

Decision Notice



Decision 186/2011 Mr L and North Lanarkshire Council

Translation services information

Reference No: 201101086

Decision Date: 15 September 2011

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

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



Summary

Mr L requested from North Lanarkshire Council (the Council) information in respect of the translation of a file. The Council responded by stating that the information was not held. Following a review, Mr L remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr L's request for information in accordance with Part 1 of FOISA, being satisfied that it did not hold the information he had requested. 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) and (4) (General entitlement) 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.

Background

1. On 20 February 2011, Mr L wrote to the Council. He referred to a file sent by the Council to various Government agencies in France and translated by International Social Services (ISS), London, at the end of 2007. Mr L requested the following information:
 - a. All and any information held by the Council relative to the practical and contractual arrangements whereby the authority obtained the services of ISS at the end of 2007.
 - b. Copies of all documents pertaining to the request for translation of the file (other than the file itself), to include any invoice, receipt, requisition etc, specifying the work carried out or to be carried out, applicable standards such as timescales etc, and the number of sheets to be translated, failing which the charging mechanism applied. This request includes documents created and stored electronically as well as physical documents concerning the transaction in question.



2. The Council responded on 15 March 2011, stating that there was no contractual agreement with ISS and contact with them, if required, was made on an *ad hoc* basis by telephone, their land mail address and their website. The Council also advised that it did not hold the information requested in respect of the translation of the specific file referred to by Mr L. The Council, to be of assistance, provided general information about its understanding of ISS's translation services.
3. On 2 April 2011, Mr L wrote to the Council requesting a review of its decision. He put forward arguments as to why he believed there must be a contractual arrangement of some form between the Council and ISS. He also submitted that he expected the Council was required by auditing standards to maintain records as to payment made for translation services, albeit arranged on an *ad hoc* basis, and that he should be provided with this information.
4. The Council notified Mr L of the outcome of its review on 6 May 2011. The Council upheld its decision that it did not hold the information requested. It stated that it engaged ISS on an occasional, case by case, basis: there was no contract between the Council and ISS. In relation to records of payment made, the Council stated that it did not hold records for the payment made for the translation in the case to which Mr L referred.
5. On 13 June 2011, Mr L wrote to the Commissioner, 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.
6. The application was validated by establishing that Mr L 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. The investigating officer contacted the Council, 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. The Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, and in particular to explain the steps it had taken to identify and locate any relevant information held. Its submissions in response, insofar as relevant, will be considered further in the following section.



Commissioner's analysis and findings

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

Section 17(1) – Information not held

9. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received. Where a Scottish public authority receives a request for information that it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant in writing that it does not hold the information.
10. The Council indicated that it held no information falling within the scope of Mr L's requests.
11. In order to determine whether the Council dealt with Mr L's requests correctly, the Commissioner must be satisfied as to whether, at the time it received Mr L's requests, it held any information which would fall within the scope of those requests. The Council was therefore asked to explain the searches it had conducted to determine whether any relevant information was held.
12. The Council replied that its Social Work and Corporate Financial Systems had been checked for the period from June 2002 to June 2008. From these systems, photographic images of invoices for each ledger entry had been downloaded, indicating receipt value, date and in some instances the names of individuals linked to enquiries for translation. The Council explained that a number of these invoices were for an annual fee paid to ISS. However, while acknowledging that it had engaged ISS to undertake the translation in question, it could identify no specific evidence of any transaction between the Council and ISS relating to Mr L's request. The Council explained that it did not have a contractual arrangement with ISS for translation of data but in past years had paid an annual retainer for access to that service. It stated that its retention period for invoices is current year plus five years.
13. The Council made several suggestions why there was no invoice for the service: that ISS had omitted to bill the Council; that the invoice from ISS had been non-specific; or that as an annual fee was paid to ISS for services of this kind, only those requests that exceeded the annual subscription had been billed by ISS.
14. Mr L requested information about the translation, including the number of pages translated. The Council was asked to respond to Mr L's point that it was "incredible" that it was unable to advise how many pages were sent for translation. The Council explained that it was unable to be specific about the number of pages as there was no specific letter, email or invoice which referred to that number. It could identify the report sent for translation, but this had in any event been copied to Mr L twice already.



15. Mr L's request was not for the translated file, or the file sent for translation. In addition, the Commissioner is aware that, in the course of the investigation, the Council clarified certain aspects of the circumstances of the translation to Mr L: however, this is not something that falls within the ambit of the Commissioner's investigation.
16. The standard of proof to apply in determining whether a public authority holds the requested information is the civil standard of the balance of probabilities. In deciding where the balance lies, the Commissioner will consider the scope, quality and results of the searches carried out by the public authority. He will also consider, where appropriate, any other reason offered by the public authority to explain why it has concluded that the information is not held.
17. The Commissioner is of the view that the searches undertaken, and described above, by the Council were reasonable in the circumstances: they covered the time period specified by Mr L and would appear to have been carried out in the locations where such information should have been held. Indeed, these searches located information about services obtained from ISS, albeit not the information Mr L requested.
18. The Commissioner has also taken into account Mr L's view about what information he would have expected to be held, and the Council's explanations as to possible reasons why this information was not held. While the Commissioner appreciates Mr L's surprise that the Council is unable to identify details of a specific transaction, he notes that the Council has attempted to supply possible explanations about why the requested information is not held. He also acknowledges that the existence in law of a contract for certain work will not necessarily mean that documentary evidence of that contract will be held. In all the circumstances, he is satisfied that the Council took adequate steps to identify and locate any relevant information it did hold.
19. For these reasons the Commissioner finds that the Council was correct to give Mr L a notice under section 17(1) of FOISA, to the effect that it held no information which fell within the scope of his requests.

DECISION

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



Appeal

Should either Mr L or the 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 Enforcement
15 September 2011



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.

...

- (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.

...