregan that it had contacted the police in an attempt to establish the whereabouts of the co-owner of the property. When asked for documentary evidence of this contact, the Council stated that it held no information or evidence regarding attempts to notify the co-owner or to ascertain their whereabouts. Enquiries were made verbally via the Council's Police Liaison Officer, without success. The Council stated that no formal request was made (to the police) and no information was obtained.
13. The Council explained that the two co-owners jointly owned the property, and were jointly and severally liable for the cost of all repairs carried out to that property: there was no "invisible" 50-50 or other split of liability between them. Either of the two co-owners could be held responsible for the cost of all of the work. The Council submitted that this was the reason that no further attempts were made to trace the co-owner or to notify them: it was aware of the whereabouts of one of the co-owners and it was therefore deemed unnecessary to pursue the other owner.
14. The Commissioner has considered the Council's submissions regarding request a) and is satisfied that, although Council officials can recall that an attempt to trace the co-owner had been undertaken, through enquiries to the police, the Council does not hold any recorded information to demonstrate this.
15. While the Commissioner accepts that the Council was trying to assist Ms Cregan in this instance (and was correct, in line with its duty to advise and assist, to advise Ms Cregan about the attempts it had made to contact the co-owner), FOISA required the Council to make a clearer distinction between information it did and did not hold, and to notify Ms Cregan (in terms of section 17(1) of FOISA) that it held no recorded information regarding its attempts to trace the co-owner.

Request b)

16. In its review outcome, the Council advised Ms Cregan that it did not have information which set out a list of works related to each interim evaluation and how these were apportioned between owners. In its submissions to the Commissioner, the Council explained that, in order to determine if such information existed, it had contacted the external surveyor and asked him to provide the method he deployed to breakdown the allocation of costs between the two co-owners.



17. As noted above, joint owners of heritable properties are jointly and severally liable for the cost of repairs carried out by the Council. The Council noted that this is a legal obligation and it is normal practice for the Council to pursue one owner alone for payment if the whereabouts of the other is unknown. The Council advised that there was no specific policy in place regarding this practice, but the Council was entitled to pursue debt in this way.
18. Regarding repairs, the Council explained that its usual practice is to provide a breakdown of the costs/works of the overall project to the owners at the outset, and, at the time of the works in question, to issue invoices to owners as work progressed. The Council advised the Commissioner that it did not receive a breakdown of works completed in respect of each interim valuation, and that this was done at the final accounting stage. The Council maintained that this case was not handled differently to any others, and that no breakdown of costs was provided to the co-owner as their whereabouts were unknown.
19. The Council explained that, at the time the work was completed, one of the co-owners had applied for a grant towards the cost of the work. No other owners were listed on the application and no reference had been made to the other co-owner. The repairs notice was served on this person alone, who, being a joint owner of the property, was liable for the entire bill. It would have been up to the individual concerned to seek repayment of a half share from the other co-owner.
20. In her submissions, Ms Cregan explained why she needed to know the apportioned costs at the time of the death of one of the co-owners. Ms Cregan argued that she needed to determine whether any diligence was undertaken by the Council on costs after the death of one of the co-owners, when the other co-owner then held sole ownership of the property.
21. The Commissioner has sympathy with the position Ms Cregan has found herself in, and understands her desire to obtain the information she has requested. However, with respect to request b), having considered the Council's submissions and explanations with regard to the apportioned costs, the Commissioner accepts that the Council does not hold the information she had asked for, and finds that the Council was correct to notify Ms Cregan, in terms of section 17(1) of FOISA, that it did not hold the information she was seeking.



DECISION

The Commissioner finds that East Lothian 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 Cregan.

The Commissioner finds that by correctly notifying Ms Cregan that it did not hold any information regarding request b), the Council complied with Part 1 of FOISA.

However, by failing to notify Ms Cregan that it held no recorded information falling within the scope of request a), as required by section 17(1), the Council failed to comply with Part 1 of FOISA.

Given the explanation by the Council, summarised in this decision, the Commissioner does not require the Council to take any further action in relation to Ms Cregan's request.

Appeal

Should either Ms Cregan or East Lothian 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
Head of Enforcement
20 February 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.

...