

Decision Notice

Decision 078/2017: Mr Julian Calvert and Argyll and Bute Council

Empty/Disused Properties

Reference No: 201700355

Decision Date: 17 May 2017



Scottish Information
Commissioner

Summary

The Council was asked for details of empty and disused properties which it owned.

The Council disclosed a list of properties, with other details, but Mr Calvert was not convinced this list was complete or accurate.

The Commissioner investigated and was satisfied that the Council identified and disclosed to Mr Calvert all the information it held and which fell within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4)

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 19 January 2017, Mr Calvert made a request for information to Argyll and Bute Council (the Council). Mr Calvert's request read as follows:

"Please supply a listing of all the empty/disused properties currently owned by the Council, stating whether they are on the market (for sale), together with the value of each property (the asking price if it's for sale, net book value for all properties including those for sale)."
2. The Council responded on 31 January 2017, disclosing a list of properties with some other details.
3. On 31 January 2017, Mr Calvert wrote to the Council requesting a review of its decision. He believed the information might be inaccurate or incomplete.
4. The Council asked Mr Calvert (2 February 2017) to clarify which properties he considered might be missing from the list. Mr Calvert responded the same day with some examples, submitting that at least one property appeared to have been included in error and at least one other appeared to have been omitted. He noted that some properties on the list were missing their prices and net book values (NBVs).
5. The Council notified Mr Calvert of the outcome of its review on 23 February 2017. It provided explanations for the examples Mr Calvert identified, including confirmation of an omission. It also clarified what was recorded with regard to NBVs and asking prices.
6. On 23 February 2017, Mr Calvert wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Calvert stated he was

dissatisfied with the outcome of the Council's review because he remained unconvinced that the list provided was complete.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Calvert 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 7 March 2017, the Council was notified in writing that Mr Calvert 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, including what searches it had undertaken to identify and locate all the information requested, and about the processes involved in maintaining the relevant records, including audit processes.
10. The Council provided submissions on 30 March 2017. The investigating officer then sought clarification regarding aspects of the searches conducted and, on 6 April 2017, the Council provided its further comments.

Commissioner's analysis and findings

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

Section 1(1) of FOISA – General entitlement

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. This is subject to qualifications, but these are not applicable in this case.
13. 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 will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why the information (or, in this case, more information) is not held.
14. Mr Calvert explained in his application that since seeking a review, he had been alerted to a further empty/disused property considered on a council agenda within the last three years and provided a weblink. He stated this was the second occasion where, by sheer coincidence, he had discovered information of relatively high profile (but controversial) which the Council had failed to disclose to him. He remained concerned that there may be other properties not on the list supplied.
15. The Council submitted that it had disclosed all information it held in relation to Mr Calvert's request and that there were "no further omissions" from the information provided to Mr Calvert at the time of the review.

Searches

16. The Council was asked to describe the searches it had undertaken, with details of the places searched, the search terms and other parameters used, and who was involved in the searches (and why).
17. The Council explained that the information on properties it owned was held in several disparate systems, namely:
 - AIRS – the system administrator searched this Asset Inventory Register (which is used to provide information for the Council's annual accounts)
 - Concerto – the system administrator searched this property database, used to provide monitoring information on properties owned or leased by the Council
 - *Ad hoc* databases, paper files and the Council's website were also searched by Estates and Legal staff.
18. The Council indicated these systems were being standardised to create a central database for all property matters. This involved data cleansing and investigation of anomalies. It provided explanations in relation to the examples cited by Mr Calvert.
19. Searches were run within AIRS and Concerto to analyse "empty/disused" properties, using the terms "surplus", "vacant", "sold" "under offer" and "pending transfer". This highlighted a need for reconciliation and further investigation, as the properties identified by this means might not be empty or disused.
20. On 31 March 2017, the investigating officer sought clarification from the Council on the use of the terms "empty" and "disused" during these searches. The Council confirmed that "a search for "empty" or "disused" was carried out, but neither term was used within the two databases searched [AIRS and Concerto]. The Council confirmed that its searches had included all the terms identified in the preceding paragraph, which it considered adequate to identify all relevant data held.
21. The Council further explained what it records and why. It stated that a property is highlighted as empty or disused by the "owning" department, which then instructs the Estates Team if a property is to be leased or sold. If repairs are required, then the Properties Services Team is given instructions.
22. In addition, the Council clarified that an empty or disused building would be reviewed to decide if it could be utilised by another department of the Council, offered for lease or sold. It may be retained if there was a requirement. The decision to put a property up for sale would only be made after other uses had been fully explored.
23. With regard to valuation, the Council clarified its verification and auditing processes used for the data collection systems described above. It explained that all buildings are subject to a rolling programme of valuation for accounting purposes and that the AIRS system is normally updated annually for any revaluations. It stated that property is valued at fair value. Surplus assets are valued (at fair value) using IFRS [International Financial Reporting Standard] 13.
24. The Council further explained what it did when there is no market-based evidence of fair value, because of the specialist nature of the asset and the consequent rarity of a sale. In such a case, the fair value would be estimated using a "depreciated replacement cost approach".

25. The Council added that revaluations of its land and property were carried out by external valuers at 31 March 2016, in accordance with the rolling programme. The methodologies and basis for estimation are, it explained, set out in the professional standards of the Royal Institution of Chartered Surveyors.
26. The Commissioner can only consider what recorded information is actually held by the Council and not information it should hold, or what an applicant believes it should hold. She notes the searches conducted of the various systems and records in place at the time Mr Calvert's request was received, together with the Council's explanations of its own business needs and the records it maintains to meet these.
27. The Council has explained what mechanisms trigger records to be made or updated within its existing systems. It is clear that a single, ready-made "list" did not exist when Mr Calvert's request was received, but that the Council extracted data from the relevant databases and other records to collate into a list. This may not have been entirely straightforward given the number of systems involved and the different business needs of each service or department. The Commissioner notes the ongoing process of rationalising the relevant records, but acknowledges that this remains incomplete.
28. Given the submissions and explanations provided, the Commissioner is satisfied that the Council conducted adequate and proportionate searches to identify and locate the information requested by Mr Calvert. She is satisfied with the explanations given by the Council in respect of the anomalies identified by Mr Calvert, given the current state of the relevant records: in particular, she accepts the Council's explanation of why the (unroofed) property identified in Mr Calvert's application was not considered to fall within the scope of the request.
29. On the balance of probabilities, therefore, the Commissioner is satisfied that the Council has identified, located and disclosed to Mr Calvert all the information it holds which falls within the scope of his request. She finds that the Council complied with Part 1 of FOISA in responding to his request.
30. As stated in many previous decisions, the Commissioner's remit extends only to the consideration of whether a Scottish public authority actually holds the requested information and whether it has complied with Part 1 of FOISA in responding to a request. The Commissioner cannot comment on whether a public authority should retain, record or hold more or different information about its property assets. Equally, it is not for the Commissioner to determine whether the records held are accurate. On the other hand, it is perhaps unfortunate that some of the context provided above was not offered to Mr Calvert in responding to his request or his requirement for review, with a view to managing his expectations as to the available information.

Decision

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

Appeal

Should either Mr Calvert or Argyll and Bute 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
Acting Scottish Information Commissioner

17 May 2017

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.

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