

Decision Notice



Decision 192/2010 Mr Alexander MacDonald and East Dunbartonshire Council

RoSPA inspection report for King George V Park, Bearsden

Reference No: 201000681

Decision Date: 22 November 2010

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

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



Summary

Mr MacDonald requested from East Dunbartonshire Council (the Council) certain pages of a safety inspection report by the Royal Society for the Prevention of Accidents (RoSPA) in respect of the King George V Park, Bearsden. The Council responded by providing a copy of the report. Mr MacDonald was not satisfied with what he received and remained dissatisfied following a review. He applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Mr MacDonald's request for information in accordance with Part 1 of FOISA, by stating that it did not hold the information requested. Being satisfied, however, that Mr MacDonald was in possession of the requested information, 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 3 October 2007, Mr McDonald wrote to the Council, requesting a copy of a safety inspection report for King George V Park, Bearsden dated 23 September 2007, produced by RoSPA. The Council provided him with a copy of the report consisting of 4 numbered pages and later he was provided with 2 pages of accompanying photographs.
2. Mr McDonald subsequently obtained a further copy of the RoSPA report from another source and discovered that the content of this version differed from the copy he had received from the Council. The report received consisted of 9 numbered pages, with pages 1, 7, 8 and 9 corresponding with pages 1 to 4 supplied by the Council in 2007. Pages 2, 3, 4, 5 and 6 in the version obtained subsequently had not, however, been provided by the Council in response to his earlier request.



3. On 3 February 2010, Mr MacDonald wrote to the Council referring to his earlier request and requesting the following information:
“... page 2, 3, 4, 5 and 6 were also missing from this report containing the introduction which is an essential part of the report. Please send me these pages to complete my request.”
4. The Council responded on 4 February 2010 and emailed Mr MacDonald a copy of the RoSPA report, again consisting of only the 4 numbered pages sent to him in November 2007
5. On 18 February 2010, Mr MacDonald wrote to the Council requesting a review of its decision. He referred to the Council's failure to supply the pages detailed in his request, advising that the pages supplied appeared to be incorrectly numbered.
6. The Council notified Mr MacDonald of the outcome of its review on 16 March 2010. The review found that there was no evidence for the existence of an introduction to the RoSPA report, or indeed any other pages of content, and consequently the Council was satisfied that the document supplied to Mr MacDonald was the complete report, with no pages omitted and no redactions.
7. The Council found that since there were no missing pages, or if there were, they were not in its possession, it would have been appropriate for it to have given him notice under section 17(1) of FOISA, that the Council did not hold the information requested. The review therefore gave Mr MacDonald notice to that effect.
8. On 23 March 2010, Mr MacDonald 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.
9. The application was validated by establishing that Mr MacDonald 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

10. The investigating officer subsequently 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. In particular, the Council was asked to explain the steps it had taken to ascertain whether it held the information requested by Mr MacDonald.



11. During the investigation, Mr MacDonald provided the Commissioner with the copy of the RoSPA report that he had obtained from the Council in November 2007, and also the copy he had obtained from elsewhere subsequently. While Mr MacDonald confirmed that he had these “missing pages” when he made his request to the Council on 3 February 2010, he advised that they were of poor quality and hoped this would be remedied by the Council providing better copies.
12. During the investigation, the investigating officer supplied the Council with the version of the RoSPA report obtained by Mr MacDonald from another source. The Council confirmed that it did in fact hold the pages described by Mr MacDonald as “missing”, and that the copies it held were of similar quality to the ones obtained by Mr MacDonald. The Council submitted that the “missing pages” were in fact the statement, provided in advance of the report being conducted, detailing the conditions under which the Council commissioned the report. It stated that this information bore no relation to the technical content of the RoSPA report and was not part of the report.
13. Mr MacDonald did not accept the Council’s assertion that the “missing pages” were not part of the report. He commented that such pages appeared routinely in other, similar RoSPA reports commissioned by local authorities, of which he supplied examples. He considered the conditions contained in these pages to be essential to a proper understanding of the report and highlighted the phrase *The Introduction forms an essential component of this report*, which occurred at the foot of each page of the longer version he had obtained, as evidence that this version was the full report.
14. The Council agreed to contact RoSPA to ascertain the versions of the report held by RoSPA, why there should be different versions (if there were) and whether a better copy of the version Mr MacDonald was concerned about could be provided to him. RoSPA found that it held two versions of the RoSPA report, although it was unsure why this was so. One of these contained the images but no introduction, while the other contained the introduction but no images. The Council stated that it would forward to Mr MacDonald any further explanation from RoSPA, as to why there are two versions of the report, if and when RoSPA made the Council aware of this.

Commissioner’s analysis and findings

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



Section 17 – Notice that information is not held

16. Section 17(1) of FOISA requires that where an authority receives a request for information that it does not hold, then it must give the applicant notice in writing to that effect. In terms of section 1(4) of FOISA, the information the authority is required to provide in response to an information request is that held by it at the time the request is received, subject to qualifications which are not relevant in this case.
17. During the investigation, it became clear that Mr MacDonald and the Council had been of different views about the information which was the subject to the request. The Council's review of 16 March 2010 recognised this to some extent, in identifying the perceived discrepancy between the version of the report he had been provided with and that he believed RoSPA had supplied to the Council. It concluded that there was only one version of the report, however, a position it adhered to in the early stages of the investigation. Given the circumstances in which the report had been commissioned, it had not considered extensive searches for a further version to be necessary.
18. During the investigation, however, following further discussion with the investigating officer, the Council confirmed that it held the requested information at the time it received Mr MacDonald's request. The Council confirmed that these pages were of the same quality as those Mr MacDonald already held, providing a copy.
19. Mr MacDonald views (see paragraph 13 above) on what should be considered to be the full version of the report was put to the Council during the investigation. It acknowledged his point that the footnotes to the "missing pages" suggested that these were indeed part of the report, while maintaining that the official report held by RoSPA and supplied to the Council did not include these pages.
20. Whilst the Commissioner acknowledges the Council's explanations of how and why it dealt with Mr MacDonald's request as it did, and in particular why it interpreted the request as it did, in the circumstances he is satisfied that the Council held the information requested by Mr MacDonald at the time it received his request. The Council clearly lacked a full understanding of precisely what information Mr MacDonald was seeking, but it could have attempted to rectify this by seeking clarification. It proceeded to deal with the request without seeking such clarification, however, and the Commissioner must conclude that in doing so it incorrectly gave Mr MacDonald notice in terms of section 17(1) of FOISA that it did not hold the information he had requested. In failing to identify, locate and provide the information it did hold, the Council failed to deal with the request in accordance with section 1(1) of FOISA.
21. Mr MacDonald has expressed dissatisfaction about there being different versions of the RoSPA Report and questioned the authenticity of the report. The role of the Commissioner, however, is to decide whether a public authority has complied with Part 1 of FOISA in dealing with a request for information. It is not his function to verify the accuracy of any information an authority does hold, or to determine why it holds different versions of the same document.



22. Having found a breach of Part 1 of FOISA, the Commissioner must consider whether any steps are now required from the Council to rectify that breach. In the decision of the Court of Session in the case of Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73¹, the Court emphasised that FOISA gives a right to information rather than documents. The recorded information in this case, the “missing pages” referred to in Mr MacDonald’s request, is in fact held by Mr MacDonald. The Commissioner therefore does not require any action from the Council in respect of the breaches of Part 1 of FOISA referred to in paragraph 20 above.

DECISION

The Commissioner finds that East Dunbartonshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr MacDonald. In particular, he finds that the Council incorrectly notified Mr MacDonald in terms of section 17(1) of FOISA that the information sought in his request was not held. By failing to identify, locate and supply the information which fell within the scope of Mr MacDonald's request, the Council failed to comply with section 1(1) of FOISA.

Given that Mr MacDonald has the requested information in his possession, the Commissioner does not require the Council to take any action in response to these failures.

Appeal

Should either Mr MacDonald or East Dunbartonshire Council (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
22 November 2010

¹ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



Appendix

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.

...