

# Decision Notice

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**Decision 096/2017: Mr Donald MacKintosh and Renfrewshire Council**

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**Procedure not followed (property redevelopment)**

Reference No: 201700655

Decision Date: 21 June 2017



Scottish Information  
Commissioner

## Summary

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The Council was asked about the failure to follow procedures in respect of the 1996 redevelopment of properties in Paisley. The Council explained that it was not involved in the acquisition of the properties and therefore it held no information falling within the request.

The Commissioner investigated and found that the Council had properly responded to the request for information. The Commissioner was satisfied that the Council was correct to give notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of the request.

## 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 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

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1. On 25 January 2017, Mr MacKintosh made a request for information to Renfrewshire Council (the Council). Mr MacKintosh stated that when Williamsburgh Housing Association had acquired properties in Paisley in 1996 for redevelopment, "a procedure was not followed" and he asked the Council to disclose what procedure was not followed and why. He said this related to statutory home loss payments and he attached four letters from the Council (all from 2011) which he believed were relevant.
2. The Council responded on 15 February 2017. It explained that it was not involved in the acquisition of the properties to which Mr MacKintosh had referred, and gave notice, in line with section 17 of FOISA, that it did not hold any information falling within his request. The Council advised Mr MacKintosh to contact Williamsburgh Housing Association.
3. On 3 March 2017, Mr MacKintosh wrote to the Council requesting a review of its decision. He believed the Council was aware of the procedure that had not been followed, and considered that the Council was obliged to explain that to him. He commented that the properties could not have been redeveloped by Williamsburgh Housing Association without the Council's approval.
4. The Council notified Mr MacKintosh of the outcome of its review on 28 March 2017. The Council upheld its initial response that it did not hold any information. The Council explained that FOISA gives a right to recorded information and does not oblige Scottish public authorities to create information to satisfy a request. The Council again advised Mr MacKintosh to contact Williamsburgh Housing Association.

5. On 7 April 2017, Mr MacKintosh applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr MacKintosh stated he was dissatisfied with the outcome of the Council's review because he believed it held information that fell within his request.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that Mr MacKintosh 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. 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 justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

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

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

### **Section 17 - Notice that information is not held**

9. 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. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
10. At review, the Council upheld its initial response and reiterated that it held no information falling within Mr MacKintosh's request. The Council maintained this position in its submissions to the Commissioner.
11. During the investigation, the Council was asked how it established that it did not hold any information covered by Mr MacKintosh's request. The Council replied that Mr MacKintosh had given it a list of correspondence which he felt would be pertinent to locating information on this issue. This listed councillors, a Council service area, and a named Council employee. Some of the individuals were no longer with the Council, but the Council had been able to consult one of the persons named by Mr MacKintosh, who confirmed that the Council had not had any involvement in the redevelopment. Although staff in its Housing department may have been aware of the development, it was not a Council project: the redevelopment of the area in question was carried out by the Housing Association.
12. The Council confirmed that it held no information about the policies and procedures followed by the Housing Association in redeveloping the properties.
13. The Council explained that to ensure it had not overlooked any recorded information falling within the request, the request was discussed with current Housing department staff who double-checked the files held on Comprehensive Improvement Projects carried out by housing association partners with Scottish Government grant funding. In order to confirm that the checks were as thorough as possible, a member of Council staff sourced a report from the Housing Association, published in 2009, to determine the rough date of the

improvement project. The Council's Housing department staff once again confirmed that this was not a development in which the Council had been involved.

14. Mr MacKintosh had referred to information he would have expected the Council to have, and these references (including a media article<sup>1</sup>) were put to the Council. The Council commented that it did not consider the article relevant to whether the Council holds information falling within the scope of the request: the acquisition of the building by the Housing Association did not involve the Council and the Council could not provide Mr MacKintosh with information on the procedure followed by a private landlord and the Housing Association in the sale of a property with vacant possession.
15. On another point raised, the Council said that while there is no statutory responsibility for the Council or Housing Associations to provide alternative housing for private tenants in such circumstances, the Council can work with private tenants and provide advice and assistance on rehousing (including the option of applying to the Council or a housing association). However, this does not extend to providing the home loss payment requested by Mr MacKintosh.
16. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted Mr MacKintosh's request reasonably and took adequate, proportionate steps in the circumstances to establish whether it held any information covered by his request. Given the explanation which the Council has provided about its lack of involvement in the redevelopment or in making home loss payments to tenants of a private landlord, she is satisfied, on the balance of probabilities, that the Council does not hold the information requested by Mr MacKintosh.
17. The Commissioner is therefore satisfied that the Council was correct to give Mr MacKintosh notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

## Decision

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

## Appeal

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Should either Mr MacKintosh or the 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**  
**Scottish Information Commissioner**

**21 June 2017**

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<sup>1</sup> [http://www.the-gazette.co.uk/news/15223549.Masterplan\\_to\\_transform\\_the\\_West\\_End\\_of\\_Paisley/](http://www.the-gazette.co.uk/news/15223549.Masterplan_to_transform_the_West_End_of_Paisley/)

## Appendix 1: Relevant statutory provisions

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### 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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