

Decision Notice

Decision 057/2015: Mrs Margaret Scott and East Dunbartonshire Council

Report on adaptations to a bathroom

Reference No: 201500047

Decision Date: 22 April 2015



Scottish Information
Commissioner

Summary

On 28 April 2014, Mrs Scott asked East Dunbartonshire Council (the Council) for a report by a contractor on remedial works to be carried out in her bathroom.

The Council informed Mrs Scott that it did not hold the report, but provided Mrs Scott with some related information to be of assistance. Mrs Scott was dissatisfied that she had not been provided with the information she had requested and applied to the Commissioner for a decision.

Following an investigation, while the Commissioner was satisfied that the Council did not hold the report requested, she found that the Council failed to provide Mrs Scott with reasonable advice and assistance in responding to her request. She did not require the Council to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15(1) (Duty to provide advice and assistance); 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

1. On 28 April 2014, Mrs Scott made a request for information to East Dunbartonshire Council (the Council). The information requested was that in a specific report submitted by Select Facilities (a specialist adaptations contractor employed by the Council) to undertake remedial work in Mrs Scott's bathroom, to include details of every aspect of the recommendations within the report.
2. Mrs Scott subsequently wrote to the Council on 13 June 2014, requesting a review on the basis that the Council had not provided a response to her request within 20 working days.
3. The Council acknowledged Mrs Scott's request for review on 20 June 2014, but did not provide a response.
4. On 9 September 2014, Mrs Scott wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Commissioner subsequently issued *Decision 216/2014 Mrs Margaret Scott and East Dunbartonshire Council*¹, finding that the Council had breached Part 1 of FOISA. She required the Council to provide Mrs Scott with a review outcome.
5. The Council provided Mrs Scott with a review outcome on 21 November 2014, apologising for earlier its failure to respond. It notified her, in terms of section 17(1) of FOISA, that it did not hold the report requested. To be of assistance, the Council provided Mrs Scott with a copy of a purchase order identified during its searches which related to the works in question.
6. On 5 January 2015, Mrs Scott again wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mrs Scott stated she was dissatisfied with the outcome of

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2014/201402234.aspx>

the Council's review as it had not provided the information requested, in particular "*the breakdown of costs for this work which resulted in the £3,500 invoice*".

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mrs Scott had 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.
8. On 23 January 2015, the Council was notified in writing that Mrs Scott had made a valid application. The case was allocated to an investigating officer.
9. 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.
10. The Council was asked to justify why it had applied section 17(1) of FOISA to Mrs Scott's request and to explain, and provide evidence of, the searches carried out to identify and locate any information falling within the scope of Mrs Scott's request.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mrs Scott and the Council. She is satisfied that no matter of relevance has been overlooked.

Whether information was held

12. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
13. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect. In this case, the Council issued Mrs Scott with such a notice.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. She also considers, where appropriate, any reason offered by the public authority to explain why the information is not held. While it may be relevant as part of this exercise to explore what information should be held, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) held by the public authority.
15. With its review response, the Council provided Mrs Scott with a copy of a purchase order relating to the works in question. This detailed a brief description of the works instructed, together with an order value. Although not strictly the information sought, the Council provided this information as it considered it might be of assistance to Mrs Scott, in the absence of the report. Mrs Scott did not believe this satisfied the terms of her request.
16. In its submissions to the Commissioner, the Council maintained that it did not hold any information falling within the scope of Mrs Scott's request and that it had provided a copy of

the purchase order in the interests of being helpful. It provided evidence of the searches and enquiries carried out in reaching this conclusion.

17. In relation to these searches and enquiries, the Council provided copies of internal email correspondence, which included an email from Select Services (the sub-contractor), confirming that it had not completed a written report on the works required.
18. The Council explained that in cases of this nature, works are instructed by the Council, through the completion of a Sub-Contractor Instruction, known as a CSI, which details the works required and the estimated costs. The CSI is then passed to the Procurement Team, which raises a purchase order to the contractor. The estimation of works is based on an assessment and the experience of the employees and Team Leaders within the Council, based on previous similar works.
19. In this case, the Council explained, Select Facilities inspected the property on behalf of the Council to assess the works required, which were intimated to the Council's Property Maintenance Team by telephone. The Property Maintenance Team completed a CSI instructing the works, based on previous knowledge and experience of similar works. The Procurement Team raised a purchase order to the sub-contractor, describing the works to be carried out with an estimated cost. The Council submitted that this was the limit of the sub-contractor's involvement as (for reasons not relevant to this investigation) the works were unable to proceed further.
20. In the internal email correspondence provided by the Council, and on the purchase order provided to Mrs Scott, reference was made to an "EDC Spec" upon which the works required were to be based. The Council explained that the particular specification referred to was no longer held but, for illustrative purposes, provided a sample of a specification for similar works. The Council explained that this specification was a standard set of requirements outlined by the Property Maintenance Team Leader for wet room installations, and was used for all such installations, i.e. it was not unique to the works required in Mrs Scott's property. The Council further explained that in some cases the specification was issued with the CSI and in others it was not. Also, depending on the level of work required, it might be the case that not every aspect of the specification would require to be incorporated – it was, in essence, an agreed standard for works of this nature.
21. The internal email correspondence provided by the Council also explained that the information detailed on the purchase order replicated that of the CSI. The CSI, had it still been held, would not have revealed any further information to that already provided to Mrs Scott. (The Council explained that in line with retention timescales, it no longer held the CSI and accompanying paperwork in this case.) In relation to the costs detailed on the purchase order, the email correspondence described these as an estimate and not an actual cost or a quotation for the works.
22. During the investigation, Mrs Scott made reference to the Council's "Terms and Conditions for Contractor/Sub-Contractor Work Tenders/Contracts". She submitted that parts 6.1, 6.2, 8.1 and 8.2 stipulated that "*contractors must submit estimates which are detailed*".
23. In its response, the Council explained that this referred to the process followed at the point of awarding tenders to a contractor. The contractor would be obliged to provide a response to the specification with costings at that point, which would be accepted by the Council, inform any works carried out and govern the contractual position between the Council and the contractor. The Council submitted that a detailed estimate would not be required for every individual job requested during the period of the contract.

24. The Council maintained its position that it did not hold the information requested by Mrs Scott, namely the report by the sub-contractor.

Commissioner's view

25. The Commissioner notes the explanations provided by the Council of the procedures followed when instructing works of this nature. She also notes the evidence from the sub-contractor, confirming that the report requested was never created and that the results of its inspection were intimated verbally to the Council's Property Maintenance Team. She further notes that, in the absence of the report, the Council provided Mrs Scott with a copy of the purchase order "to be helpful".
26. The Commissioner also notes the submissions from Mrs Scott, in particular her reference to the Council's Terms and Conditions. It is evident that paragraphs 6.1 and 6.2 relate to the process for submitting tenders and, therefore, are not relevant to this particular case. Paragraphs 8.2 and 8.3 provide for "post-award" estimates to be submitted for certain works, but do not require a detailed estimated to be created in every case.
27. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Council interpreted Mrs Scott's request reasonably and took adequate, proportionate steps to establish what information it held and which fell within the scope of Mrs Scott's request. She is therefore satisfied that the Council does not (and did not, on receiving the request) hold the information requested.

Section 15(1) - Duty to provide advice and assistance

28. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
29. The Commissioner notes that, while the Council does not hold the information requested by Mrs Scott, it did not provide her with a full explanation describing the reasons why it did not hold the information requested.
30. In the Commissioner's view, if the Council had provided Mrs Scott with explanations detailing the process for instructing works of this nature, and the level of information required to be recorded on a CSI or purchase order, placing that information in the context of this particular job, she would have had a better understanding of what information the Council held and why it did not hold the information she sought. If such an explanation had been given to her, Mrs Scott might not have required a decision from the Commissioner in this case.
31. The Commissioner finds that the Council failed to provide Mrs Scott with sufficient advice and assistance, and therefore failed to comply with section 15(1) of FOISA. Given the explanation provided in this decision, she does not require the Council to take any action with respect to this failure.

Decision

The Commissioner finds that East Dunbartonshire Council partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs Scott.

The Commissioner finds that the Council was correct to notify Mrs Scott, in terms of section 17(1) of FOISA, that it did not hold the information requested, and in that respect complied with Part 1.

The Commissioner also finds that the Council failed to provide reasonable advice and assistance to Mrs Scott, and therefore failed to comply with section 15(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of this failure, in response to Mrs Scott's application.

Appeal

Should either Mrs Scott or East Dunbartonshire 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 April 2015

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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info