

Decision Notice



Decision 096/2013 Robert Potter & Partners LLP and Dumfries and Galloway Council

Information relating to regeneration projects in Dumfries

Reference No: 201202641
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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 7 and 10 September 2012, Robert Potter & Partners LLP (Potter & Partners) asked Dumfries and Galloway Council (the Council) for information relating to two regeneration projects in Dumfries. The Council disclosed some information and notified Potter & Partners that it did not hold any further information.

Following an investigation, the Commissioner found that the Council had provided Potter & Partners with all of the relevant information that it held.

Relevant statutory provisions

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. This decision considers the Council's handling of two separate information requests from Potter & Partners. These are described as Potter & Partners' first and second information requests in what follows.

The first information request

2. On 7 September 2012, Potter & Partners wrote to the Council requesting the following information in relation to the masterplan for the Whitesands area of Dumfries town centre:

"Copies of all documentation in the possession of the Council, DG Design and DG First in relation to the above. This is to include all documentation in relation to the above masterplan and the Dock Park Revitalisation Project, Dumfries where any reference is made to the above masterplan."



For the avoidance of doubt, by way of documentation, this means copies of all reports, consultations, memos (internal and external), emails (internal and external), faxes (internal and external), minutes of all meetings (internal and external), file notes, diary notes, working papers, drafts and of course, all correspondence.”

3. Following a request for clarification, Potter & Partners emailed the Council on 24 September 2012. They stated that the information they were seeking related to the procurement of DG First and Gillespies LLP for the Whitesands project. They understood the appointment was made in 2005, and were seeking information from the inception of the procurement process to the commencement of delivery of the service.
4. The Council responded on 4 October 2012. The Council informed Potter & Partners that it was disclosing some information, subject to the redaction of signatures. The Council also gave notice, in terms of section 17 of FOISA, that it did not hold any information in respect of the procurement in 2008 – 2009 and was not obliged to keep such information for any more than three months.
5. In further correspondence, the Council confirmed that the only information that it held which fell within the scope of the request had been disclosed to Potter & Partners on 4 October 2012. The Council also explained to Potter & Partners that no “masterplan” had been produced and therefore the Council did not hold that specific information.

The second information request

6. On 10 September 2012, Potter & Partners wrote to the Council requesting the following information in relation to the Stove Project, 96-102 High Street, Dumfries:

“Copies of all documentation in the possession of the Council in relation to the above from 29 February 2012 to the date of this request.

For the avoidance of doubt, by way of documentation, this means copies of all reports, consultations, memos (internal and external), emails (internal and external) faxes (internal and external), file notes, diary notes, working papers, drafts and of course, all correspondence.”

7. Following a request for clarification, Potter & Partners emailed the Council on 24 September 2012. They stated that the information they were seeking related to the stage 2 refurbishment of 96-102 High Street, Dumfries, dating from the commencement of the process to the present time.
8. The Council responded on 5 October 2012. The Council informed Potter & Partners that it had identified some information falling within the scope of their request. It disclosed this information to Potter & Partners.
9. Potter & Partners wrote to the Council again on 2 November 2012, indicating that they had expected the disclosed information to have contained information on a tendering process undertaken in 2012.



10. In further correspondence, the Council explained that its role in the project was to provide support to the Stove Group. The Council also explained that it held limited information regarding the tender process; it had been providing some assistance to the Dumfries and Galloway Chamber of Commerce (the Chamber) in the tender evaluation, and any records relating to the Council's participation would be in the possession of the Chamber.
11. On 16 November 2012, Potter & Partners wrote to the Council requesting a review of its decisions in relation to both requests. In further correspondence, Potter & Partners explained that, in relation to the first request, they considered that the Council must hold additional documentation beyond that already disclosed by the Council. In relation to the second request, Potter & Partners considered there was a significant gap in the documentation previously provided.
12. The Council notified Potter & Partners of the outcome of both reviews on 14 December 2012. In both cases, the Council confirmed that it held no further information falling within the scope of the requests.
13. On 17 December 2012, Potter & Partners wrote to the Commissioner, stating that they were dissatisfied with the outcome of the Council's reviews and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
14. The application was validated by establishing that Potter & Partners made requests for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to those requests. The case was then allocated to an investigating officer.

Investigation

15. The investigating officer subsequently contacted the Council, 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. The Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested. The Council was also asked to explain the searches that it had undertaken in order to locate and retrieve any relevant information.
16. The Council responded on 21 February 2013, explaining the searches that had been undertaken and stating that it held no other information beyond that already provided to Potter & Partners.
17. During the investigation, the investigating officer asked the Council to conduct additional searches to ascertain whether it held any additional relevant information, particularly in relation to the apparent gap in records identified by Potter & Partners. No further information was retrieved as a result of these searches.



Commissioner's analysis and findings

18. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Potter & Partners and the Council. She is satisfied that no matter of relevance has been overlooked.

Has all relevant information been identified and retrieved by the Council?

19. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to certain qualifying provisions which do not apply here. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If the authority does not hold any information covered by the request, it is required to give the applicant notice in writing to that effect, under section 17(1) of FOISA.

The first information request

20. In their application to the Commissioner, Potter & Partners indicated that they did not accept that the Council held no information relating to the procurement process. It is this aspect of the Council's response that the Commissioner has considered within her decision.
21. As indicated above, the Council gave notice, in terms of section 17 of FOISA, that it did not hold any information relating to this part of their request.
22. In their application, Potter & Partners stated that they found it inconceivable that the Council was able to enter into an agreement with Gillespies LLP without the need, apparently, to have any documentation relating to the earlier procurement process.
23. In its submissions to the Commissioner, the Council explained that the information that had been disclosed to Potter & Partners was a Two-way Agreement. The Council stated that the contract was not subject to procurement rules under European Union legislation and there was no requirement to retain documentation. As such, the tender information had not been retained after the Agreement had been signed. Therefore, the Council did not hold any information which would assist in determining how the Agreement was reached.
24. The Council explained that it had carried out an electronic search in the Service concerned and had searched any manual files which had been retained. The Council stated that no information had been identified as a result of these searches.
25. The Council submitted that all searches that could be carried out had been carried out. No information, apart from the Two-Way Agreement that had been disclosed to Potter & Partners, had been identified.



26. In relation to the existence of information showing how the Two-Way Agreement was reached, the Council stated that its Chief Internal Auditor had confirmed that at the time (2008-2009), there was no written guidance in place and there was no written requirement to retain documentation. The Council suggested that, at that time, records in public authorities were perhaps not as well kept as today.
27. The Commissioner has considered the Council's submissions and its explanation of why it does not hold any additional information beyond that already disclosed. Having done so, the Commissioner is satisfied that the Council has conducted proportionate and adequate searches and has identified and disclosed all relevant information to Potter & Partners in relation to the first request.

The second information request

28. In their application to the Commissioner, Potter & Partners expressed surprise that there was an apparent gap in the information supplied by the Council between May and late August 2012. Potter & Partners stated that they had been advised of a problem with the procurement process in May 2012, and the process had subsequently been abandoned in late August 2012. Potter & Partners indicated that they would have expected recorded information such as emails to exist during this period.
29. The Council explained that the information provided to Potter & Partners was held by the Strategic Projects Team from the Council's Economic Development Service and was stored in its electronic and manual filing system. The Council also explained that information was stored on a project by project basis and the electronic file "Showcase Dumfries and the Stove" was the focal point of its searches, along with paper files titled "The Stove".
30. The Council further explained that it had a limited involvement in the tendering process as the process was conducted by the Chamber, which was not acting as an agent of the Council. The Council stressed that the project in question was undertaken solely by the Chamber.
31. In relation to the gap in information between May and late August 2012, identified by Potter & Partners, the Council confirmed that there had been no email correspondence during this period. The Council stated that it did hold some limited recorded information dating from this period, in the form of telephone and diary notes, which had been disclosed to Potter & Partners. The Council indicated that there had been telephone discussions between Council staff and the Chamber during the period in question, but there was no email correspondence.
32. At the request of the investigating officer, the Council conducted additional searches for emails. The Council explained the search terms that had been employed and confirmed that the searches encompassed the emails of staff who were involved in the project. No additional information was retrieved as a result of these further searches.



33. The Commissioner has considered the Council's submissions and its explanation of why it does not hold any additional information beyond that already disclosed. As with the first information request, the Commissioner is satisfied that the Council has now conducted proportionate searches and has identified and disclosed all relevant information to Potter & Partners in relation to the second request.

Conclusion

34. The Commissioner is satisfied that, in relation to the first information request, the Council was correct to give Potter & Partners notice, in terms of section 17(1) of FOISA, that it held no information relating to the procurement process.
35. By providing all of the information that it held in relation to the second information request, she is satisfied that the Council dealt with that request in accordance with section 1(1) of FOISA.
36. The Commissioner notes that her remit in carrying out this investigation extends to the consideration of whether the Council actually holds the relevant information requested by Potter & Partners. She cannot comment on whether a public authority should have recorded any, or more, information about a particular event or process. Consequently, in this instance, she cannot comment on whether the Council ought to hold further, or more comprehensive, recorded information.

DECISION

The Commissioner finds that Dumfries and Galloway Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Robert Potter & Partners LLP.

Appeal

Should either Robert Potter & Partners LLP or Dumfries and Galloway 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.

Margaret Keyse
Head of Enforcement
17 May 2013



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.
- ...
- (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.
- ...

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.
- ...