

# Decision Notice 016/2020

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## Copy of invoice: e-counting software costs

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**Applicant: The Applicant**

**Public authority: Aberdeen City Council**

**Case Ref: 201802122**



Scottish Information  
Commissioner



## Summary

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The Council was asked for a copy of an invoice for e-counting software costs. The Council stated that it held the information on behalf of the Returning Officer.

During the Commissioner's investigation (following a decision in the Court of Session on a related case), the Council agreed that it did hold the invoice on its own behalf. The Council supplied the invoice to the Applicant, with personal data redacted.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 3(2)(a)(i) (Scottish public authorities)

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 9 May 2018, the Applicant made a request for information to Aberdeen City Council (the Council). He referred to the fact that, on 29 May 2017, the Scottish Government had written to the Council and invited the Council to invoice the Scottish Government for e-counting software costs. He requested:  
  
“... a copy of any invoice submitted by the Council to the Scottish Government in response to this letter.”
2. The Council responded on 22 May 2018. It explained that the costs were incurred during the 2017 Local Government elections and that the information requested was held by the Council on behalf of the Returning Officer. Therefore, the invoice was not held by the Council for the purposes of FOISA (section 3(2)(a)(i)).
3. On 29 July 2018, the Applicant wrote to the Council requesting a review of its decision. He believed the information was held by the Council. He believed the information was made available in the unaudited accounts that were available for public inspection in terms of section 101 of the Local Government (Scotland) Act 1973. The Applicant said that, as the information appeared in the accounts, it must therefore be held by the Council for six years according to paragraph 6(3) to schedule 11 of the Value Added Tax Act 1994.
4. The Council notified the Applicant of the outcome of its review on 3 August 2018. The Council maintained that the information was not held by the Council for the purposes of FOISA, but went on to state that it considered his request to be vexatious (erroneously citing section 14(2) (repeated request)).
5. On 9 November 2018, the Applicant wrote to the Commissioner. The Applicant argued that the information was held by the Council for the purposes of FOISA.
6. On 19 November 2018, the Council issued a revised review response to the Applicant, noting that it had incorrectly stated that it considered his request to be vexatious. However, the Council maintained that it did not hold the information requested for the purposes of FOISA and that it was held on behalf of the Returning Officer, citing section 3(2)(a)(i).

7. On 6 December 2018, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review of 19 November 2018. The Applicant believed that any information held within the Council's statutory accounts to comply with financial regulations was held by the Council and therefore was accessible through FOISA.

## Investigation

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8. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
9. 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 to answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
10. The Applicant was also invited to provide any comments he wished to make. Both the Council and the Applicant provided the Commissioner with submissions in support of their respective views.
11. Also relevant to this case is the Commissioner's *Decision 206/2018 Mr M and Aberdeenshire Council*<sup>1</sup> which considers a similar request for information. This decision was appealed to the Court of Session on a point of law.
12. In light of the similarity between the appeal to the Court of Session and the present application (both related to the proper interpretation of section 3(2)(a)(i) of FOISA in the context of a local authority and a Returning Officer) the present application (relating to the request 9 May 2018 for e-counting software costs) was sisted by the Commissioner to await the decision of the Court of Session.
13. On 3 December 2019, the Court of Session issued its Opinion<sup>2</sup> in the appeal against *Decision 206/2018*. The Court upheld the appeal, finding that Aberdeenshire Council did hold the information for which it had cited section 3(2)(a)(i) of FOISA. The Court remitted the case back to the Commissioner for further consideration.
14. On 11 December 2019, the investigating officer contacted the Council and drew its attention to the Court of Session's Opinion.
15. On 6 January 2020, the Council accepted that it held the invoice for the purposes of FOISA. On 8 January 2020, the Council disclosed the information to the Applicant, with the redaction of some personal data in terms of section 38(1)(b) of FOISA (Personal information).
16. The Applicant confirmed receipt of the information, and confirmed that he had no dissatisfaction in respect of the redaction of the personal data. He asked the Commissioner to issue a decision on whether the Council had complied with Part 1 of FOISA.

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2018/201801007.aspx>

<sup>2</sup> <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019csih57.pdf?sfvrsn=0>

## Commissioner's analysis and findings

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17. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.
18. As stated above, following consideration of the Court of Session Opinion, the Council accepted that it held the information requested by the Applicant for the purposes of FOISA. The Council supplied the information to the Applicant subject to the redaction of personal data.
19. In the absence of submissions to the contrary, the Commissioner finds that the Council was wrong to state that it did not hold the information requested at the time of the Applicant's request. In making this finding, the Commissioner recognises that the view initially taken by the Council reflected the view of the Commissioner in *Decision 206/2018* and others, but which the Court of Session subsequently found to be incorrect.

## Decision

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The Commissioner finds that Aberdeen City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 by failing to respond to the information request made by the Applicant in terms of section 1(1).

Given that the Council has disclosed the information to the Applicant, the Commissioner does not require the Council to take any action in response to this failure.

## Appeal

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Should either the Applicant or the 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**

**28 January 2020**

### 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.

...

#### 3 Scottish public authorities

...

- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-

- (a) by the authority otherwise than-
- (i) on behalf of another person; or

...

...

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