

Decision Notice



Decision 132/2008 Mr Paul Drury and Glasgow City Council

Correspondence exchanged between two individuals

Reference No: 200800444

Decision Date: 9 October 2008

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Paul Drury requested all correspondence between Charlie Gordon MSP and the Council's Chief Executive and Solicitor relating to the redevelopment of the Pollok Shopping Centre at Silverburn and the Darnley Mains planning applications from Glasgow City Council (the Council). The Council responded by advising Mr Drury that it did not hold the information he was seeking. Following a review, Mr Drury remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Drury's request for information in accordance with Part 1 of FOISA by giving Mr Drury notice, in terms of section 17 of FOISA, that it did not hold the information he was seeking.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is not held)

The full text of each of the statutory provisions referred to above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 11 December 2007, Mr Drury sent two emails to Glasgow City Council (the Council) requesting the following information:
 - **Request 1:** All correspondence (email, memo or letter) between Charlie Gordon (an MSP, who previously served as leader of the Council) and the Council's Chief Executive and Solicitor on the subject of the redevelopment of the Pollok Shopping Centre as Silverburn (to include references to planning applications and the sale of any council-owned land).
 - **Request 2:** All correspondence (email, memo or letter) between Charlie Gordon and the Council's Chief Executive and Solicitor on the subject of any Darnley Mains planning application by London and Clydeside Properties.



2. The Council responded to both requests separately on 7 January 2008. In each case, it gave Mr Drury notice, as required by section 17 of FOISA, that it did not hold any of the information he had requested.
3. On 8 January 2008, Mr Drury wrote to the Council, separately requesting reviews of each of these decisions. Mr Drury queried the Council's reference in its initial responses to "Charlie Gordon MSP". Mr Drury noted that the correspondence he was seeking was not limited to Charlie Gordon's recent role as an MSP, but included his six year tenure as leader of the Council. Mr Drury reiterated his original requests.
4. The Council notified Mr Drury of the outcome of its reviews on 1 February 2008. The Council advised Mr Drury that by referring to "Charlie Gordon MSP", it had not meant to indicate that it had restricted its previous searches to the two years he has served as a member of the Scottish Parliament, but that it was simply referring to him using his present title. In relation to each request, the Council advised Mr Drury that, after an extensive search of its records, it had concluded that it did not hold the information he had requested.
5. On 26 March 2008, Mr Drury wrote to the Commissioner, stating that he was 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. A single application was made in relation to both Request 1 and Request 2.
6. The application was validated by establishing that Mr Drury had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.

Investigation

7. On 14 April 2008, the investigating officer contacted the Council, providing it with 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. In particular, the Council was asked to provide the Commissioner with details of the searches it had undertaken for the information requested by Mr Drury, and was also asked for submissions as to how it had come to the view that it did not hold the information sought by Mr Drury.
8. The Council responded on 30 April 2008 and provided submissions supporting its view that it did not hold the information sought by Mr Drury.
9. Further information and clarification was sought from the Council on a range of matters during the investigation.



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions that have been presented to him by Mr Drury and the Council and is satisfied that no matter of relevance has been overlooked.
11. Charlie Gordon MSP was the leader of Glasgow City Council between 1999 and 2005. During that time, two property developments were approved by the Council; the redevelopment of the Pollok Shopping Centre at Silverburn and the retail/industrial development at Darnley Mains. Mr Drury is seeking copies of any correspondence held by the Council between Charlie Gordon and the Council's Solicitor and Chief Executive regarding these two developments.
12. In his application to the Commissioner, Mr Drury stated that he was dissatisfied with the Council's response that it did not hold the information he was seeking. Mr Drury submitted that, in the case of Darnley Mains, he did not accept the Council's assertion that there had never been any correspondence between Charlie Gordon and the Council's Solicitor or Chief Executive. He referred to comments made by Charlie Gordon at a committee meeting, in which he advocated a "180 degree turnaround" on council policy. He questioned how he could have made such a statement if he had never communicated in writing with officials before speaking out. Mr Drury also referred to a handwritten note authored by one of the Council's senior officials, which stated that, "I. Drummond [the Council's Solicitor] received instructions from C. Gordon". Mr Drury argued that this document clearly indicated a continuing dialogue between Charlie Gordon and the Council's Chief Solicitor.
13. Mr Drury also submitted that he did not accept the Council's claim that no correspondence between the named parties existed in relation to the Silverburn development. Mr Drury queried whether it was reasonable to believe that the leader of the Council (Charlie Gordon) would never have emailed or sent a memo to the Council's Solicitor or Chief Executive, in relation to such a large retail development in Glasgow.
14. In short, Mr Drury submitted that he did not accept that the Council had correctly advised him that it did not hold the information he was requesting.

Section 17 – Notice that information is not held

15. In order to determine whether the Council was correct to give Mr Drury notice under section 17(1) of FOISA that it did not hold the information he was seeking, the Commissioner must be satisfied that, at the time of Mr Drury's request, the Council did not hold the correspondence he was seeking.
16. In its submissions, the Council provided details of the searches it had undertaken to find the correspondence sought by Mr Drury.



17. The Council confirmed that it had searched both paper and electronic files, including the personal files of both the Solicitor to the Council and the Chief Executive, and that it had searched for material dating from 1999 onwards (the year that Charlie Gordon became leader of the Council) but that no relevant documentation had been located.
18. The Council maintained that in 2003 the Chief Executive's Office (where both the Chief Executive and the Solicitor to the Council are based) transferred its existing paper files to the basement of City Chambers, due to a lack of space in its offices. At that time, the Chief Executive's Office also adopted a working practice (or informal policy) whereby paper files would only be retained for a period of 1-2 years before they were disposed of. The Council stated that it had searched these archive basement paper files for the information sought by Mr Drury and it provided the Commissioner with details of these searches.
19. The Council stated that during its searches it had located a basement file entitled "Chief Executive's Office Basement Files – Pre-August 2003 Box M Council Leader (C Gordon) April 1999 – December 2001" and that it would have expected any correspondence between the Council Leader and the Chief Executive / Solicitor to the Council (within the specified time-frame) to be retained within that file and not copied into any other file. The Council stated that this file had been searched and that no relevant documentation had been found. The Council maintained that no files entitled "Silverburn" or "Darnley Mains" had ever existed in the Chief Executive's Office.
20. In addition to searching files held by the Chief Executive's office, the Council also searched relevant files within its Development and Regeneration Services Department for the information requested by Mr Drury. The Council searched the planning files for Darnley Mains and Silverburn, along with the property files for Silverburn and the Directorate Correspondence files and no documents falling within the scope of Mr Drury's request were located.
21. In response to Mr Drury's queries regarding the existence of the handwritten note, discussed above in paragraph 14, the Council advised the Commissioner that it had contacted the official who had penned the note. The official had advised the Council that this note was prepared almost ten years ago. The official had confirmed that he had no recollection of what the entry in the note referred to, and he was unable to provide the Council with further information on this matter.
22. In Mr Drury's application, Mr Drury had indicated that he did not accept the Council's assertion that there was never any correspondence between Charlie Gordon and the Council's Solicitor or Chief Executive in relation to the Darnley Mains development. The Commissioner has reviewed the responses provided by the Council to Mr Drury, and it is clear to him that at no time did the Council assert that there had never been any correspondence between the named parties, rather, it stated that it did not hold any such information at the time of Mr Drury's request.
23. When the Commissioner is considering the application of section 17(1) of FOISA, he is not investigating whether the requested information ever existed, nor whether the public authority ever held it, he is instead focusing instead on whether the public authority held the information at the time of the applicant's request.



24. After considering the submissions of both parties the Commissioner is satisfied that in this case the Council does not (and did not at the time of Mr Drury's request for review) hold the information requested by Mr Drury. The Commissioner is satisfied that the Council has carried out relevant and extensive searches for the correspondence requested by Mr Drury, and that the Council was correct to give him notice, in terms of section 17 of FOISA, that it does not hold the information he is seeking.

DECISION

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

Appeal

Should either Mr Drury or Glasgow City 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 notice.

Margaret Keyse
Head of Investigations
9 October 2008



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.

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.