

# Decision Notice



Decision 273/2013 Mr Colin McLeod and Dundee City Council

Marchbanks recycling centre

Reference No: 201302117

Decision Date: 3 December 2013

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
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## Summary

On 6 May 2013, Mr McLeod asked Dundee City Council (the Council) for information relating to the disposal or alternative uses of the former Marchbanks recycling centre. The Council provided a copy of a committee report and told Mr McLeod that it held no further information.

Following an investigation, the Commissioner was not satisfied that adequate searches had been carried out for the information and required the Council to carry out further searches.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement)

## Background

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1. On 6 May 2013, Mr McLeod wrote to the Council asking for any information it held pertaining to the disposal or alternative uses of the former Marchbanks recycling centre, following its planned closure.
2. The Council responded on 18 June 2013, informing Mr McLeod that there were no plans to dispose of the site following the closure: it was likely there would be a continuing need for the site.
3. On 20 June 2013, Mr McLeod wrote to the Council requesting a review of its decision. He considered the Council's response to be a statement of opinion rather than information answering his request. He expected there to be information held to support the statement.
4. Following the Commissioner's intervention, the Council notified Mr McLeod of the outcome of its review on 23 August 2013. It provided a copy of the committee report which had proposed closure of the Marchbanks recycling centre, noting that the decision was based on revenue savings rather than consideration of alternative uses.
5. On 9 September 2013, Mr McLeod 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 McLeod made a request for information to a Scottish public authority and 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

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7. 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. These focused on the steps taken by the Council to identify and locate any relevant information. In response, the Council provided submissions.

## Commissioner's analysis and findings

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

### **Has all relevant information been identified, located and provided by the Council?**

9. Section 1(1) of FOISA requires a Scottish public authority which holds information to provide that information when requested to do so by any applicant. In terms of section 1(4), the information to be provided is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.
10. In this case, therefore, the Commissioner must satisfy herself that the Council took adequate steps to identify and locate all the information relevant to the request. In such cases, a simple assertion by the authority that the information is not held will not be sufficient: generally, the Commissioner will expect to be provided with compelling reasons if the authority has concluded that searches were unnecessary.



11. To support the contention that it held no further information, the Council was asked to describe the searches it had carried out. Describing alternative uses for the property as “matters of strategic importance to the Council”, the Council stated that it had discussed the matter with certain senior officials in the City Development and Environment departments, rather than carrying out searches. It believed it unlikely that alternative uses of the property would have been considered without these officers being aware, although it could not confirm whether any searches had been carried out within the departments in question (or whether discussions as to the future of the site had been recorded). With reference to the relevant Council minute, it reasserted that the recycling centre had been closed to make revenue savings rather than to pursue an alternative use.
12. The Council also provided some context in relation to the site in question. It explained that the site of the former recycling centre was only one small part of a much larger area of Council land, with other parts being used for the parking of refuse vehicles, an office and the storage of road salt. It pointed out that disposal of the site would place it in private ownership, but surrounded by Council land. This is helpful, but it suggests that alternative uses for the property (and Mr McLeod did not just ask about disposal) are hardly “matters of strategic importance”, but rather simple questions of organisation within larger Council premises. These would not seem to require the direct involvement of the senior officers referred to in the Council’s submissions.
13. The Commissioner acknowledges that more radical reorganisations of the premises in question (presumably, not involving separate disposal of the small part under consideration here) might need to involve more senior officers. However, it does not seem to follow that such matters could not be contemplated (at any level) without the involvement of these officers. Presumably, the early consideration of options (at least) might go on without them. In any event, none of the possibilities considered in this and the preceding paragraph seem so remote to the Commissioner that the need to search for relevant recorded information should have been rejected.
14. In all the circumstances, therefore, the Commissioner is not satisfied that the Council took adequate steps to identify and locate the information requested by Mr McLeod. She does not consider herself able to conclude otherwise, on the evidence provided by the Council. She therefore finds that the Council failed to deal with Mr McLeod’s request in accordance with section 1(1) of FOISA, and now requires the Council to carry out searches for the information, to satisfy itself (and her) as to whether any further information is held. Should further information be identified and located by the Council, the Commissioner requires it to provide Mr McLeod with that information or deal with the information otherwise in accordance with Part 1 of FOISA.
15. The Commissioner would point out that in the Assessment Report dated 12 April 2011, produced after the Council’s FOI practice had been assessed by Commissioner’s staff, the following recommendations were agreed by the Council (at Appendix 1 (Action Plan)):
  - Point 7 (a) – that the Council retains records of the searches carried out by staff to determine whether any relevant information is held which would answer a request for information.



- Point 7 (d) – that the evidence of any searches carried out, with any relevant background or contextual information, is provided to the Legal Manager to facilitate the provision of a fully informed substantive response in cases where the Council [states that it does not hold information].
16. The Council agreed to take action on these points by ensuring that departmental FOI representatives would introduce formal recording procedures relating to information searches, based on a standard format. The Commissioner understood this to have been actioned and is therefore disappointed to note that the Council appeared to be unable to confirm whether any relevant searches had been carried out in this case in the departments most directly concerned. Recurrences of this issue may lead the Commissioner to consider whether any further remedial action is required, in relation to the Council's practice in searching for information.

## DECISION

The Commissioner finds that 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 McLeod. In particular, she finds that the Council failed to take adequate steps to identify, locate and provide the information requested by Mr McLeod and therefore failed to comply with section 1(1) of FOISA

The Commissioner therefore requires the Council to undertake further searches to satisfy itself, and her, that no further information is held, by 17 January 2014. Where further information is identified and located, the Commissioner requires the Council to provide this information to Mr McLeod, or to deal with it otherwise in accordance with Part 1 of FOISA.

## Appeal

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Should either Mr McLeod or Dundee 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**  
**3 December 2013**



## Appendix

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### 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.  
...
- (6) This section is subject to sections 2, 9, 12 and 14.