

Decision Notice



Decision 149/2008 Mr Gatley and Renfrewshire Council

Copies of receipts for Councillors' expenses

Reference No: 200800889

Decision Date: 1 December 2008

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Kevin Dunion

Scottish Information Commissioner

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



Summary

Mr Gatley requested from Renfrewshire Council (the Council) copies of receipts for expenses claimed by Renfrewshire Councillors from 2000 to 2007. In responding, the Council identified certain information it could supply but gave Mr Gatley notice under section 17 of FOISA that it did not hold the remainder. Following a review, Mr Gatley remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Gatley's request for information in accordance with Part 1 of FOISA, by providing him with a notice under section 17 of the Act that it did not hold certain information which would address his request. The information the Council did hold having been provided to Mr Gatley, he did not require the Council to take any action

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17 (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. On 22 May 2008, Mr Gatley wrote to the Council requesting copy receipts for all expenses claimed by Renfrewshire Councillors "for the periods provided to me under the FOI".
2. The Council contacted Mr Gatley on 22 May 2008 to seek clarification from him as to the information that he was seeking, and for which financial years he wanted that particular information. On 2 June 2008, Mr Gatley wrote to the Council confirming that he was seeking copies of Councillors' receipts for expenses claimed in the period 2000 to 2007.



3. The Council responded to Mr Gatley on 17 June 2008. In its response, the Council stated that receipts for Councillors' expenses for the current and immediately past financial years were available and could be provided to Mr Gatley, with the exception of telephone bills disclosing the telephone numbers of private individuals. In respect of receipts for the period up to the beginning of the immediately past financial year, the Council gave Mr Gatley notice under section 17 of FOISA to the effect that this information was not held. The Council also responded to points raised by Mr Gatley regarding the legal requirements for retaining the receipts requested.
4. Mr Gatley submitted a request for review to the Council on 18 July 2008, asking the Council to review its decision not to provide the requested information to him.
5. The Council notified Mr Gatley of the outcome of its review on 14 August 2008. In responding, the Council upheld its earlier decision without modification.
6. On 15 September 2008, Mr Gatley wrote to the Commissioner's Office, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The application made by Mr Gatley only related to the Council's reliance on section 17 of FOISA in respect of receipts for the period 2000 to 2006 (and for the period 2000 to 2007 in respect of one specified Councillor only).
7. The application was validated by establishing that Mr Gatley 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. The case was then allocated to an investigating officer.

Investigation

8. The investigating officer contacted the Council on 29 September 2008, advising it that an application had been received from Mr Gatley and 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. In particular, the Council was also asked to justify its position that it did not hold certain of the Councillors' expense receipts requested by Mr Gatley, and to provide details of the searches it had carried out to determine whether this information was held. A response to these points was received from the Council on 20 October 2008.
9. Further information and clarification was sought from the Council on certain matters during the course of the investigation. All relevant submissions received from both the Council and Mr Gatley will be addressed in the Commissioner's analysis and findings below.
10. The Commissioner notes that Mr Gatley was provided with copies of receipts for the financial year 2006/07 for the one specified Councillor in the course of the investigation. No issues have been raised with the Commissioner in respect of this aspect of Mr Gatley's request and the Commissioner will not consider it further in this decision.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Gatley and the Council and is satisfied that no matter of relevance has been overlooked.

Section 17 – Notice that information is not held

12. In order to determine that the Council was correct to give notice under section 17(1) of FOISA that it did not hold certain of the information Mr Gatley requested, the Commissioner must be satisfied that the Council did not, at the time of Mr Gatley's request, hold the information in question.
13. The Council submitted that it did not hold receipts for expense claims submitted by Councillors prior to the financial year 2006/07. The Council asserted that there was no statutory requirement for it to do so in terms of the relevant scheme for Councillor's expenses then applicable, and that when the receipts had been used to check against claims it was decided that they were no longer needed. As a consequence, receipts for the period prior to 2006/07 were destroyed in the normal course of business some time before Mr Gatley's request.
14. Searches carried out by the Council in its Finance and Information Technology Department confirmed that the receipts for the period prior to 1 April 2006 had been destroyed in accordance with the relevant records retention schedule, on the basis that they did not require to be retained. The Council further advises that it has received advice that indicates that there is no statutory requirement for it to retain receipts for the period prior to 2006/07.
15. The Council also carried out searches of the records held by staff in the Members' Services section, which included Councillor's secretaries. The Council advised that the staff in Members' Services had confirmed that they did not retain members' receipts for expense claims.
16. The Council also provided the Commissioner with a copy of the records retention schedule applicable to members' expenses claims. This schedule states that information relating to members' expenses claims should be retained for the current year plus an additional four years. During the course of the investigation, the investigating officer sought clarification from the Council as to which records were encompassed in the term "members' expenses claims". The Council advised that this term related to only the claims forms submitted and not the receipts which accompanied them.



17. Mr Gatley believes that there is an obligation on the Council to retain receipts for 5 years plus the current year for tax purposes. In response to this assertion, the Council notified Mr Gatley of its position that the Taxes Management Act 1970 did not impose any obligation on the Council to preserve receipts for allowances paid to elected members. In the Council's view, as elected members were treated as employees for tax purposes, it had to keep records of payments made to them, which it did. The Council has advised that there were obligations on individuals under the 1970 Act to preserve records relating to their own tax assessments, and also on employers to provide information on employees when required to do so by a notice from the (Inland) Revenue. However, the Council submitted that there was no specific requirement to produce receipts.
18. The Council referred to the requirements in regulation 97 of the Income Tax (Pay as you Earn) Regulations 2003, which it submitted obliged employers to retain records of payments made under PAYE for three years following the tax year to which they related and to produce these to the (Inland) Revenue when required to do so. The Council stated that again there was no requirement to produce receipts.
19. Aside from requirements under tax legislation, the Council also explained to Mr Gatley that prior to May 2007 allowances and expenses were paid in terms of schemes made under the Local Authorities etc (Allowances) (Scotland) Regulations 1995. The Council advised that these regulations required every local authority to keep a record of the payments made by it in accordance with any scheme made pursuant to the Regulations. The authority was then obliged to publish the record not later than 1 June in each year in respect of the previous year. The Council again submitted that this was an obligation to maintain a record and not to keep receipts.
20. When the Commissioner is considering the application of section 17(1) of FOISA, he is not investigating whether the requested information ever existed, or whether the public authority ever held it, or whether it was under an obligation to hold it. He is instead required to consider whether, as a matter of fact, the public authority held the information at the time of the applicant's request.
21. In the circumstances, having considered the Council's explanation of its interpretation of the Taxes Management Act 1970 along with Mr Gatley's submissions, the Commissioner can understand that Mr Gatley might consider the Council should hold receipts for Councillor's expenses for the whole period covered by his request. However, having taken into account all submissions made by the Council, including the retention schedule covering members' expenses claims and the Council's guidance on members' salaries, allowances and expenses, the Commissioner accepts the Council's submissions that it did not hold the information in question at the time of Mr Gatley's request.



22. It is apparent that the Council only retains receipts in respect of the expenses claimed for the last financial year and that any others are destroyed. As mentioned already, the Commissioner's decision must restrict itself to whether the Council held the information requested by Mr Gatley at the time of his request. While the Commissioner has noted the existence of the relevant taxation legislation and other statutory requirements, and the different interpretations placed on these, it is not for him to comment on whether the Council is fulfilling its obligations under these pieces of legislation in respect of the payment records it holds.
23. The Commissioner is satisfied therefore that the Council was correct to provide Mr Gatley with a notice under section 17 of FOISA in this case, as he is satisfied that the Council did not at the time of Mr Gatley's request (and indeed does not) hold information which would address his request, with the exception of the information identified and provided to him.

DECISION

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

Appeal

Should either Mr Gatley or Renfrewshire 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.

Kevin Dunion
Scottish Information Commissioner
1 December 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.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.