

# Decision Notice

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**Decision 041/2016: Mr James Duff and Dumfries and Galloway Council**

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**Correspondence between civil authorities and the police authority**

Reference No: 201502256

Decision Date: 22 February 2016



Scottish Information  
Commissioner

## Summary

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On 28 September 2015, Mr Duff asked Dumfries and Galloway Council (the Council) for correspondence between the Council (as the former police authority) and the Law Society of Scotland, relating to complaints he had made. The Council stated that it did not hold the information.

Following an investigation, the Commissioner accepted that the Council held no information falling within the scope of Mr Duff's request.

## Relevant statutory provisions

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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 Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 28 September 2015, Mr Duff made a request for information to the Council. He asked the Council for correspondence between the Council (as the then police authority) and the Law Society of Scotland, relating to specific complaints he had made to the Police.
2. The Council responded on 26 October 2015 and, citing section 17 of FOISA, stated that it had carried out searches and concluded that it held no information falling within the scope of the request. The Council considered it unlikely that it had ever held the information and suggested that Mr Duff might wish to make a request to Police Scotland.
3. On 27 October 2015, Mr Duff wrote to the Council, requiring a review of its decision.
4. The Council notified Mr Duff of the outcome of its review on 25 November 2015, upholding its original decision. It confirmed that it had carried out additional searches, which it considered comprehensive in the circumstances. It adhered to the view that it was unlikely ever to have held the information. If it had, the Council stated, the information would have been transferred to Police Scotland when the new police force was created.
5. On 27 November 2015, Mr Duff wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He stated he was dissatisfied with the outcome of the Council's review because he did not accept the conclusion that it did not hold the information.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr Duff made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.

7. On 21 December 2015, the Council was notified in writing that Mr Duff had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, with particular reference to the steps taken to establish that it held no relevant information.
9. The Council provided submissions on 28 January 2016.

## **Commissioner's analysis and findings**

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10. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both Mr Duff and the Council. She is satisfied that no matter of relevance has been overlooked.
11. In its submissions to the Commissioner, the Council explained that it had carried out searches within Legal Services, Executive Support and the Governance and Elections Team, as these were the areas that would hold such information, if it were held. It provided emails confirming nil returns from these searches. The Council considered it likely, given the dates identified in Mr Duff's request, that any correspondence of the type sought by Mr Duff would have been conducted by post. In addition to searches of manual files, however, it undertook searches of electronic records for completeness' sake (using search terms it provided).
12. The Council did not consider it likely that the Law Society of Scotland would have corresponded with the police authority in the terms suggested by Mr Duff. Even if it had, the Council submitted, records relating to the Council's functions as police authority were transferred to the Scottish Police Authority when that authority was created. A small number of files had been retained by Legal Services, but these were covered by the searches carried out.
13. In any case, the Council believed it likely, given the passage of time, that any relevant information held it would have been destroyed by the time of Mr Duff's request. It was not aware of the specific records retention in place in the 1990s and it had been unable to trace what information had been destroyed, but submitted that it was common practice for "operational" information to be destroyed following the making and execution of decisions.
14. The Commissioner has carefully considered all of the submissions provided by both Mr Duff and the Council, including the Council's explanations of why the searches it conducted would have located any information falling within the scope of Mr Duff's request.
15. Having considered all relevant submissions, the Commissioner accepts that the Council carried out adequate, proportionate searches in the circumstances to ascertain whether it held any information falling within the scope of Mr Duff's request. She accepts that any information relevant to the request would have been identified using the searches described by the Council. On the balance of probabilities, she accepts that the Council was correct in concluding that it did not hold the information sought by Mr Duff.

## **Decision**

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The Commissioner finds that Dumfries and Galloway Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Duff.

## **Appeal**

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Should either Mr Duff or the 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**

**22 February 2016**

### 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.

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(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.

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#### 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.

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