

Decision Notice

Decision 175/2015: Mr Fleming and Aberdeenshire Council

Management of Stonehaven Recreation Grounds Trust 2010 - 2014

Reference No: 201501133

Decision Date: 10 November 2015



Scottish Information
Commissioner

Summary

On 4 March 2015, Mr Fleming asked Aberdeenshire Council (the Council) for all the information it held on the management of the Stonehaven Recreation Grounds Trust (the Trust) during the period 2010 – 2014. The Council responded by stating that it did not hold any information. Mr Fleming remained dissatisfied following a review and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council complied with Part 1 of FOISA in responding to Mr Fleming's request.

Relevant statutory provisions

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

1. On 4 March 2015, Mr Fleming made a request for information to the Council. He asked for all the information held by the Council and by Aberdeenshire Councillors on the management of the Trust during the period 2010 – 2014, specifically:
 - a. Agendas and minutes of meetings attended by Councillors (in their role as nominated Trustees from the Kincardine and Mearns Area Committee)
 - b. Annual reports
 - c. Annual accounts
 - d. Correspondence between the Council and the Recreation Grounds Trustees
 - e. Reports to the Area Committee.
2. The Council responded to Mr Fleming on 7 May 2015, apologising for the lateness of its response. It told him it did not hold the information he had requested.
3. On 21 May 2015, Mr Fleming wrote to the Council requesting a review of its decision. He explained why he believed the Council would hold relevant information.
4. The Council notified Mr Fleming of the outcome of its review on 11 June 2015, upholding its original decision without modification. It provided some explanation of the status of Councillors on the Trust, in support of its position.
5. On 12 June 2015, Mr Fleming wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Fleming stated he was dissatisfied with the outcome of the Council's review because he believed the Council must hold relevant information: he explained why.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Fleming 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. The case was allocated to an investigating officer.
7. On 21 August 2015, the Council was notified in writing that Mr Fleming had made a valid application. 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 questions on the steps taken to identify and locate any relevant information.
8. The Council responded on 1 September 2015, providing submissions in response to the investigating officer and confirming that it was not withholding any information covered by the request.

Commissioner's analysis and findings

9. 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 Fleming and the Council. She is satisfied that no matter of relevance has been overlooked.

Information held by the Council

10. 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 an applicant notice in writing to that effect.
11. Mr Fleming remained unconvinced that the Council had identified and located all the information it held and which was capable of addressing his request. He explained his understanding of the position regarding nomination of Councillors to the Trust. He referred to correspondence noted in the minute of a meeting of the Area Committee held on 11 December 2012, which he considered relevant (although he acknowledged that other correspondence, referred to in a letter from the Area Manager, might not have been sent within his specified timeframe). Finally, he noted the absence of any information held by Councillors, which he considered to fall within the scope of the request and which he submitted should have been obtained from them by the Councillor.
12. At this point, the Commissioner must note that she can only consider this request insofar as it relates to information held by the Council. This will not include information held by individual Councillors, unless that information can be deemed to be held on behalf of the Council (which the Commissioner will consider further below). Individual Councillors are not Scottish public authorities for the purposes of FOISA, nor – as Mr Fleming appears to be suggesting – can they be considered employees (or the equivalent) of the Council.
13. The Council explained the background to its relationship with the Trust. It emphasised that the Trust did not share information with it. It identified those areas of the Council considered likely to hold relevant information and described the searches carried out, providing the search terms used. The Council also stated that Area Office staff were asked to answer questions from personal knowledge: backing up the results of the searches, this confirmed

that the correspondence referred to in the Area Manager's letter had not extended beyond 2009.

14. The Council emphasised that any Councillors nominated to the Trust would be appointed to serve the interests of the Trust rather than those of the Council. It noted that this should be clear from the Area Manager's letter identified by Mr Fleming. The Council contended that there was no need to approach Councillors because they were not acting on behalf of the Council – such information would not be held by it or on its behalf.
15. The Council also noted that there had been no Councillors nominated to the Trust after the Local Government elections in May 2012. These nominations apart, it had not been involved in elections of Trustees since 2009. In support of its submissions, it provided additional background information during the investigation.
16. The Commissioner is satisfied that the searches and other enquiries undertaken were sufficient. Having considered all relevant submissions and the surrounding circumstances, she also accepts there was no requirement to pursue information held by the Councillors nominated to the Trust: information held by them as Trustees would not be held by or on behalf of the Council.
17. Consequently, the Commissioner is satisfied with the Council was entitled to conclude that it held no information falling within the scope of Mr Fleming's request. Mr Fleming was quite clear about the timeframe of his request and appears to have understood fully the implications of setting that timeframe. If he wishes to make a further request for earlier (or later) information, he is free to do so.

Decision

The Commissioner finds that, in respect of the matters specified in the application, Aberdeenshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Fleming.

Appeal

Should either Mr Fleming or Aberdeenshire 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

10 November 2015

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.

...

(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.

...

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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