

# Decision Notice

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**Decision 084/2017: Lynn Watson and Dundee City Council**

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**Flooding and water damage at St Paul's Academy, Dundee**

Reference No: 201700344

Decision Date: 24 May 2017



Scottish Information  
Commissioner

## Summary

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The Council was asked for information on flooding and water damage at St Paul's Academy in Dundee. The Council informed Ms Watson that it did not hold the information. The Commissioner upheld the Council's response.

## 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.

All references to "the Commissioner" in this decision 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

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1. On 11 December 2016, Ms Watson made a request for information to Dundee City Council (the Council). The request read as follows:

*"Please detail any problems St Paul's Academy has had, since it opened, with flooding; water damage; dampness or any related issue.*

*I would like details of any measures taken to prevent, mitigate or otherwise deal with any water-related issues arising from groundwater, surface water or drainage. I would also like copies of any correspondence relating to these matters – between school, Council and/or any other bodies or organisations.*

*Please note that by 'St Paul's Academy', I am referring to the whole site – buildings and grounds to the boundary fences and Gillburn Road."*

2. The Council responded on 5 January 2017. The Council informed Ms Watson that there had not been any issues at St Paul's Academy with flooding, water damage, dampness or any other related issues.
3. On 5 January 2017, Ms Watson wrote to the Council requesting a review of its decision. Ms Watson was dissatisfied that the Council had not provided any information regarding flooding, which (she stated) occurred regularly around the school site. She also made reference to a document which, she stated, contained information regarding below-ground drainage at the site.
4. The Council notified Ms Watson of the outcome of its review on 27 January 2017. The Council restated its position that there had been no material issues with flooding or water damage on the school site. The Council stated that there had been regular flooding off-site adjacent to the school, which fell outwith the scope of the request. The Council also confirmed that there had been no leaks within the building fabric itself which had affected the facilities and their usage. The Council stated that the document to which Ms Watson had

referred in her requirement for review was a building warrant created prior to the school being built (and therefore also fell outwith the scope of the request).

5. On 21 February 2017, Ms Watson wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Watson stated she was dissatisfied with the outcome of the Council's review as she considered it to be untrue.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that Ms Watson 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 7 March 2017, the Council was notified in writing that Ms Watson had made a valid application. The case was then 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 it had taken to identify and locate any information falling within the scope of Ms Watson's request.
9. The Council responded on 5 April 2017.

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

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10. 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 Ms Watson and the Council. She is satisfied that no matter of relevance has been overlooked.

### **Section 17 of FOISA – information not held**

11. 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, subject to qualifications which are not applicable in this case. Under section 17(1), where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
12. In its response to Ms Watson, the Council gave notice that it did not hold any information falling within the scope of her request.
13. In her application to the Commissioner, Ms Watson stated that she was aware of flooding around and on the school site and did not consider the Council's responses to be accurate.
14. In its submissions to the Commissioner, the Council explained that the school is managed under a Public Private Partnership by both the Council and Robertson Facilities Management (RFM).
15. The Council stated that all records of any maintenance and defects relating to the facility are held by RFM where they relate to RFM's contractual obligations under the PPP agreement. These are recorded by means of a live helpdesk system used for logging failures.
16. The Council explained also that defects which do not fall within RFM's contractual obligations but relate to soft grounds maintenance (the Council's responsibility) are reported directly to

the Council's City Development Department, which decides the best course of action to deal with the issue.

17. The Council stated that RFM conducted a search of its systems and confirmed that no drainage or flooding issues falling within the scope of Ms Watson's request had been recorded since the school was opened. The Council also confirmed the departments and members of staff consulted within the Council itself and the search terms and date parameters used to search for any relevant information.
18. Having considered the Council's explanation of the searches and enquiries undertaken, the Commissioner accepts that these were reasonable and proportionate in the circumstances, and would have been likely to retrieve any information falling within the scope of the request. The document highlighted by Ms Watson does appear to fall outwith the scope of her request: it dates from before the opening of the school and, in any event, relates to the normal process of constructing a large building rather than anything directly to do with the subject matter of the request.
19. The Council's submissions also refer to instances of "ponding" in the vicinity, following heavy rain. The Council does not appear to regard these as falling within the terms of the request (i.e. it does not consider them to amount to a "problem ... with flooding, water damage, dampness or any related issue"). Having considered the pictures supplied by Ms Watson, of the area of "ponding" which falls within the site boundary, the Commissioner would not regard this as a wholly unreasonable conclusion: however, it should have been apparent from Ms Watson's requirement for review that she was concerned about the presence of water in this area and the Council's position with regard to this particular issue should have been explained to her more clearly.
20. That said, the Commissioner is satisfied from all the submissions received that the Council does not hold any recorded information falling within the scope of Ms Watson's request. As a result, she is satisfied that the Council was correct to inform Ms Watson that it held no recorded information falling within the scope of her request. In doing so, the Council complied with section 17(1) of FOISA.
21. As stated in previous decisions, the Commissioner's remit in carrying out investigations of this nature extends to the consideration of whether the Council actually held, on receiving the request, any relevant information in recorded form. She cannot comment on whether the Council ought to hold information of this nature (in relation to relevant incidents which were not recorded, for example), as Ms Watson appears to believe.

### **Additional comment on the Council's handling of the request**

22. As noted above, the Commissioner accepts that the Council does not hold the information requested by Ms Watson and correctly gave notice to this effect.
23. In the Commissioner's view, it is likely that any information of this nature would comprise environmental information as defined in regulation 2(1) of the Environmental Information Regulations 2004 (the EIRs). As such, it may have been appropriate to apply the exception in regulation 10(4)(a) of the EIRs, on the basis that the information was not held when the request was received.
24. This was not matter raised in Ms Watson's application, so the Commissioner does not require the Council to take any action on this occasion. However, she would ask it to bear in mind the requirements of the EIRs when responding to future requests which are likely to encompass environmental information.

## **Decision**

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The Commissioner finds that Dundee City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms Watson.

## **Appeal**

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Should either Ms Watson or Dundee City 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**

**24 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.

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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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