

Decision Notice



Decision 149/2013 Mr Stephen Woods and Glasgow City Council

Information relating to professional fees

Reference No: 201301030
Decision Date: 23 July 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 25 February 2013, Mr Woods asked Glasgow City Council (the Council) for information concerning the requirement for Lighting Engineers employed by the Council to pay professional fees. The Council responded by providing an explanation of why it had taken certain policy decisions in the past.

Following an investigation, the Commissioner found that the Council did not hold any recorded information falling within the scope of Mr Woods' request and that the Council had breached Part 1 of FOISA by failing to tell Mr Woods that this was the case.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 25 February 2013, Mr Woods wrote to the Council asking for information concerning the requirement for Lighting Engineers employed by the Council to pay professional fees after 1997.
2. The Council responded on 12 March 2013. The Council provided an explanation to Mr Woods of why it had taken certain policy decisions in the past.
3. On 16 March 2013, Mr Woods wrote to the Council requesting a review of its decision. In Mr Woods' view, the Council had not adequately addressed his information request.
4. The Council notified Mr Woods of the outcome of its review on 22 April 2014. The Council upheld its previous decision and reiterated the explanation that it had provided in its initial decision.



5. On 24 April 2013, Mr Woods 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 Woods 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.

Investigation

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. The Council was asked whether it held any recorded information that would fall within the scope of Mr Woods' request and for details of the searches it had undertaken in order to locate and retrieve any relevant information.
8. The Council responded on 1 July 2013.

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

Does the Council hold any relevant information?

10. As noted above, in its response to Mr Woods' request and in its response to his requirement for review, the Council provided an explanation of certain policy decisions that it had taken previously.
11. In his application to the Commissioner, Mr Woods stated that the Council's responses had explained that the management team in place at the time had considered there was a requirement at the time for Lighting Engineers to pay professional fees. However, in his view, the Council had not provided him with any information showing why it had taken those decisions.
12. In its submissions, the Council stated that it considered that the information and responses previously provided to Mr Woods were relevant and clearly explained its position on the matter raised in his request.



13. In relation to the question of what relevant recorded information the Council might hold, the Council explained that it was very unlikely that a formal note or minute of the qualification requirements, as part of the recruitment process, would have existed. It explained that an assessment of entrance and qualification requirements was made by management staff in conjunction with the recruiting manager prior to a position being advertised. The Council stated that this detail would be recorded as part of the recruitment process, but such information was only retained for a period of six months after the recruitment process had ended, in line with established Council procedures.
14. The Council explained that it had carried out a search of all relevant records and files available, including electronic searches, and had found no relevant information due to the time that had elapsed since 1997. The Council also noted that there had been a number of Service reorganisations and office moves since 1997 resulting in the clearance of files and records that were considered obsolete. Consequently, there was no audit trail to verify how and when any relevant information had been destroyed or deleted.
15. The Commissioner has considered the Council's submissions and its explanation of why it does not hold any recorded information falling within the scope of Mr Woods' request. The Commissioner is satisfied that the Council has conducted proportionate searches to establish whether it holds any relevant information. The Commissioner has concluded that the Council does not hold any relevant, recorded information falling within the scope of the request.
16. The Commissioner recognises that the Council was attempting to be helpful by explaining to Mr Woods why certain policy decisions had been taken by it in the past. However, it is clear to the Commissioner that the Council did not actually hold any recorded information falling within the scope of his request. In such circumstances, the appropriate response from the Council should have included an explanation that no recorded information was held. By failing to provide notice to this effect (as required by section 17(1) of FOISA), the Commissioner finds that Council failed to comply with Part 1 of FOISA.

DECISION

The Commissioner finds that Glasgow City 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 Woods by failing to give notice in terms of section 17(1) that it did not hold the requested information.

The Commissioner does not require the Council to take any action in response to this failure in response to Mr Woods' application.

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Stephen Woods
and Glasgow City Council



Appeal

Should either Mr Woods or Glasgow city 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.

Margaret Keyse
Head of Enforcement
23 July 2013



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.

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