

# Decision Notice

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**Decision 032/2015: Dr Ruth Thomas and South Lanarkshire Council**

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**The 100 series Edinburgh to Dumfries bus service**

Reference No: 201400322

Decision Date: 12 March 2015



Scottish Information  
Commissioner

## Summary

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On 31 July 2013, Dr Thomas asked South Lanarkshire Council (the Council) for copies of emails from named Councillors to various bodies concerning the 100 series Edinburgh to Dumfries bus service.

The Council informed Dr Thomas that it did not hold the requested information for the purposes of FOISA. Dr Thomas subsequently narrowed the scope of her request to emails sent by Councillor Hamish Stewart to Strathclyde Partnership for Transport (SPT).

The Commissioner investigated and found that the Council had responded to Dr Thomas's request for information in accordance with Part 1 of FOISA. The Commissioner was satisfied that any such information would have been held by the Council on behalf of Councillor Stewart. Therefore it would not have been held by the Council for the purposes of FOISA.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 3(2)(a)(i) (Scottish public authorities); 17(1) (Notice that information is not held)

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 31 July 2013, Dr Thomas made a request for information to the Council. The information requested was:  
  
Copies of all correspondence sent from South Lanarkshire Council email addresses by (three named Councillors) between 1 June and 20 July 2013 to SWESTRANS (South West of Scotland Transport Partnership), SPT (Strathclyde Partnership for Transport), Dumfries and Galloway Council and South Lanarkshire Councillors on the subject of the 100 series Edinburgh to Dumfries bus service.
2. The Council responded on 28 August 2013. The Council gave notice in terms of section 17(1) of FOISA that it did not hold the requested information. This was on the basis that information held by Councillors relating to their political and constituency work was not covered by FOISA. Therefore it was not held by the Council.
3. On 23 October 2013, Dr Thomas emailed the Council requesting a review of its decision as she did not accept the Council's position regarding political and constituency work in relation to one of the Councillors: Councillor Hamish Stewart. Dr Thomas stated that Councillor Stewart represented the Council on the SPT Board and any correspondence between him and SPT should be viewed in this context.
4. The Council notified Dr Thomas of the outcome of its review on 21 November 2013. The Council upheld its previous decision that it did not hold the information on the basis that any such emails (if they existed) would not have been created by Councillor Stewart acting in a

capacity linked to a role within the Council. The Council stated that, in all other respects, information sent by a Councillor would be deemed to be held by the Councillor him/herself.

5. On 10 February 2014, Dr Thomas wrote to the Commissioner. Dr Thomas applied to the Commissioner for a decision in terms of section 47(1) of FOISA, stating that she was dissatisfied with the outcome of the Council's review. This was because she believed the fact that Councillor Stewart sat on the Board of SPT meant his correspondence with SPT could have been carried out in that role.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that Dr Thomas made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision. The case was allocated to an investigating officer.
7. 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 answer specific questions, including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
8. The Council responded on 13 May 2014, providing submissions explaining why it considered any emails sent by Councillor Stewart to SPT would not be held by it for the purposes of FOISA.
9. In subsequent correspondence, the Council provided additional information supporting its claim that any such information would not be held for the purposes of FOISA. Additionally, the Council asked Councillor Stewart if he recalled sending any such emails and, if so, on what basis they were sent.
10. Dr Thomas expressed dissatisfaction with the Council's position only in relation to any emails sent by Councillor Stewart to SPT. Therefore, this decision will only consider whether the Council holds any such emails for the purposes of FOISA.

## **Commissioner's analysis and findings**

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11. 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 Dr Thomas and the Council. She is satisfied that no matter of relevance has been overlooked.

### **Section 3(2)(a)(i) of FOISA – Scottish public authorities**

12. Section 1(1) of FOISA states that a person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority. However, section 3(2)(a)(i) of FOISA makes it clear that if the authority holds the information on behalf of another person, then the information is not held by the authority for the purposes of FOISA.
13. The Council's position was that any relevant information, if held, would be held by it on behalf of Councillor Stewart and not held by the Council for the purposes of FOISA.
14. A key question for the Commissioner to consider is whether the information under consideration is held by the Council for the purposes of FOISA. The word "held" has a specific meaning in section 3(2) of FOISA that is not simply determined by the presence of information within the premises or information systems of a public authority. When

information is present within a public authority's premises and systems only because it is held on behalf of another person, the public authority does not hold that information for the purposes of FOISA.

15. In this case, the specific information sought by Dr Thomas is emails sent by Councillor Stewart to SPT in June and/or July 2013 on a particular subject.
16. Dr Thomas stated that she had previously obtained information from SPT showing one half of a chain of email correspondence relating to the 100 bus service. Councillor Stewart was one of the recipients of those emails from SPT.
17. In Dr Thomas's view, any emails sent by Councillor Stewart to SPT could have been sent in his role as the Council's representative at SPT or in his capacity as a member of a Council Committee and, consequently, as a representative of the Council.
18. The Council submitted that Councillor Stewart could not be viewed as a representative of the Council when carrying out his duties as a member of SPT. In the Council's view, once an elected member was appointed to an outside body (such as SPT), they became bound to act in that body's best interests. The Council explained that it had provided guidance to its elected members to that effect. The Council provided a copy of its guidance to the Commissioner.
19. The Council also stated that it had no direct involvement in the provision of public transport. The Council explained that the Transport Act 1985 led to the deregulation of scheduled bus services, and private companies now operated the majority of services on a commercial basis. The Council submitted that it had no responsibility for commercial bus services and operators themselves determined the route, frequency of the service and days and time of operation of all commercial services. The Council stated that it was unable to identify any interest that it had in the 100 bus service (which was the subject of the request).
20. The Council also submitted that any information falling within the scope of the request would not have been created by Councillor Stewart in any capacity linked to a role within the Council, such as the Chair or member of a Committee. Consequently, any correspondence would not have been written on behalf of that Committee. The Council stated that such correspondence would only be created in limited circumstances, such as where a Committee had made a decision and it was being implemented by the member concerned, "i.e. the Chair etc." It submitted that this was very exceptional and in practice did not happen in South Lanarkshire.
21. The Council also explained that two of its senior officers had met with Councillor Stewart during the Commissioner's investigation. They had asked him if he had any recollection of sending any relevant emails to SPT on the subject of the 100 bus service and, if so, in what capacity (i.e. on behalf of a constituent, as a member of SPT or on behalf of the Council). Councillor Stewart had stated that any emails he sent to SPT would have been on behalf of constituents. He had explained that he recalled a history of local residents being dissatisfied with the previous provider of the service. He did not recall sending any emails to SPT on behalf of the Council. He also stated that he no longer had any emails from the period covered by the request.

#### *Councillor Stewart as a member of SPT*

22. The Commissioner has firstly considered the position in respect of Councillor Stewart's role as a member of SPT.

23. In the Commissioner's view, the Councillor's appointment to SPT cannot be viewed as being in the capacity of a "representative" of the Council when carrying out his duties as a member of SPT. The Commissioner considers that his duties and obligations would have been to act in a way which promoted SPT's interests.
24. Accordingly, the Commissioner is satisfied that any information held by the Council on behalf of Councillor Stewart acting in his capacity as a member of SPT is not held by it for the purposes of FOISA.

*Councillor Stewart acting on behalf of the Council*

25. The Commissioner also considered the position regarding any relevant emails sent by Councillor Stewart in his capacity as Chair or member of any Council Committees. In particular she considered whether they would have been sent by him in his capacity as a representative of the Council acting on behalf of the Council.
26. The Commissioner has considered the Council's submissions and its non-involvement in the provision of public transport. Given its position in this respect, the Commissioner is unable to envisage any circumstances in which Councillor Stewart would have communicated with SPT in his capacity as Chair or member of any Council committees. Consequently, she does not consider that he would have communicated with SPT as a representative of the Council acting on behalf of the Council.
27. Having considered the submissions from Dr Thomas and the Council, the Commissioner is satisfied that the Council did not hold any information falling within the scope of Dr Thomas's request for the purposes of FOISA when it received her request. The Commissioner is satisfied that any such information, if it existed, would have been held on behalf of Councillor Stewart.

## **Decision**

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

## **Appeal**

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Should either Dr Thomas or South Lanarkshire 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**12 March 2015**

### 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.

...

#### 3 Scottish public authorities

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- (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

...

#### 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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