

Decision Notice



Decision 058/2009 Reverend Vincent Byrne and Renfrewshire Council

Cost of public consultation

Reference No: 200801685
Decision Date: 21 May 2009

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Kevin Dunion
Scottish Information Commissioner

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Summary

Reverend Vincent Byrne requested from Renfrewshire Council (the Council) information concerning the cost of a public consultation prior to the construction of a pathway. The Council responded by advising Reverend Byrne that it did not hold the information he had asked for. Following a review, Reverend Byrne remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council did not hold the information Reverend Byrne had asked for and that it had dealt with his request for information in accordance with Part 1 of FOISA.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is not held)

Background

1. On 30 July 2008, Reverend Byrne wrote to the Council with four separate information requests concerning the construction of a new footpath in Paisley. Only one of these requests is relevant for the purposes of this decision:
 - What was the cost of the pathway including cost of (public) consultation?Reverend Byrne's request made clear that the costs he was seeking should include officials' time, advertising, letters, surveying, construction and gardening.
2. The Council responded on 29 August 2008. The Council provided Reverend Byrne with the construction cost of the pathway. The response also advised Reverend Byrne that the Council was unable to provide costs of letters, advertising and officers' costs but that this would be provided if it became available.
3. On 1 September 2008, Reverend Byrne wrote to the Council requesting a review of its decision. Reverend Byrne drew the Council's attention to the fact that very few consultation responses had been submitted by the public and that he had not been provided with the cost of the consultation process.



4. The Council notified Reverend Byrne of the outcome of its review on 7 October 2008. The Council advised Reverend Byrne that the information requested concerning the cost of the consultation was not held by it.
5. On 13 November 2008, Reverend Byrne wrote to the Commissioner, stating that he 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 Reverend Byrne 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 contacted the Council on 22 December 2008, advising it that an application had been received from Reverend Byrne, 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. In particular, the Council was asked to justify its position that it did not hold the information concerning the cost of the public consultation and to explain what steps it had undertaken in order to establish that it did not hold the information requested by Reverend Byrne.
8. The Council responded on 21 January 2009, confirming that it did not hold the information requested by Reverend Byrne and explaining the steps it had taken to ascertain that this was the case.
9. As noted above, Reverend Byrne initially made four separate information requests to the Council. Information which fulfilled the terms of one of these requests was released by the Council with its response of 29 August 2008. Information which fulfilled the terms of a further two requests was released, to Reverend Byrne's satisfaction, during the course of the investigation and he did not require the Commissioner to consider these as part of this decision.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has consider all of the withheld information and the submissions made to him by both Reverend Byrne and the Council and is satisfied that no matter of relevance has been overlooked.



Whether the information requested by Reverend Byrne is held by the Council

11. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that it does not hold the information.
12. In its review response of 7 October 2008, the Council stated that, while it held details of the construction costs of the pathway, it did not hold the full cost information requested by Reverend Byrne.
13. In order to determine whether the Council was correct to advise Reverend Byrne that it did not hold this requested information, the Commissioner must establish whether, at the time it received Reverend Byrne's request, the Council held information which would address his request.
14. In its submissions to the Commissioner, the Council explained that the project (to create the new footpath) was controlled and managed by the Council's Housing and Property Services. The Council stated that the project to create the pathway was carried out following a proposal to, and subsequent agreement at, a Neighbourhood Forum meeting.
15. The Council stated that it had a record of a meeting which took place in December 2007, which identified the number of consultation forms that were sent out and returned. The Council clarified that the consultation forms were not posted to residents and other interested parties; instead, Housing Officers hand delivered the forms locally as part of their normal duties.
16. The Council explained that these were not additional duties that were separately quantified and, consequently, there is no record held of the costs of advertisement, letters and officials' time. The Council stated that it does not require Housing Officers to record the time spent on individual tasks so there is no record held which would identify the specific amount which might be attributable to this project.
17. The Council also noted that it did not record the specific costs of the administration or stationery used in this specific task and, therefore, was unable to provide information which would fulfil this aspect of Reverend Byrne's request.
18. Having considered the Council's submissions on this point and its explanation of the steps taken in order to ascertain that all relevant information has been supplied to Reverend Byrne and, consequently, that it does not hold the information which is the subject of this decision, the Commissioner is satisfied that the Council does not hold this information. The Commissioner is satisfied that the Council has taken all reasonable steps to establish whether any relevant information is available. The Commissioner has therefore concluded that the Council was correct in informing Reverend Byrne that it was unable to supply the information in question.
19. The Commissioner is therefore satisfied that the Council has complied with the provisions of FOISA in dealing with Reverend Byrne's request.



DECISION

The Commissioner finds that Renfrewshire Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Reverend Byrne.

Appeal

Should either Reverend Byrne 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
21 May 2009



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.

...

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.