

Decision Notice



Decision 006/2010 Mr Lawrie Richmond and South Ayrshire Council

Girvan Pavilion closure

Reference No: 200901417

Decision Date: 20 January 2010

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

Mr Richmond requested from South Ayrshire Council (the Council) copies of technical reports relating to Girvan beach pavilion and a copy of the report to the council committee recommending its closure. The Council responded by providing some information, but informed Mr Richmond that other information that he sought was not held. Following a review, Mr Richmond remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Richmond's request for information in accordance with Part 1 of FOISA.

Relevant statutory provisions and other sources

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

1. On 14 April 2009, Mr Richmond wrote to the Council requesting a copy of all the technical reports as to why Beach Pavilion Girvan was closed for safety reasons in September 2000. He also requested a copy of the report to the council committee recommending the closure and by whom it was authored, which councillors were present at the meeting and how they voted.
2. After seeking clarification from Mr Richmond, the Council responded to his request on 24 June 2009. The Council supplied some of the information sought, but advised Mr Richmond that it was unable to identify the Committee report to which he referred. However, the Council supplied Mr Richmond with a copy of a Committee Report and Minute which referred to the demolition of the property and advised Mr Richmond that there was no record retained regarding the decision making (voting) process.



3. On 8 August 2009, Mr Richmond wrote to the Council requesting a review of its decision. In particular, Mr Richmond indicated that, at the time of the building's closure, a Councillor had informed residents of Girvan that there was an engineer's report stating that the building was unsafe and had to close. At the time, it had been maintained that this report was confidential. Mr Richmond stated that, although he had been provided with survey reports from 1996 to 2004, this had not included the report that led to the building's closure. He stated that he could not believe that such an important document would be destroyed or mislaid.
4. The Council notified Mr Richmond of the outcome of its review on 10 September 2009. This response informed Mr Richmond, in terms of section 17 of FOISA, that the information he sought was not held by the Council.
5. On 15 September 2009, Mr Richmond 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 Richmond 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

7. On 10 November 2009, the investigating officer 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 about the searches undertaken to identify relevant information following receipt of Mr Richmond's request.

Commissioner's analysis and findings

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



Court of Session Opinion – requests for documents

9. The Commissioner notes that the information request by Mr Richmond included a request for copies of documents. In the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA provides a right to information, not documents. However, the Court said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
10. In this case, the Commissioner notes that there is no indication in the correspondence he has seen between Mr Richmond and the Council that the Council questioned the validity of the information request. In addition, there is nothing to suggest from correspondence which the Council has subsequently had with the Commissioner that the Council was unclear as to what the information request sought.
11. The Commissioner is satisfied that the request is reasonably clear and that the information request is therefore valid.

Information not held

12. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that it does not hold the information.
13. Mr Richmond was provided with survey reports from 1996 and 2004, but nothing from 2000 when the building was closed. Mr Richmond submitted that the 2004 report shows some deterioration in the property, but he felt there was nothing to indicate why it was closed four years earlier. He was not satisfied that the Council did not hold any information as to why the building had to close with immediate effect.
14. In its letter to Mr Richmond of 10 September 2009, the Council advised him that his request related to information dating back to 2000. It advised Mr Richmond that, during the intervening period, the Council had undergone a number of restructuring exercises and had experienced a number of changes with senior personnel and with internal processes including financial and email systems. The Council advised Mr Richmond that it had conducted an extensive search in relation to the documents he was seeking, but that it does not hold the information that he sought.



15. The Council provided Mr Richmond with an explanation of its processes, including the ability of Senior Officers to make decisions under delegated powers. This process, the Council advised, allows for immediate decisions to be made by Officers without first seeking approval within the Council Committee structure. The Council advised Mr Richmond that the decision to close the Beach Pavilion may have fallen within this delegated authority. Given the passage of time, it was possible that this decision was made by a Senior Officer who is no longer within the employment of the Council. No manual records were identified about this matter and the Council advised him that email records of former employees are not retained.
16. However, the Council advised Mr Richmond that there were number of documents held within the Council records that relate to the Beach Pavilion; some of these were sent to Mr Richmond to assist him, although this was not the specific information he was seeking.
17. Within its submissions to the Commissioner, the Council explained that it had originally forwarded Mr Richmond's request to its Development and Environment Department which identified a number of documents but not the information sought by Mr Richmond. The Council then widened its search for the information.
18. The Council explained that it contacted its IT department to establish whether it could gain access to the computers of members of staff who had left the Council. The Council's IT department advised that once an employee leaves the Council, IT are informed and it will disable the account and delete the account and information saved on their private drive after a period of three months.
19. The Council also explained that it had contacted its Principal Archivist who explained that each department had its own individual retention schedules and these would have been drawn up and signed off at various stages. The Principal Archivist also searched through the hard copy signed Council Minutes from 2000 through to 2001 and found no mention of the Beach Pavilion or its closure. The Principal Archivist also advised that it would not expect to hold the report; these records are not generally kept with signed minutes, as usually only the signed Minutes are retained for permanent retention.
20. The Council advised that it had searched for any document, whether it was a committee report or an officer's report, which mentioned the Beach Pavilion. The Council searched prior to 2000 and after 2001. Searches were also undertaken in budget reports, to determine whether the closure was recorded as part of a savings package.
21. The Council provided a list of officers who were contacted regarding the search for this information, their current designation and explanations as to why they were asked and a brief log of the work undertaken to search for the information.
22. The Council was unable to confirm whether the information sought by Mr Richmond existed. It could only state that, if it did exist, the Council no longer holds it. However, the Council explained that had the information been available, it could see no reason for it not to be supplied to Mr Richmond.



23. The Commissioner has considered the submissions made by the Council and is satisfied that it was correct in its determination that it does not hold the information sought by Mr Richmond, in terms of section 17 of FOISA. It is clear from the submissions made by the Council that a thorough search has been undertaken of both manual and electronic files, involving a range of relevant officers. The Commissioner is satisfied that reasonable attempts have been made to retrieve the information sought by Mr Richmond, and to pass on what information of potential relevance to him was identified in the course of its searches.
24. On balance of probabilities, therefore, the Commissioner is satisfied, having considered the searches undertaken and the explanations as to why this information might not be expected to be held at the time of Mr Richmond's request, that the Council was correct in its application of section 17 of FOISA.

DECISION

The Commissioner finds that South Ayrshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Richmond.

Appeal

Should either Mr Richmond 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 Enforcement
20 January 2010



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.

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.