

Decision Notice

Decision 165/2015: Mr David Telford and North Ayrshire Council

New cost plan for houses and associated documentation

Reference No: 201501478

Decision Date: 27 October 2015



Scottish Information
Commissioner

Summary

On 23 June 2015, Mr Telford asked North Ayrshire Council (the Council) for the new cost plan for houses in Fairlie covered by a Council housing policy and all documentation associated with its production and agreement. The Council told Mr Telford that it did not hold the information.

Following an investigation the Commissioner accepted this.

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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 23 June 2015, Mr Telford made a request for information to the Council, as follows:
“From recent advertising by a local estate agent it is clear that houses in Fairlie covered by NAC Policy RES2B (RES3) are being offered for sale at a higher house price than that listed in the Policy RES2B cost plan? As this could, in theory, only take place if the original cost plan has been revised, I will be most grateful if you will provide a copy of this new cost plan and all documentation associated with its production and agreement.”
2. The Council responded on 8 July 2015. The Council gave notice, in terms of section 17(1) of FOISA, that it did not hold the information.
3. On 11 July 2015, Mr Telford emailed the Council requesting a review of its decision. He believed that the Council held the information he had asked for, and referred to several Council documents to support his position.
4. The Council notified Mr Telford of the outcome of its review on 10 August 2015, confirming its original decision without modification. The Council stated that the only cost plan which it held was the original one referred to in Mr Telford’s request.
5. On 12 August 2015, Mr Telford emailed the Commissioner. Mr Telford applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Telford stated he was dissatisfied with the outcome of the Council’s review and he remained dissatisfied with the Council’s response.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Telford 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 then 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. On 3 September 2015, the investigating officer notified the Council in writing that Mr Telford had made a valid application. The Council was invited to comment on this application and to answer specific questions. These questions focused on whether the requested information was held. The Council responded on 18 September 2015.

Commissioner's analysis and findings

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

Section 17 - Notice that information is not held

9. 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 qualifications which are not applicable in this case. 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.
10. The Council provided the Commissioner with a copy of its housing policy RES2B (RES3) (page 23 of its Local Development Plan¹), together with the cost plan² that formed part of the original planning application in 2012/13 (12/00195/PPM)³. The Council explained that the cost plan included information about the types of houses which it was proposed would be built, and the sale prices proposed at that time. The cost plan also indicated what the "development return allowance" would be, in terms of the percentage of sales income (10.79%, rather than the 12% initially agreed with the developer).
11. The Council explained that, as far as it was aware, there were no restrictions on the sale of the houses in Fairlie, only on the use of the proceeds of sale. If the developer was now advertising the houses for sale at higher prices, the Council was not in a position to comment on why (or whether) this was happening.
12. The Council explained that the developer's profit was reduced to 10.79% of sales income, when planning permission was granted, subject to completion of a "Section 75 Agreement", on 23 January 2013. The Council stated that all proceeds from the development, except the developer's profit, are channelled into the Kelburn Castle Restoration Works Trust for the restoration and subsequent maintenance of Kelburn Castle and improvements to the Country Centre.
13. The Council provided details of the searches it had conducted to establish whether it held any information falling in scope of the request. It explained that the departments and services within the Council which were involved in the planning application and the

¹ <http://www.north-ayrshire.gov.uk/Documents/CorporateServices/LegalProtective/LocalDevelopmentPlan/post-examination/adopted-LDP-policy.pdf>

² http://www.eplanning.north-ayrshire.gov.uk/OnlinePlanning/files/859636B141B5284232473378D6A2BBC5/pdf/12_00159_PPM-Cost_Plan-581271.pdf

³ <http://www.eplanning.north-ayrshire.gov.uk/OnlinePlanning/applicationDetails.do?activeTab=documents&keyVal=M1AHS3LE00Q00>

subsequent documentation were the Planning Service and Legal Services. It stated that no other departments were involved with the development.

14. Within Legal Services there were two files, one for legal advice relating to the planning application and another relating to the Section 75 Agreement. The Council confirmed that both files were searched, but did not contain any information covered by Mr Telford's request.
15. The relevant planning file is held electronically and was searched by a member of the Planning Service, again without finding any information covered by Mr Telford's request.
16. The Council also provided details of the time period covered by its search and its records retention policy (which shows how long the Council would usually keep certain types of record).
17. Having considered the terms of Mr Telford's request and all of the relevant submissions, specifically the fact that the Council has now granted planning permission and agreed the developer's profit, but does not have any remit to decide the sale price for the houses, the Commissioner accepts that the Council does not hold the information requested by Mr Telford. The Commissioner therefore accepts that the Council was correct to give notice, in terms of section 17 of FOISA, that it did not hold the requested information.

Decision

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

Appeal

Should either Mr Telford 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

27 October 2015

Appendix 1: 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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