

# Decision Notice

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## Decision 145/2018: Paisley Art Institute and Renfrewshire Leisure

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### List of Alphonse Legros Gift art works

Reference No: 201800745

Decision Date: 1 October 2018



## Summary

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Renfrewshire Leisure was asked for a list of the Alphonse Legros Gift art works existing at present at Paisley Museum. Renfrewshire Leisure referred to an annotated list disclosed earlier.

The Commissioner was asked to investigate, on the basis that the applicant was not satisfied it had been provided with the requested information. He did so and was satisfied that the searches were sufficient to identify any relevant information held at the time of the request. He also found a failure to respond to the request on time.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held); 73 (Interpretation) (definition of “information”)

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. The context here is a series of correspondence, some of which included information requests, between Mr Durning, Paisley Art Institute’s Archivist, and Renfrewshire Leisure. The subject matter is a gift of artworks (82 items: paintings and other media) presented to the Paisley Art Institute (PAI) by Professor Alphonse Legros in 1880.
2. On 15 August 2017, Mr Durning, on behalf of PAI, made a request for information to Renfrewshire Leisure in which he asked for  
  
“... a list of Alphonse Legros Gift art works, including his pupils, that exist at the present time in Paisley Museum buildings and those which are framed.”  
  
Mr Durning provided the names of the pupils as being: William Strang, Henry Tuke, J.B. Clarke, Miss Hutchison, E. Sichel, J.P. Beadle, T. Fairs and L. Richeton.
3. On 21 August 2017, Mr Durning sent an email to Renfrewshire Leisure clarifying his request. He stated that he wanted “a list of artworks physically existing at the museum as opposed to a list showing pictures in records.”
4. Renfrewshire Leisure emailed Mr Durning on 21 August 2018, referring to an annotated list supplied to him in January 2017 and asking him to clarify what additional information he required.
5. On 4 October 2017, Mr Durning wrote to Renfrewshire Leisure on behalf of PAI, requesting a review on the basis that he did not consider the requested information to have been provided. He had sent Renfrewshire Leisure a communication in very similar terms on 30 August 2018.

6. Renfrewshire Leisure wrote to Mr Durning on 27 October 2017, apologising for an administrative error which meant the request had been overlooked. It stated that a review was now in progress.
7. Renfrewshire Leisure notified Mr Durning of the outcome of its review on 31 October 2018 confirming that changes were being made to improve the request handling process in the light of the earlier failure to respond, for which it also apologised. Renfrewshire Leisure informed Mr Durning that he already had the list of all relevant works understood to be held within the museum and associated storage buildings.
8. On 27 April 2018, Mr Durning wrote to the Commissioner on behalf of PAI. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Durning stated he was dissatisfied with the outcome of Renfrewshire Leisure's review as he did not believe he had been given the information he sought. He submitted that the list provided earlier simply restated what was in Renfrewshire Leisure's records regarding the Alphonse Legros Gift, rather than stating what was actually there in the collection. He also expressed concern regarding its delay in responding.
9. In what follows, references to PAI should be read as including Mr Durning, acting on PAI's behalf.

## **Investigation**

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10. The application was accepted as valid. The Commissioner confirmed that PAI made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
11. On 31 May 2018, Renfrewshire Leisure was notified in writing that PAI had made a valid application. The case was allocated to an investigating officer.
12. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Renfrewshire Leisure was invited to comment on this application and answer specific questions, referring to its handling of the request and the steps taken to identify and locate any relevant information held.

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

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13. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both PAI and Renfrewshire Leisure. He is satisfied that no matter of relevance has been overlooked.
14. The initial request dated 15 August 2017 noted that the pictures in the gift were all framed initially. As not all of them were still framed, PAI asked Renfrewshire Leisure to explain what had happened to the framing. This part of the request was not, however, covered by PAI's application to the Commissioner, so the Commissioner has no locus to consider the matter further in this decision.
15. It may also be helpful to confirm that, although PAI also raised issues (during the investigation) regarding redaction of donors' names from accession records provided in response to a related request, this matter is not encompassed by the request of 15 August 2017 (the only one under consideration here) and so does not form part of this investigation.

## Information held by Renfrewshire Leisure

16. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. These qualifications do not apply in this case.
17. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. "Information" is defined for these purposes in section 73 of FOISA, as (subject to qualifications which are not relevant here) "information recorded in any form".
18. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.

### *Interpretation*

19. PAI does not dispute that it has the annotated list supplied in January. However, it is also apparent that PAI does not believe this fulfils the terms of the request.
20. Taking into account PAI's clarification of 21 August 2017 (above), in which it states it wishes to know which artworks are "physically existing at the museum," it is apparent that PAI is concerned with what (from the Legros Gift) is there at present, not what historical records are held in respect of the Gift. What the Commissioner must consider, in terms of section 1(4) of FOISA, is what recorded information Renfrewshire Leisure held at the time it received the request.
21. If a current record of this particular collection was not held at that time, either in the form of a completed list or by way of records from which such a list could readily be collated, the Commissioner must conclude that Renfrewshire Leisure did not hold the information requested by PAI. He could not, for example, require Renfrewshire Leisure's curators to review the collection and create a record which did not exist already: that would involve a degree of professional judgement amounting to the creation of new information, which would go beyond the authority's obligations under section 1(1) of FOISA.

### *Searches*

22. Renfrewshire Leisure provided submissions to the effect that it held no further information which it could provide to PAI. Renfrewshire leisure conducted searches of various historical records, from its accession registers onwards, and including card indices and ad hoc informal records created by staff on previous occasions. It acknowledged that some of this information had not been identified at the time of the request (but had been sent to the applicant subsequently) and referred to the annotated list sent to the applicant previously (a list provided by the applicant and annotated following consideration of the works in the collection).
23. Renfrewshire Leisure also explained that it was in the process of creating an inventory of works currently held in Paisley Museum, but this was not held – in respect of the Legros Gift – at the time the request was received. There was no requirement that it hold such an inventory. It confirmed that information from the inventory had since been provided to PAI.

24. Renfrewshire Leisure believed thorough and extensive searches were undertaken at the time of the request and was confident, on the balance of probabilities, that no further information was held falling within the scope of this request. It stated that all appropriate and proportionate searches were undertaken at the time, by staff qualified and with the necessary expertise to do so.

### *Conclusions*

25. As stated in many previous decisions, the Commissioner's remit extends only to the consideration of whether a Scottish public authority actually holds the requested information and whether it has complied with Part 1 of FOISA in responding to a request. The Commissioner's role is not to determine whether a public authority should retain, record or hold more information about a subject.
26. In the circumstances, the Commissioner is satisfied that Renfrewshire Leisure took adequate and proportionate steps to establish the information it held which fell within the scope of PAI's request. Having considered descriptions of all the resources available for searching, the Commissioner is satisfied that – at the time it received the request – Renfrewshire Leisure held no records from which it could collate a list of the relevant works meeting the terms of the request (i.e. a list of those works actually there in the collection). That would require research and professional judgement on the part of its curatorial staff – which it appears to have exercised, up to a point, but which is not something the Commissioner could require it to do.
27. Consequently, the Commissioner is satisfied, on the balance of probabilities, that Renfrewshire Leisure did not hold the information requested by PAI.

### **Timescales**

28. In its application, PAI complained that Renfrewshire Leisure had “not been timely in their replying”.
29. Renfrewshire Leisure acknowledged in its review outcome that its response to the request of 15 August 2017 was late: it was not logged initially and there was a failure to respond within the 20 working days allowed under FOISA. The Commissioner agrees, and therefore finds that Renfrewshire Leisure failed to comply with section 10(1) of FOISA.
30. The Commissioner cannot, however, find a further failure to comply in relation to a requirement for review. Renfrewshire Leisure's communication of 21 August 2017 was not a response to the request under FOISA, either providing the requested information or refusing to do so under any of the provisions in Part 1 of FOISA. PAI's communication of 30 August 2017 appeared to recognise this, stating that it had not received the information requested. Unfortunately, it could not be a valid requirement for review at that point: 30 August 2017 was only the eleventh of the 20 working days allowed to Renfrewshire Leisure to respond to the request. Only the communication of 4 October 2017 could be a valid requirement for review, the 20 working days having passed by then without a response, and that was responded to (on 31 October 2017) within the further 20 working days allowed for responding to it.

## Decision

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The Commissioner finds that, in respect of the matters specified in the application, Renfrewshire Leisure partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made on behalf of Paisley Art Institute.

The Commissioner is satisfied that Renfrewshire Leisure took adequate steps to identify and locate any information it held and which fell within the scope of the request, and was correct in confirming that it held no information in addition to the list provided to PAI already. The Commissioner also finds that Renfrewshire Leisure failed to meet the required timescale for responding to the request, as set out in section 10(1) of FOISA.

## Appeal

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Should either Paisley Art Institute or Renfrewshire Leisure 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**

**1 October 2018**

### 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.

...

#### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; 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.

...

### **73 Interpretation**

In this Act, unless the context requires a different interpretation—

...

“information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

...



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