

Decision 050/2006 Mr Turvey and Highland Council
<i>Request for forensic report relating to sandbags</i>

Applicant: Mr Doug Turvey
Authority: Highland Council
Case No: 200501828
Decision Date: 23 March 2006

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
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KY16 9DS

Request for forensic report relating to sandbags – information not held – no reference to section 17 on receipt of initial response – on review advised that information not held

Facts

In February 2001 Mr Turvey's wheelchair was in a collision with some sandbags on a pavement. Since that date there has been considerable correspondence between Mr Turvey and Highland Council regarding the ownership and disposal of, and liability for, the sandbags. This resulted in Mr Turvey making a freedom of information request for a copy of the forensic report on the sandbags. On review, the Council advised Mr Turvey that it did not hold the information requested. Mr Turvey applied to the Commissioner for a decision.

Outcome

The Commissioner found that Highland Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by notifying Mr Turvey that it did not hold the information requested.

The Commissioner found that Highland Council partially failed to comply with Part 1 of FOISA in failing to issue a notice in accordance with section 17(1) in response to Mr Turvey's initial request, advising him that it did not hold the information requested and of his rights in accordance with section 19 of FOISA.

The Commissioner does not require the Council to take any remedial steps.

Appeal

Should either Highland Council or Mr Turvey wish to appeal against this decision, there is a right to 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. I understand that in February 2001 Mr Turvey's electric wheelchair collided with some sandbags on the pavement. In trying to avoid these sandbags his chair slipped off the pavement and collided with a parked car which was scratched. Since that date there has been considerable correspondence between Mr Turvey and Highland Council (the Council) over the ownership and disposal of, and liability for, the sandbags. This resulted in Mr Turvey's request by fax to the Council of 6 March 2005:

“Please advise where and when the documents including the inspection and forensic reports will be available as provided in the Freedom of Information Act”
2. The Council responded to this fax on 15 March 2005. The Council referred Mr Turvey to its letter to him of 14 March 2003 in which the Council had advised that the matter had been referred to the Council's insurers the previous year and that they had concluded that the Council was not liable.
3. Mr Turvey sent a further fax to the Council on 23 March 2005, sending the same message again on 28 March 2005. He referred to the Council's letter of 15 March 2005 and advised that he was requesting documents covered by the Freedom of Information Act. He reminded the Council that it should respond within 20 working days.
4. The Council treated Mr Turvey's fax of 23/28 March 2005 as a request for review on the basis that Mr Turvey had expressed dissatisfaction with the Council's response of 15 March 2005.
5. In its notice of review of 31 March 2005 the Council advised that it had reviewed its correspondence with Mr Turvey and its decision not to disclose the information requested. The Council confirmed that it could not disclose the information requested by Mr Turvey as the Council did not hold it. The letter provided Mr Turvey with information about his rights to appeal to my Office.
6. On 27 May 2005 Mr Turvey applied to me for a decision.
7. The case was allocated to an investigating officer.

Investigation

8. Mr Turvey's appeal was validated by establishing that he had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its decision not to provide the information requested.
9. Mr Turvey was advised that the investigation was confined to his request for recorded information, that is, the request for the forensic and inspection reports on the sandbags.
10. The investigating officer contacted the Council on 15 February 2006 giving notice that an appeal had been received and that an investigation into the matter had begun. Under section 49(3) of FOISA the Council was invited to comment on the issues raised by this case and to supply certain information. The Council was also asked to set out, for the purposes of this investigation, why it did not hold the information requested by Mr Turvey.
11. The Council made a number of submissions in respect of this application.

Council's submissions

12. The Council indicated that it understood that in February 2001 Mr Turvey was driving down the pavement in his electric "power chair" when he came across sandbags which were obstructing the pavement. In trying to avoid the sandbags his chair slipped off the pavement and collided with a parked car which was scratched. The Council advised that when it was informed about the obstruction by Mr Turvey the sandbags were removed in compliance with the Roads (Scotland) Act 1984 and thrown in the nearest skip. The origin of the sandbags had never been discovered. The Council advised Mr Turvey that the sandbags did not belong to the Council or its contractors.
13. The Council indicated that Mr Turvey had made a claim against the Council for damages which the Council's insurers had repudiated. Mr Turvey had subsequently complained to the Scottish Public Services Ombudsman (the Ombudsman), who had chosen not to investigate his complaint. A copy of the Council's submissions to the Ombudsman was enclosed.

14. The Council indicated that there had been considerable correspondence from Mr Turvey since February 2001 seeking information on the ownership of the sandbags. The Council indicated that it had provided Mr Turvey with as much information as it held on the inspections of the pavements and any work carried out in the area around the time. The Council indicated that it could not provide Mr Turvey with a forensic report on the sandbags as no tests were carried out, or with the sandbags themselves as these had been thrown away. Copies of key correspondence were supplied to me.
15. The Council confirmed that on 6 March 2005 Mr Turvey had requested the forensic report on the sandbags under freedom of information. The Council advised that Mr Turvey's fax was not at first treated as an FOI request. The Council assumed that this was because of the long running nature of the issue and the fact that no information existed.
16. The Council decided to treat Mr Turvey's subsequent fax of 23/28 March 2005 as a request for review and advised that the original decision had been upheld on the basis that the information requested by Mr Turvey did not exist.
17. The Council indicated that it had not refused to provide information to Mr Turvey and had provided as much information as it could to explain the situation at the time of the incident.
18. The Council advised that it was now attempting to improve its response to requests where information was not held. The Council indicated that it tried to ensure that section 17 was referenced where information was not held and that the applicant was informed of their right to review and provided with other relevant information.

Commissioner's analysis and findings

19. Mr Turvey was advised by the investigating officer that I had no power to order the return of the sandbags or to determine their ownership. Therefore, this investigation focussed on Mr Turvey's request for the forensic report. I understand that Mr Turvey believes a forensic report must have been produced to establish that the sandbags did not belong to the Council.

20. The Council has corresponded with Mr Turvey continuously on this matter since February 2001. The Council's position is that the sandbags were not placed on the pavement by them or their contractors. The sandbags were removed by the Council following the incident using its powers under the Roads (Scotland) Act 1984 and placed in the nearest skip. The Council does not know who owned the sandbags. The Council has advised that no forensic report was ever produced in respect of the sandbags and that therefore this information is not held.
21. I have considered the correspondence and information supplied to me by both parties in this case and the submissions made to me by the Council. I have also taken into the account the information that has been supplied to Mr Turvey by the Council in the course of previous correspondence since February 2001.
22. I am satisfied that no forensic report or any other inspection report was ever produced in respect of the sandbags. I am therefore satisfied that the information requested by Mr Turvey is not held by the Council.

Decision

I find that Highland Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by notifying Mr Turvey that it did not hold the information requested. I am satisfied that the information was not held by the Council.

I find that Highland Council partially failed to comply with Part 1 of FOISA in failing to issue a notice in accordance with section 17(1) of FOISA advising Mr Turvey that it did not hold the information requested and advising him of his rights in accordance with section 19 of FOISA.

I do not require the Council to take any remedial steps.

Kevin Dunion
Scottish Information Commissioner
23 March 2006