

Decision Notice



Decision 126/2008 Mr William Stewart and Audit Scotland

Audit of North Lanarkshire Council

Reference No: 200800359

Decision Date: 29 September 2008

www.itspublicknowledge.info

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Summary

Mr William Stewart asked Audit Scotland to provide him with information about the audit of North Lanarkshire Council's 2006-2007 accounts. Audit Scotland advised Mr Stewart that it was not the Council's appointed auditors and so it did not hold this information. Audit Scotland also advised Mr Stewart that PricewaterhouseCoopers (PwC), who were the Council's appointed auditors, would hold the information, but that, as PwC were not subject to the Freedom of Information (Scotland) Act 2002 (FOISA), he did not have the right to receive the information from them.

Following an investigation, the Commissioner found that Audit Scotland had dealt with Mr Stewart's request for information in accordance with Part 1 of FOISA by stating that, in terms of section 17(1) of FOISA, it did not hold the information requested. The Commissioner also found that the relationship between Audit Scotland and PwC was not one whereby PwC could be considered to hold information on behalf of Audit Scotland in terms of section 3(2)(b) of FOISA.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement); 3(1) and (2)(b) (Scottish public authorities) and 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.

Audit Scotland (March 2007) Code of Audit Practice (prepared for the Auditor General and the Accounts Commission):

http://www.audit-scotland.gov.uk/docs/corp/2006/070328_codeofauditpractice.pdf

Background

1. On 29 November 2007, Mr Stewart wrote to Audit Scotland requesting information obtained during the audit of North Lanarkshire Council's 2006/07 accounts, and for information about councillors' and directors' salaries, and directors' names. (See the discussion on the extent of Mr Stewart's request below.)



2. Audit Scotland replied to Mr Stewart on 18 December 2007. Audit Scotland explained that it was not the Council's appointed auditor, and so it did not hold the evidence collected during the audit. Audit Scotland advised Mr Stewart that PricewaterhouseCoopers (PwC) are the Council's appointed auditors and that PwC would hold a considerable volume of working papers and documents obtained during the course of their audit of the Council's accounts. However, Audit Scotland also advised Mr Stewart that PwC are not subject to FOISA.
3. Audit Scotland told Mr Stewart that it did hold a copy of the auditors' annual report and would supply a copy to Mr Stewart if he wished. Audit Scotland also advised Mr Stewart that the Council would be best placed to provide information and explanations relating to its accounts and that, since the Council is subject to FOISA, he may wish to make a request to the Council for the information.
4. On 15 February 2008, Mr Stewart wrote to Audit Scotland requesting a review of the way it had dealt with his information request.
5. On 3 March 2008, Audit Scotland notified Mr Stewart of the outcome of its review. Audit Scotland confirmed its earlier decision that it did not hold any information falling within Mr Stewart's request and repeated its original advice to Mr Stewart.
6. On 10 March 2008, Mr Stewart wrote to the Commissioner, stating that he was dissatisfied with the outcome of Audit Scotland's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Stewart 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.
8. On 14 March 2008, Audit Scotland was notified in writing that an application had been received from Mr Stewart and the case was subsequently allocated to an investigating officer.

Investigation

9. On 25 March 2008, the investigating officer contacted Audit Scotland, providing it with an opportunity to comment on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions.
10. The comments from Audit Scotland are considered in the Analysis and Findings section below.



Commissioner's analysis and findings

11. In coming to a decision in this matter, the Commissioner has considered all the information and submissions presented to him by Audit Scotland and Mr Stewart and is satisfied that no matter of relevance has been overlooked.
12. The Commissioner will firstly look at the extent of Mr Stewart's request and how it was interpreted by Audit Scotland. He will then consider whether Audit Scotland complied with Part 1 of FOISA by stating that it did not hold any information falling within the request.

Extent of the request of 29 November 2007

13. Mr Stewart's information request was for (amongst other matters) "all material evidence of what Audit Scotland obtained in their examination concerning North Lanarkshire Council 2006-2007 accounts." Audit Scotland interpreted this request as seeking the information obtained from the Council by the appointed auditor for the purposes of the audit.
14. During the investigation, Mr Stewart explained that one purpose of his request was to obtain information about what had been done by the auditors during their audit of the Council and he had phrased his request ("all material evidence") to include this information.
15. Whilst the intention behind Mr Stewart's request may be to obtain information about what was done in the audit, it is not in fact what he requested in his request of 29 November 2007.
16. In a previous decision, *Decision 149/2006 Mr Rob Edwards and the Scottish Executive* (at paragraph 32), the Commissioner stated:

"I would expect that any public authority interpreting a request for information in a way that diverged from the established meaning of the words contained in the request would do so only on the basis of some evidence that the requestor intended such an interpretation."
17. The Commissioner considers that there is nothing in this instance to suggest that Audit Scotland construed the request for information in a way that diverged from the established meaning of the words and that Audit Scotland interpreted the request in a reasonable manner. While he recognises that Mr Stewart's request for review does suggest that the response received from Audit Scotland did not, in Mr Stewart's view, provide information to satisfy his request, there is nothing in the request for review which, when read objectively, is sufficient to identify that Mr Stewart is wishing evidence of what was done by the appointed auditor in addition to that obtained in their audit.
18. Any information request should be approached in a common sense way and with the intention to assess what it is that the person making the request wishes to know. If that is not clear then the public authority receiving the request may have an obligation (under section 15 of FOISA) to advise and assist the person making the request and this may lead to the request being clarified. Section 1(3) FOISA provides for a situation where the request is not clear and further information is sought in order to comply with the request for information.



19. However, where the request is clear on the face of it, the public authority does not have an obligation to try to imagine what other information the person making the request might have considered requesting. In this case the Commissioner accepts that the request appeared plain when read objectively by Audit Scotland and that consequently section 1(3) FOISA did not apply.
20. The Commissioner also notes that Audit Scotland referred Mr Stewart to the Council as an authority that may hold information he was seeking and also referred him to the published report by PwC for the audit of the Council.
21. If a requestor wishes to have information other than that already requested the remedy is to make a fresh request in different terms and the Commissioner notes that Mr Stewart has made a subsequent request which asks for the information which he thought fell within the terms of his request of 29 November 2007.

Section 17(1) – Notice that information is not held

22. Mr Stewart expressed dissatisfaction that he was unable to assess what the auditors had done in respect of the audit of the Council and was unable to access the information held by PwC.
23. It should be noted that the Commissioner can only investigate whether Audit Scotland was correct to state in terms of section 17(1) of FOISA that it did not hold the information requested (i.e. information obtained by PwC during its audit of the Council). In doing so, the Commissioner will take account of section 3(2)(b) of FOISA, which states that information is held by an authority for the purposes of FOISA if it is held by a person other than the authority, on behalf of the authority.
24. Audit Scotland supplied the Commissioner with a copy of its *Code of Audit Practice*, which provides information on how public sector audit is delivered in Scotland. For the sake of this decision, it is important to be aware that the Accounts Commission is responsible, under the Local Government (Scotland) Act 1973 (the Local Government Act), for appointing auditors to carry out the audits of local authorities. The Accounts Commission either appoints Audit Scotland or private firms of auditors (“approved auditors”) to carry out such audits.
25. In this case, an approved auditor, PwC, was appointed by the Accounts Commission to carry out an audit of the Council. Audit Scotland was not the appointed auditors for the Council and no member of the staff of Audit Scotland participated in the audit of the Council. (Paragraph 15 of the *Code of Audit Practice* makes it clear that, once appointed, auditors act independently in carrying out their responsibilities and in exercising their professional judgement.) Consequently, any information obtained during the audit will be held by PwC and not by Audit Scotland.
26. The investigating officer also considered whether Audit Scotland held copies of any of the information held by PwC, but is satisfied that Audit Scotland does not hold such information.



27. During the investigation, Audit Scotland was also asked whether it could be said that PwC, in terms of section 3(2)(b) of FOISA, held information relating to the audit of the Council on behalf of a public authority and, more particularly, if PwC held such information on behalf of Audit Scotland. If it did, then the information would be considered to be “held” by the public authority for the purposes of FOISA and Mr Stewart would have a right to make an information request for that information.
28. Audit Scotland stated that it could not be said that PwC held the material on behalf of anyone, and, in particular, not on its behalf. Audit Scotland explained that the appointed auditor would conduct the audit in accordance with a combination of statutory duties and professional standards, summarised in Audit Scotland’s own *Code of Audit Practice*, and would hold the material which is gathered for the purpose of the audit on its own behalf. Whilst Audit Scotland provides guidance and support to approved auditors and, on behalf of the Auditor General and the Accounts Commission, monitors their performance through a quality appraisal process, it is the appointed auditor (in this case PwC) which holds the material obtained from the audit. Once appointed, auditors act independently in carrying out their responsibilities and in exercising their professional judgement. In the case of local authorities, the duties are set out in Part VII of the Local Government Act and include the duties to:
- audit the financial statements of the audited body
 - satisfy themselves that the financial statements have been prepared in accordance with all applicable statutory requirements
 - satisfy themselves that proper accounting practices have been observed in the preparation of the financial statements
29. Audit Scotland also commented that the power to access to information for audits is conferred on auditors by statute.
30. The Commissioner accepts that PwC is private firm of accountants and is not a Scottish public authority as defined by section 3 of FOISA. The Commissioner also accepts that the relationship between PwC and Audit Scotland in this respect is not one whereby PwC can be considered to hold any information on the audit of the Council on behalf of Audit Scotland. Instead, the Commissioner is satisfied that the information is held by PwC as auditor in its own right. As such, the rights to information provided by section 1(1) of FOISA do not apply to any of the information held by PwC which falls within the scope of Mr Stewart’s request.
31. The Commissioner therefore accepts Audit Scotland’s submissions that it does not (and did not at the time of Mr Stewart’s request) hold the material which PwC gathered as part of the 2006-2007 audit of the Council.
32. The Commissioner is therefore satisfied that Audit Scotland correctly notified Mr Stewart in terms of section 17(1) of FOISA that the information requested by him was not held by it. He does not require any action to be taken by Audit Scotland in response to this decision.



DECISION

The Commissioner finds that Audit Scotland acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Stewart.

Appeal

Should either Mr Stewart or Audit Scotland 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.

Kevin Dunion
Scottish Information Commissioner
29 September 2008



Appendix

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.

3 Scottish public authorities

- (1) In this Act, “Scottish public authority” means-
 - (a) any body which, any other person who, or the holder of any office which-
 - (i) is listed in schedule 1; or
 - (ii) is designated by order under section 5(1); or
 - (b) a publicly-owned company, as defined by section 6.
- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-
 - (...)
 - (b) by a person other than the authority, on behalf of 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.

