

# Decision Notice



Decision 029/2014 Mr Peter Bennett and North Lanarkshire Council

Employment of a surveyor

Reference No: 201302213

Decision Date: 17 February 2014

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**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
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## Summary

On 28 June 2013, Mr Bennett asked North Lanarkshire Council (the Council) for information about its employment of a surveyor who surveyed his house. The Council stated that the surveyor had not been employed by the Council in the last five years. Following a review, in which the Council informed Mr Bennett that the surveyor had been used once, Mr Bennett remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Council disclosed the name of the person who had engaged the surveyor.

The Commissioner found that the Council did not hold the correspondence sought by Mr Bennett, but that the information provided to Mr Bennett during the investigation should have been disclosed at an earlier stage.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 8(1) (Requesting information); 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 28 June 2013, Mr Bennett asked the Council for the following information:
  - a. How many times in the last five years had the Council used a named surveyor.
  - b. Who authorised his use.
  - c. Emails or letters used to hire him in his capacity as a surveyor in the last year.
2. The Council responded on 23 July 2013. It informed Mr Bennett that the Council had not used the surveyor in the past five years.
3. On 23 July 2013, Mr Bennett emailed the Council requesting a review of its decision. Mr Bennett stated that he had received a response to the first part of his request, but not the remainder.



4. Mr Bennett resubmitted his request for review on 14 August 2013.
5. On 15 August 2013, the Council issued a response to his email of 23 July 2013. The Council informed Mr Bennett that the Chief Solicitor had authorised the employment of the surveyor and that it held no emails or letters in this respect.
6. The Council asked Mr Bennett to confirm he was content to withdraw his request for review of 14 August 2013. Mr Bennett did not provide such confirmation and the Council proceeded to review its response to his request of 28 June 2013. The Council notified Mr Bennett of the outcome of its review on 11 September 2013. It informed Mr Bennett that its response dated 15 August 2013 was correct; and confirmed that it had been incorrect to inform him, on 23 July 2013, that the surveyor had not been used by the Council during the last five years.
7. On 20 September 2013, Mr Bennett 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.
8. The application was validated by establishing that Mr Bennett 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/those requests. The case was then allocated to an investigating officer.

## Investigation

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9. On 9 October 2013, the Council was notified in writing that an application had been received from Mr Bennett and was asked to provide its comments on the application (as required by section 49(3)(a) of FOISA) and to respond to specific questions. The Council was asked to provide details of its employment of the surveyor and the searches it had conducted for information covered by Mr Bennett's request.
10. The Council responded on 7 November 2013. It explained that it had instructed the surveyor by telephone and provided details of the searches that had been conducted for any recorded information covered by Mr Bennett's request.
11. On 28 November 2013, the Council provided further information about how it had ascertained whether any information was held about the employment of the surveyor. The Council also provided the name of the Chief Solicitor who had authorised the employment of the surveyor, and confirmed that this information had been withheld under section 38(1)(b) of FOISA.
12. The Council was asked for submissions to support its position that the Chief Solicitor's name should be withheld under section 38(1)(b) of FOISA. Mr Bennett was also asked for and provided his reasons for requiring disclosure of the Chief Solicitor's name.
13. On 15 January 2014, the Council disclosed the Chief Solicitor's name to Mr Bennett.



## Commissioner's analysis and findings

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

### Part a – number of times the Council used the surveyor

15. The Council confirmed to the Commissioner (7 November 2013), that it had only used the named surveyor once in the last five years.
16. On the basis of the Council's submissions about the searches it carried out for information covered by Mr Bennett's request, the Commissioner is satisfied that the Council informed Mr Bennett correctly that the named solicitor had only been used once. (Details of the searches carried out by the Council are summarised below, in relation to part c of Mr Bennett's request.)
17. The Commissioner is satisfied that the Council disclosed the information it held with respect to this part of Mr Bennett's request in line with section 1(1) of FOISA.

### Part b - Chief Solicitor's name

18. The Council disclosed the Chief Solicitor's name to Mr Bennett during the investigation. In the absence of substantive reasons as to why this information was originally withheld from Mr Bennett (none have been provided by the Council), the Commissioner must conclude that the Council failed to comply with section 1(1) of FOISA in withholding this information from Mr Bennett. As this information was disclosed during the investigation, the Commissioner does not require any action as a result of this failure.

### Part c - emails/letters used to hire the named surveyor in the last year

19. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) 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.
20. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
21. Where an application is made to the Commissioner on the basis that the applicant believes there to be information held, or further information held, which has not been provided by the authority (but which should be provided in accordance with Part 1 of FOISA), the Commissioner must satisfy herself that adequate steps have been taken by the authority to identify all the information relevant to the request (or alternatively, be given a reasonable explanation as to why the information or further information is not held). A simple assertion by the authority that the information is not held will not be sufficient.



22. The Council was asked to explain how it had searched for information covered by Mr Bennett's request, and how it had established that it did not hold any letters or emails relating to the engagement of the surveyor. In its response dated 7 November 2013, the Council explained that it was not uncommon for the instruction of a survey to take place over the phone or face to face, on a one-off basis with arrangements made by the Chief Solicitor. It confirmed that it did not hold any record of a documented contract. The Council stated that it does not retain the chartered surveyor firm (named surveyor's employer) as a contractor and there are no standard terms of engagement.
23. In its submission dated 28 November 2013, the Council stated that the availability of other surveyors was not considered and the firm in question was chosen as reputable, credible professionals operating in the field; the named surveyor was chosen by his firm to carry out the work. The Council explained that a meeting did take place between a council officer and the named surveyor to confirm the survey details; as the meeting was brief and straightforward, it was considered that there was no need for a file note on the outcome of the meeting.
24. The Council stated that the officer who attended the meeting with the named surveyor had checked their diary for 2011 and 2012 but there was no record of exactly when the meeting took place. The Council also provided details of the searches it had conducted to identify any information falling in scope of the request, which included a search of this officer's emails. These searches did not identify any relevant information.
25. During the investigation, the Council provided a range of documents and information which were created in the period following completion of the survey. Within the documents and information provided, there were references to the employment of the named surveyor which might be taken to indicate that the Council held further information covered by Mr Bennett's request. However, after each of these references were raised with the Council, the Council was able to explain why, in each case, the existence of these references did not indicate that it held any recorded information covered by Mr Bennett's request.
26. Having considered the submissions made by the Council, the Commissioner is satisfied that the Council does not hold emails or letters used to hire the named surveyor in the last year, and that it has now carried out searches which would have retrieved any relevant information. The Commissioner is therefore satisfied that the Council was correct to inform Mr Bennett it did not hold the requested information, in line with section 17(1) of FOISA.

#### **Other matters**

27. The Commissioner notes that the Council asked Mr Bennett to re-submit his request dated 28 June 2013. Having considered the terms of Mr Bennett's request, the Commissioner considers that it met all the requirements of section 8(1) of FOISA and Mr Bennett should not have been asked to re-submit what was a valid request.



28. The Commissioner considers it reasonable to comment that a more helpful response to Mr Bennett's request for review, specifically explaining why no additional information was held and disclosing the name of the Chief Solicitor, may have pre-empted an application from Mr Bennett and a lengthy investigation.

## DECISION

The Commissioner finds that North Lanarkshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Peter Bennett.

The Commissioner finds that by providing some information to Mr Bennett and informing him that some information was not held, the Council complied with Part 1 of FOISA (specifically, sections 1(1) and 17(1)).

However, by wrongly withholding personal data which was later disclosed, the Council failed to comply with section 1(1) of FOISA. As the information has now been provided, the Commissioner does not require the Council to take any action in respect of this failure.

## Appeal

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Should either Mr Bennett 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**  
**17 February 2014**



## 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.
- ...

##### 8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
- (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
  - (b) states the name of the applicant and an address for correspondence; and
  - (c) describes the information requested.
- (2) For the purposes of paragraph (a) of subsection (1) (and without prejudice to the generality of that paragraph), a request is to be treated as made in writing where the text of the request is-
- (a) transmitted by electronic means;
  - (b) received in legible form; and
  - (c) capable of being used for subsequent reference.



**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 question 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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