

# Decision Notice



Decision 110/2008 Mr C John Sibbett and East Lothian Council

Transcription of shorthand notes

Reference No: 200800618

Decision Date: 17 September 2008

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr Sibbett requested a copy of the notes (shorthand and normal text notes) taken at a planning meeting and a transcript of the shorthand notes into normal text from East Lothian Council (the Council). The Council provided a copy of the notes, but stated that a transcript of the shorthand notes was not available. In response to Mr Sibbett's request for a review of this decision, the Council stated that it had not created a transcript of the shorthand notes, so in terms of section 17 of the Freedom of Information (Scotland) Act 2002 (FOISA), it did not hold this information. Mr Sibbett remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Sibbett's request partly in accordance with Part 1 of FOISA. He found that the Council was wrong to notify Mr Sibbett in terms of section 17(1) that the information requested was not held. He concluded that the notes of the meeting were held, but the information contained therein was not available in the form preferred by Mr Sibbett (i.e. a transcript of the shorthand). Having considered the duties contained in section 11 and 15 of FOISA, he concluded that the Council was not obliged in the circumstances of this particular case to create and provide a transcript of the notes to Mr Sibbett.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement), 11(1) and (2) (Means of providing information), 15(1) (Duty to provide advice and assistance) 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

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1. On 15 February 2008, Mr Sibbett wrote to the Council requesting the following information:
  - Shorthand and normal text notes taken at a particular Planning Committee meeting, and concerning a specific planning application [Mr Sibbett provided the date of the meeting and the planning application reference].
  - An unabridged transcription of those notes from shorthand into normal text.



2. The Council responded to this request on 19 February 2008. It provided a copy of the voting record, representation and shorthand notes from the meeting. The Council stated that a transcript of the shorthand notes was not available.
3. On 20 March 2008, Mr Sibbett wrote to the Council requesting a review of its decision that a transcript of the shorthand notes was not available. Mr Sibbett requested a copy of the unabridged notes of the meeting in a format he could understand. He noted that he had tried to get the shorthand notes transcribed by a number of companies, but this had not been possible. This was because many shorthand symbols used by an individual practitioner are unique to that individual, and so cannot be transcribed by another practitioner.
4. The Council sent a copy of the formal minutes of the relevant meeting on 28 March 2008 to Mr Sibbett, noting that these minutes had been approved after Mr Sibbett's initial request. The Council asked Mr Sibbett to confirm that he still required it to undertake a review of its decision with respect to his information request. Mr Sibbett confirmed on 1 April 2008 that he still required the Council to review its initial response.
5. The Council notified Mr Sibbett of the outcome of its review on 18 April 2008. The Council stated that the transcription of shorthand notes into normal text is not normally required for the purposes of producing committee minutes, as the standard process is to work directly from the shorthand notes. The Council notified Mr Sibbett in terms of section 17 of FOISA as it did not hold a transcript of the shorthand notes.
6. On 25 April 2008, Mr Sibbett 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. Mr Sibbett stated that the approved minutes did not contain sufficient detail to uphold the veracity and integrity of a complaint he has regarding the planning application discussed at the meeting. Mr Sibbett also commented that it seemed inappropriate for the note-taker to be the only individual who had control of the production of the minutes and the Committee Members and Council having to rely on their memories of the meeting.
7. The application was validated by establishing that Mr Sibbett 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

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8. On 14 May 2008, the Council was notified in writing that an application had been received from Mr Sibbett. The Council was provided with an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and was asked to respond to specific questions. In particular, the Council was asked to confirm whether a transcript was now held. It was asked to provide an explanation of why a transcript could not be provided and to comment on its duties under sections 11 and 15 of FOISA insofar as these might be considered relevant to this case.
9. The Council responded 29 May 2008 and stated that it did not hold a transcript. It stated that shorthand notes are only used as an aide-memoir to assist the administrators in producing the minutes and it considered that producing a transcript would be creating new information, and so would go beyond the requirements of FOISA. The Council also provided comments on its duties under sections 11 and 15 of FOISA.

## Commissioner's analysis and findings

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10. In coming to a decision on this matter, the Commissioner has considered all of the submissions that have been presented by both Mr Sibbett and the Council and is satisfied that no matter of relevance has been overlooked.
11. This case has raised three questions, which will be considered in turn below:
  - was the Council correct to indicate in terms of section 17 that the information requested was not held, because the provision of a transcript would involve creating new information?
  - was the Council obliged under the terms of section 11 of FOISA to provide Mr Sibbett with a transcript, since this was his preferred format for the provision of the information?
  - was the Council obliged to provide a transcript in pursuit of its obligation under section 15 of FOISA to provide reasonable advice and assistance to Mr Sibbett?

### Section 17(1) of FOISA

12. Section 17(1) of FOISA provides that, where a Scottish public authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held.
13. In this case, the Council notified Mr Sibbett that a transcript of the shorthand notes was not held. The Council has stated that it does not hold a transcript of the notes and has argued that to prepare such a transcript would be creating new information.



14. The Commissioner has considered this point, but does not accept that the information requested by Mr Sibbett was not held, or that providing a transcript would involve creating new information. The information requested by Mr Sibbett are the notes taken by a named person in a meeting. These notes are held. What is not held is a version of these notes that is presented in a form that is legible and understandable to Mr Sibbett.
15. In considering this point, the Commissioner has noted that the information recorded in the original notes and any transcript would not differ. Both records would say the same thing, but in one case this would be fully intelligible only to the author, and in the other case it would be intelligible to others.
16. He considers the issue in this case to be parallel to the situation had Mr Sibbett asked for handwritten longhand notes to be provided. In that case, the handwriting might also be illegible to the person receiving it. The Commissioner would not consider the creation of a legible version of that same handwritten note to be creating new information. This would be providing the information in a form that is intelligible to the reader in order to enable them to understand the information held.
17. In providing a legible version of handwritten notes, either longhand or shorthand, the Council would not be interpreting or adding information, or filling in gaps or creating complete sentences from grammatically incomplete notes. The task involved would simply be a matter of converting handwritten script into a readable form of the same words. The Commissioner understands that this type of direct transcription is what Mr Sibbett is seeking.
18. Given these observations, the Commissioner is satisfied that the information requested by Mr Sibbett is held by the Council. This is contained within the shorthand notes. Therefore, the Commissioner considers that the Council wrongly notified Mr Sibbett in terms of section 17(1) of FOISA that the information he requested was not held.
19. The Commissioner considers the main issue to be addressed in this case to be whether the Council was obliged to provide the information requested by Mr Sibbett (which is held) in the format in which he has expressed a preference. This question is addressed in terms of sections 11 and 15 below.

### **Section 11 of FOISA**

20. Under section 11 of FOISA, an authority is required, so far as it is reasonably practicable, to give effect to the preferences of a person, where they express a preference for receiving information in the form of (a) a copy of the information in permanent form (or another form acceptable to the applicant); (b) a digest or summary of the information or (c) the opportunity to inspect the information.
21. The Commissioner invited comments from the Council as to whether this provision would oblige it to provide a transcript of the shorthand notes to Mr Sibbett.



22. The Council's response noted that it had considered its duties under section 11 of FOISA, and that it had provided a copy of the information in permanent format (section 11(2)(a)). It also noted that it had provided the approved minutes of the meeting, which might be considered a "digest or summary", as required by section 11(2)(b).
23. The Commissioner has concluded that section 11 of FOISA does not create any obligation on the Council to provide a transcript of the notes requested by Mr Sibbett. He agrees that a permanent copy of the notes in the form these were held was supplied to Mr Sibbett. He does not consider a transcript to be a digest or summary of the information.
24. Mr Sibbett's expressed preference for a transcript therefore does not fall within the terms of any of the means of provision of information set out in section 11(2) of FOISA. The Commissioner is therefore satisfied that there was no obligation to provide a transcript under the terms of section 11 of FOISA.

#### **Section 15 of FOISA**

25. Section 15(1) of FOISA provides that a Scottish public authority must, as far as is reasonable, provide advice and assistance to a person who proposes to make, or has made, a request for information. What constitutes *reasonable* advice and assistance will vary from case to case.
26. The Commissioner considers the provision of assistance to an applicant who is unable to read a document that is in handwritten or in shorthand form (e.g. by the author providing a transcript or assistance in reading the script) to be a type of advice and assistance to which this section might apply.
27. In this case, however, the Commissioner has noted the individual who took the short-hand notes was not actively employed by the Council at the time when the Council reviewed its response to Mr Sibbett's request (and the point where the Commissioner must consider whether the Council acted in accordance with Part 1 of FOISA). Since the short-hand notes are unique to the individual it was not possible for the Council to produce such a transcript at that time.
28. The Commissioner is satisfied that the Council was not obliged under the terms of section 15 of FOISA to produce a transcript of the shorthand notes as requested by Mr Sibbett. In this case, the unavailability of the author of the notes meant that the task of obtaining such a transcript would go beyond what advice and assistance the Council could reasonably be expected to offer to Mr Sibbett.
29. The Commissioner has therefore concluded that the Council was not obliged in this case to supply a transcript of the shorthand notes provided to Mr Sibbett. Therefore he has concluded that the Council did not breach Part 1 of FOISA by refusing to supply this in response to his request.



## DECISION

The Commissioner finds that East Lothian Council (the Council) generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Sibbett. In particular, the Commissioner found that the Council was not obliged to provide Mr Sibbett with a transcript of the shorthand notes he had requested, and so the Council did not breach Part 1 of FOISA by refusing to supply this.

However, the Council incorrectly notified Mr Sibbett that the information he had requested was not held in terms of section 17 of FOISA. The Commissioner concluded that the provision of a transcript of the shorthand notes would not involve the creation of new information, but would instead involve providing the information held to Mr Sibbett in an alternative format. Having clarified his understanding of this point, the Commissioner did not require any action to be taken in response to this technical breach in this case.

## Appeal

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Should either Mr Sibbett 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 Investigations**  
**17 September 2008**





## 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.

##### 11 Means of providing information

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.
- (2) The means are-
  - (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
  - (b) such provision to the applicant of a digest or summary of the information; and
  - (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.

##### 15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

##### 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.