

# Decision Notice

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**Decision 166/2016: Mr William Skidmore and Aberdeen City Council**

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**Consideration of a meeting item as a “matter of urgency”**

Reference No: 201600665

Decision Date: 20 July 2016



Scottish Information  
Commissioner

## Summary

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On 19 January 2016, Mr Skidmore asked Aberdeen City Council (the Council) for information explaining why an agenda item at a meeting of the Council in May 2013 was heard as a matter of urgency.

The Council stated that it did not hold the information.

The Commissioner investigated and accepted that the Council did not hold the information requested.

## 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.

## Background

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1. On 19 January 2016, Mr Skidmore made a request for information to the Council. The request concerned a meeting of the Council on 1 May 2013<sup>1</sup>. At that meeting, the Lord Provost made a direction in terms of section 50(B)(4)(b) of the Local Government (Scotland) Act 1973 (the 1973 Act) that an agenda item be considered as a matter of urgency, “to enable the Council to determine the matter without further delay”. The item concerned the disposal of property in Broad Street, Aberdeen.
2. Section 50(B)(4)(b) of the 1973 Act provides that an item of business may not be considered at a meeting of a local authority where it is not on the agenda circulated before that meeting, unless-  
  
“by reason of special circumstances, which shall be specified in the minutes, the convener of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency”.
3. Mr Skidmore asked the Council for information which confirmed what the special circumstances were that warranted this item being heard as a matter of urgency. These special circumstances did not appear to be recorded in the minutes of the meeting.
4. Following clarification from Mr Skidmore, the Council responded on 11 March 2016. The Council informed Mr Skidmore that it did not hold the information, with an explanation of the relevant process.
5. On 14 March 2016, Mr Skidmore wrote to the Council requesting a review of its decision. Mr Skidmore did not accept that the information was not held and submitted that the Council should be able to retrieve an electronic copy of the relevant document.

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<sup>1</sup> <http://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=122&MIId=2532&Ver=4>

6. The Council notified Mr Skidmore of the outcome of its review on 11 April 2016 upholding its previous decision without modification.
7. On 12 April 2016, Mr Skidmore wrote to the Commissioner. Mr Skidmore applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He stated he was dissatisfied with the outcome of the Council's review. Mr Skidmore refused to accept that the Council did not hold an electronic copy of the information.

## **Investigation**

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8. The application was accepted as valid. The Commissioner confirmed that Mr Skidmore 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.
9. On 11 May 2016, the Council was notified in writing that Mr Skidmore had made a valid application. The case was then allocated to an investigating officer.
10. 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. In particular, it was asked to explain the steps it had taken in order to identify and locate any information falling within the scope of Mr Skidmore's request.

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

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

### **Section 17 of FOISA – information not held**

12. 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, subject to qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
13. In its initial response and in its review outcome, the Council gave notice to Mr Skidmore that it did not hold the information requested.
14. In its submissions to the Commissioner, the Council referred to its standing orders<sup>2</sup> and explained that where the deadline for submissions to a Council meeting was missed, the report author was responsible for the completion and arranging for signature of a "late docquet". This document should include the reason why the report had been submitted as a late item and why it should be considered as a matter of urgency. In the Council's view, this was the information that Mr Skidmore was seeking.
15. The Council explained that this docquet was not normally circulated with a meeting agenda, but would be retained, along with a hard copy of the agenda and related papers, for one year after the meeting took place – in this case, on 1 May 2013. Thereafter, all of this

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<sup>2</sup> <http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=53340&sID=23738>

documentation would have been destroyed. The Council stated that electronic searches had been undertaken, but no electronic version of the information could be found.

16. The Council provided an explanation of the searches that it had undertaken. The Council stated that it carried out searches in the areas most likely to hold the information. These were: Legal and Democratic Services in Corporate Governance (which services the Council and committees); Office of the Chief Executive (including the Lord Provost's Office) and Communities, Housing and Infrastructure (where the report originated).
17. The Council provided details of the searches it had undertaken. These included a search of files in its secure storage room, individual email archives, shared drives and personal files. Additionally, the Council provided a copy of its record of destruction for electronic records from the period of the Council meeting. The Council also provided a copy of its information management protocols for committee meetings – this stated that the retention period for this class of document was one year.
18. The Council stated that it was not possible to access electronic documents which might have existed around May 2013 but which no longer required to be retained. The Council stated that its email system had changed from Groupwise to Outlook in May 2013 and the archives for both had been checked on receipt of Mr Skidmore's request.
19. The Council also explained that its server back-ups only went back 28 days and it was not possible for it to recover documents which went further back. The Council noted that "back-up" was different from "archive". It explained that a back-up was a snapshot of data retained in order to restore data in the event of a technological failure, whereas an archive was information retained for a specific purpose. The Council reiterated that any information deleted from its systems outwith the back-up period was not retained.
20. Mr Skidmore did not accept that an electronic copy of the docquet could not be retrieved. In his view, any such document should have been part of the audit trail for the subject matter under consideration at the Council meeting in question. He believed such documents should be kept on the Council's servers or in data archives for future reference. He also believed that data back-ups would have been taken offsite periodically and archived. In his view, it should have been possible for the Council to retrieve the information.
21. The Commissioner has considered carefully all of the submissions provided by both Mr Skidmore and the Council, including the Council's explanations of why the searches and enquiries undertaken would have located the information sought by Mr Skidmore.
22. The Commissioner acknowledges that the information under consideration is information which Mr Skidmore believes the Council ought to hold. However, the Commissioner's role in this case is to form a view on whether the Council actually holds the information, or held it at the time the request was received.
23. Having considered all of the relevant submissions, the Commissioner accepts that the Council carried out adequate, proportionate searches to ascertain whether it held the information in question. She accepts that any relevant information would have been identified using the searches described by the Council. She also accepts the Council's explanation of why this information would not have been accessible (at the time it received Mr Skidmore's request) through any system back-up or electronic data archive.
24. Consequently, the Commissioner accepts that the Council was correct in concluding that it did not hold the information sought by Mr Skidmore and, by serving notice under section 17(1), complied with FOISA.

## **Decision**

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

## **Appeal**

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Should either Mr Skidmore or Aberdeen City 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**  
**Head of Enforcement**  
**20 July 2016**

### 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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