

# Decision Notice



Decision 120/2009 Mr Graeme Cassie and Midlothian Council

Procurement and conversion of Parkhead Lodge, Penicuik

Reference No: 200900174

Decision Date: 3 November 2009

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Cassie asked Midlothian Council (the Council) to provide all documentation associated with the procurement and conversion of Parkhead Lodge, Penicuik. In response, the Council provided some limited information about the purchase. Mr Cassie was not satisfied, believing that the Council was likely to hold other information covered by the terms of his request. Following a review, the Council provided him with a copy of a committee report and some additional background information. Mr Cassie remained dissatisfied and applied to the Commissioner for a decision.

During the Commissioner's investigation, some additional information was retrieved and provided to Mr Cassie. It was established that other information which Mr Cassie had expected to receive was not, in fact, held by the Council.

The Commissioner found that the Council had failed to comply fully with section 1 of FOISA in dealing with Mr Cassie's request.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6)

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 27 October 2008, Mr Cassie sent the Council the following request for information:

"Please can you supply me with all the associated documentation, including but not limited to, emails, meeting minutes and correspondence about the procurement and conversion of Parkhead Lodge, Penicuik to a residential care home. Planning documentation is not required...I would however like any documentation with regard to the type of residents that will occupy the care home".



2. The Council responded on 7 November 2008. It advised that the property had been purchased on the open market, and the detail of the purchase was therefore a matter of public record through the Register of Sasines. It explained that the property was purchased for use as a homeless facility but that the actual client base to be accommodated was still under consideration and there was no documentation available on this yet.
3. Mr Cassie wrote back immediately (7 November 2008) stating that he did not find this to be an acceptable response, and reiterating his request. He advised that the information request included all emails, documentation and memos associated with the decision to purchase Parkhead Lodge, together with documentation associated with the business case and the request for such a facility from any of the Council's departments.
4. The Council replied on 1 December 2008. It confirmed the information provided in the original response, and provided a copy of a report to the Housing Sub-Group committee on the proposed use of the new facility. The Council advised that the mix of clients allocated to the accommodation was still being discussed with social work colleagues.
5. On 19 December 2008, Mr Cassie requested a review of the Council's handling of his request, explaining that previous responses he had received from the Council's planning department and other public bodies had given him a level of expectation which had not been met by the Council's response in this instance.
6. On 29 December 2008, the Council advised Mr Cassie that he had already exercised his right to request a review in his email of 7 November 2008, and had received a reply on 1 December 2008. Mr Cassie was advised to complain to the Commissioner if he remained dissatisfied.
7. On 25 January 2009, Mr Cassie wrote to request a decision from the Commissioner. He explained that the Council had not provided him with the information he had requested, and that he was dissatisfied with the way in which the Council had handled his request.
8. The application was validated by establishing that Mr Cassie had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

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9. On 10 March 2009, the Council was notified in writing that an application had been received from Mr Cassie and was invited to provide any comments it wished to make on Mr Cassie's application for a decision. The Council was advised about specific concerns raised by Mr Cassie in other correspondence with the Commissioner (email of 9 March 2009), and invited to comment on those concerns. In addition, the Council was asked for details of the searches or enquiries which were carried out in order to respond to Mr Cassie's request.



10. The Council replied on 27 March 2009. The response provided factual information about the progress of the conversion project, and a list of officers who had confirmed that they did not hold any notes or minutes relative to the procurement, conversion or allocation of Parkhead Lodge. The Council also advised that there had been ongoing discussions between Housing and Social Work staff over a number of weeks in relation to the category of resident for the new accommodation.
11. On 6 April 2009, the investigating officer asked for some further detail from the Council in relation to the questions raised in her letter of 10 March 2009 about the extent of the searches it had carried out. The Council was also asked about the existence of working papers relating to the feasibility of the Parkhead Lodge conversion and the preparation of the report to Committee. The Council was reminded that all information covered by the terms of Mr Cassie's request must be taken into account.
12. During subsequent phone calls with the Council and with Mr Cassie, it was established that Mr Cassie was content to exclude tender documents and site meeting notes from the scope of his request, and for such documents to be disregarded in terms of the Commissioner's decision.
13. On 24 April 2009 the Council advised the investigating officer that the relevant officials had been asked for any emails or notes from meetings or telephone conversations, and that one email had been retrieved. (As this email post-dated Mr Cassie's information request, it has not been considered further in relation to his application for a decision from the Commissioner.)
14. After another phone discussion, on 28 April 2009, the Council was asked to check whether it held any emails relating to the Parkhead Lodge conversion, or any written advice between officials regarding the report presented to the Housing Sub-Group Committee on 18 June 2007.
15. On 14 May 2009 the Council provided four additional email exchanges. Two of these post-dated Mr Cassie's request, and the Commissioner is therefore unable to consider them further in relation to this application for a decision (this includes the email referred to above in paragraph 13). The two remaining emails both fell within the scope of Mr Cassie's request and have now been provided to him.
16. On 18 May 2009 the Council was asked for more information about the purchase of Parkhead Lodge, including the decision-making process followed by the Council in relation to this type of purchase, and whether the Council follows a standard procedure in making or approving such purchases.
17. The Council replied on 16 June 2009. It listed the steps taken by the Council's Estates Section to purchase the property, but did not explain the decision making process or whether the Council had followed a standard procedure in making the purchase. It advised that Council officials did not recall any detailed suitability study being carried out in relation to Parkhead Lodge, but did not explain whether this recollection had been verified by searching relevant records and files.



18. In order to bring the investigation to a conclusion, a meeting was arranged between the investigating officer and the Council on 20 July 2009. During this meeting the Council explained, in detail, the process by which Parkhead Lodge was identified as potential accommodation for homeless persons, then purchased and converted. Questions were raised and answered about the documentation created (or not created) at each step. As a result of the discussion, the Council carried out further searches resulting in the retrieval of some additional documents.
19. All documents retrieved were sent to Mr Cassie on 17 August 2009, along with a detailed account of the meeting with the Council and the investigating officer's conclusions.

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

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20. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Cassie and the Council and is satisfied that no matter of relevance has been overlooked.
21. The Commissioner is satisfied that the Council has now carried out the searches required to retrieve all information covered by the terms of Mr Cassie's request. The Commissioner finds that by failing to identify all relevant information falling within the scope of the request at the time of its response to Mr Cassie's request or request for review, the Council failed to comply with section 1 of FOISA. Section 1(1) states:  
  
"A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority."  
  
Section 1(6) lists the sections in FOISA to which section 1(1) is subject.
22. The Commissioner takes the view that the Council's failure to provide all the information it held showed a misunderstanding of what section 1(1) means in practice. Mr Cassie's request was expressed in broad terms, and potentially covered a wide range of information held in different departments of the Council. Even though the amount of information held by the Council turned out to be more limited than might have been expected, it is clear that the Council's response focused on what it viewed as the most relevant information, rather than considering the full extent of the information potentially covered by the terms of the request. Section 1(1) of FOISA must, however, be interpreted literally, and Scottish public authorities must ensure that all information covered by the terms of an information request is considered, in order for their response to comply with Part 1 of FOISA.



23. The Commissioner believes that this is now understood by the Council, as a result of the investigation into Mr Cassie's request. The Commissioner is satisfied that, by the end of the investigation, the further searches carried out by the Council were reasonable and sufficient to have retrieved any relevant recorded information covered by the terms of Mr Cassie's request. He accepts that the Council does not hold any further information which falls within the scope of Mr Cassie's request.
24. This being so, and because Mr Cassie has now received the information to which he is entitled, the Commissioner does not require the Council to take any further action in relation to this matter.

### **Recent Court of Session Opinion**

25. The Commissioner notes that the information request by Mr Cassie was for "documentation", or copies of documents. He notes that in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73, the Court of Session emphasised that FOISA gives a right to information, not documents. However, the Court also said, in paragraph 45 of its Opinion, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant. The Court also said that, if there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15 of FOISA, which requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

## **DECISION**

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

The Commissioner finds that the Council complied with part 1 of FOISA by providing some information to Mr Cassie following his requirement for a review of its original decision.

However, the Commissioner finds that by failing to identify and provide certain information that fell within the scope of Mr Cassie's request, the Council breached section 1(1) of FOISA.

As the Council has now identified and provided all information covered by the terms of Mr Cassie's request, the Commissioner does not require the Council to take any action in relation to this breach in response to this particular application.



## Appeal

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Should either Mr Cassie or Midlothian Council wish to appeal against this decision, there is an 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**3 November 2009**

## 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.
- (...)
- (6) This section is subject to sections 2, 9, 12 and 14.