

Decision Notice 145/2020

Road ownership

Applicant: The Applicant

Public authority: West Dunbartonshire Council

Case Ref: 202000874



Scottish Information
Commissioner

Summary

The Council was asked for the name of the previous owner of a road in Gartocharn. The Council stated that it did not hold the name of the previous owner. Following an investigation, the Commissioner accepted that the Council did not hold the information.

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 8 June 2020, the Applicant made a request for information to West Dunbartonshire Council (the Council). The information requested was the name of the previous owner of Church Road, Gartocharn which had been adopted, in part, by the Council.
2. The Council responded on the same day. It stated that it did not hold the information and suggested that the Applicant contact two properties on the road to ascertain if they knew the name of the owner of the road.
3. On 13 July 2020, the Applicant wrote to the Council requesting a review of its decision. He considered that the Council's legal department would have a deed in their possession relating to the transfer of ownership to the Council.
4. The Council notified the Applicant of the outcome of its review on 5 August 2020. The Council upheld its original response. It explained that the Legal department had checked all the recorded data it held, but had not located any information for the area that he was interested in. The Council, in an attempt to assist the Applicant, advised that the information would be held in the Sasines register at the Land Register of Scotland. The information would be publicly available, but at a cost.
5. On 7 August 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review because the road in question was on the Council's list of adopted roads, meaning it must hold legal documents relating to the adoption and who owned the road prior to adoption.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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.
7. On 27 August 2020, the Council was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.

8. 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 to answer specific questions.
9. The Council responded to the questions raised regarding the searches it had conducted and provided submissions as to why it was satisfied that the requested information was not held.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.
11. 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, 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. The qualifications contained in section 1(6) are not applicable in this case.
12. 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. If no such information is held by the authority, section 17(1) of FOISA requires it to give notice in writing to that effect.

The Council's submissions

13. In its submissions to the Commissioner, the Council confirmed that it did not hold the information requested by the Applicant.
14. The Council told the Commissioner that it had searched the records of its Legal, Roads & Transportation and Asset Management/Estates departments, but no information about the previous ownership of the road was located.
15. The Council explained that, if a road is already constructed and privately owned, the request for adoption would have come from the owner of the road. While the owners would have to provide evidence that they owned the road, adoption of the road did not mean that ownership transferred to the Council; on adoption, the Council became responsible for the maintenance of the road, but ownership did not change.
16. The Council submitted that, due to the historic nature of the adoption of Church Road, no records were held and the Council does not know how it was adopted. It noted that Church Road was included in the publicly available list of adopted roads when the Council took over from Strathclyde Regional Council in 1996, following local government reorganisation.

The Applicant's submissions

17. As noted above, the Applicant disagreed with the Council's response. Because the road was on the Council's list of adopted roads, he thought the Council must hold legal documents relating to the adoption and about who owned the road prior to adoption.

The Commissioner's findings

18. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers, where appropriate, any reason offered by the public authority to

explain why it does not hold the information. Ultimately, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).

19. The Commissioner notes that the maintenance of the road transferred to the Council in 1996 when Strathclyde Regional Council was disbanded. At that time, Church Road was already included on the list of adopted roads.
20. There was no requirement for the Council to check the ownership of Church Road when it was transferred in 1996. In any event, the Commissioner is satisfied that the searches carried out by the Council were reasonable in the circumstances and would, if the information was held, have located the information.
21. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities, that the Council does not (and did not, on receiving the request) hold the name of the previous owner of Church Road, in terms of section 17(1) of FOISA.

Decision

The Commissioner finds that West Dunbartonshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant 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

23 November 2020

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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