



Scottish Information
Commissioner

**Decision 087/2005 Mr John Robertson and Audit
Scotland**

*Request for background papers to a report by
PricewaterhouseCoopers*

**Applicant: Mr John Robertson
Authority: Audit Scotland
Case No: 200502519
Decision Date: 20 December 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 087/2005 Mr John Robertson and Audit Scotland

Request for background papers to report carried out by PricewaterhouseCoopers – whether information held – whether compliance with section 10(1) and section 19(1)

Facts

Mr Robertson requested a copy of evidence used by PricewaterhouseCoopers LLP in compiling its report to Audit Scotland following an investigation. The investigation concerned North Lanarkshire Council's purchase of housing stock from Cumbernauld Development Corporation in 1996. Mr Robertson received no response to this request within 20 working days and subsequently submitted a request for review. Audit Scotland finally responded to Mr Robertson's original request and advised that it did not hold the information requested. Following a reminder from Mr Robertson, Audit Scotland considered his request for review. It upheld its original decision. Mr Robertson applied to the Commissioner for a decision.

Outcome

The Commissioner found that Audit Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in stating that it did not hold the information requested.

The Commissioner however also found that Audit Scotland had failed to comply with Part 1 of FOISA by failing to:

- a) issue a notice under section 17(1) in conformity with FOISA
- b) respond to the request for information and request for review with 20 working days in accordance with section 10(1) of FOISA
- c) specify the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1) in accordance with section 19(b) of FOISA.

The Commissioner did not require Audit Scotland to take any remedial steps.



Appeal

Should either the Audit Scotland or Mr Robertson wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

1. Mr Robertson had been in correspondence with Audit Scotland since March 2001 in connection with his concerns about North Lanarkshire Council's purchase of housing stock from Cumbernauld Development Corporation in 1996.
2. On 29 April 2005, in the course of this correspondence, Mr Robertson asked to see a copy of the evidence relied on by PricewaterhouseCoopers (PwC) in compiling its report to Audit Scotland following an investigation carried out into this matter in 2001.
3. Mr Robertson's request was worded as follows:
 - Please provide me with the physical evidence which forms the basis for the statement that "£15.93 million was borrowed and paid to the Scottish Office." Such evidence must exist in the report made by the visiting auditor to his superiors at PwC
4. The statement had appeared in a letter from PwC to Audit Scotland dated 15 June 2001 a copy of which had already been supplied to Mr Robertson.
5. Audit Scotland acknowledged this letter on 11 May 2005 and advised that it would write again in due course.
6. On 18 June 2005 and after the 20 working days had elapsed Mr Robertson wrote again to Audit Scotland reminding it that he had received no response to his letter of 29 April 2005. Mr Robertson indicated that he assumed that Audit Scotland was refusing to supply him with the information requested and requested a review of this decision.



7. Audit Scotland responded to Mr Robertson on 27 June 2005. It indicated that Mr Robertson had first written in March 2001 regarding North Lanarkshire Council's acquisition of housing stock in Cumbernauld. In accordance with its usual practice Audit Scotland had asked the Council's appointed external auditors PwC to investigate.
8. Audit Scotland reported that PwC had written to Audit Scotland to provide background information on 15 June 2001. Following further enquiries PwC had written to Audit Scotland again on 15 July 2003 to provide further detail. Representatives from PwC and Audit Scotland had met with Mr Robertson in December 2004. In April 2005 in response to a request from Mr Robertson Audit Scotland had supplied him with copies of both letters from PwC.
9. Audit Scotland advised that PwC's views were conveyed in the two letters and Audit Scotland did not hold PwC's underlying working papers.
10. Audit Scotland indicated that it had taken all reasonable steps to explain the auditor's findings to Mr Robertson. Audit Scotland advised that audit resources were limited and that this affected the amount of time that it could commit to individual cases. In view of this, Audit Scotland advised that it would not engage in further correspondence on the subject.
11. Mr Robertson wrote again to Audit Scotland on 1 and 14 July 2005. He indicated that he was dissatisfied with the response from Audit Scotland that it did not have the underlying papers. In the latter correspondence Mr Robertson indicated that his letter of 18 June 2005 was a request that Audit Scotland review its decision not to supply the information requested. He indicated that in its letter of 27 June 2005 Audit Scotland had decided not to supply the information requested because the papers had not been procured from PwC.
12. Audit Scotland wrote to Mr Robertson on 21 July 2005 acknowledging receipt of his letters of 1 and 14 July 2005 and his request for review.
13. On 3 August 2005 Audit Scotland responded to Mr Robertson. Audit Scotland confirmed that it did not hold PwC's file. Audit Scotland advised that it had contacted PwC about the additional information Mr Robertson had requested concerning the figure of £15.93 million. Audit Scotland advised that while PwC had documents which referred to the bid figure, it appeared that the reference to this being the amount borrowed and paid was obtained from discussion with Council staff. Audit Scotland advised that the subsequent PwC letter of 15 July 2003 clarified the position.
14. Mr Robertson sent further letters to Audit Scotland on 5 and 8 August 2005 discussing the background to his question.



15. On 10 August 2005 Audit Scotland advised that it had nothing to add to the responses Mr Robertson had already received.
16. Mr Robertson formally applied to my office for a decision on 9 September 2005.
17. The case was allocated to an investigating officer.

Investigation

18. Mr Robertson's appeal was validated by establishing that he had made a request for information to a Scottish public authority, and had appealed to me only after asking the authority to review its response to his request.
19. The investigating officer contacted Audit Scotland on 16 September 2005 to inform the authority that an application had been received from Mr Robertson and to seek its comments on the issues raised by the application.
20. Audit Scotland was also asked to supply certain information to assist with the investigation. In particular Audit Scotland was asked to indicate the steps taken to determine whether or not it held the information requested by the applicant, further information about how the authority's review was carried out, any internal correspondence relating to the consideration of the request and any correspondence with PwC relating to the consideration of this request.
21. Audit Scotland responded to this letter on 23 September 2005. Audit Scotland provided background information to Mr Robertson's request and copies of additional correspondence.
22. The investigating officer subsequently sought further detail from Audit Scotland on the steps it took to determine whether it held the information requested by Mr Robertson. The combined submissions from Audit Scotland are set out below.

Submissions from Audit Scotland

23. Audit Scotland explained, by way of background, its process for dealing with complaints it receives about a council's finances.



24. If the matter is in within its remit Audit Scotland requests the council's external auditors (who are appointed by Audit Scotland and may be either an in-house resource or (as in this case) a private firm of accountants) to make enquiries at the council and to report back to Audit Scotland which then assesses whether further action is required. Audit Scotland emphasised that it relies on the response it receives from the auditors and does not generally hold underlying papers that auditors may have obtained or produced as part of their enquiries.
25. Audit Scotland advised that Mr Robertson had first contacted Audit Scotland in March 2001 about North Lanarkshire Council. In accordance with its usual practice Audit Scotland asked the Council's external auditors, at that time PwC, to investigate and report back.
26. Audit Scotland informed Mr Robertson of the outcome of PwC's enquiries. Following further correspondence over an extended period representatives from PwC and Audit Scotland met with Mr Robertson to explain the audit work and the conclusion. Audit Scotland advised that Mr Robertson was offered a copy of the relevant documents at that meeting but had declined saying that he was satisfied with the explanations provided.
27. In March 2005 Mr Robertson wrote to Audit Scotland asking to view the two letters that PwC had sent to Audit Scotland in respect of its investigation into North Lanarkshire Council. After further correspondence the two letters were provided to Mr Robertson in an unedited form.
28. Following receipt of the two letters from PwC Mr Robertson asked to see a copy of the evidence in support of one of the statements made in the first letter dated 15 June 2001. Audit Scotland indicated that no such document or information existed. Audit Scotland advised that PwC had based that particular statement on discussions with council staff. PwC subsequently advised that it was inaccurate and carried out further work to clarify and confirm the position which it did in its subsequent letter (also provided to Mr Robertson). This was discussed with Mr Robertson at the meeting in December 2004.
29. Audit Scotland indicated that while it was content with this position it was reviewed carefully and checked again with PwC to make sure nothing was held which met, or might help meet partially Mr Robertson's specific request. Audit Scotland provided me with a copy of a letter from Audit Scotland to PwC in which Audit Scotland offered to inspect the files held by PwC.
30. Audit Scotland acknowledged that Mr Robertson had sought further information on 29 April 2005 and that although this letter had been acknowledged on 11 May 2005, Audit Scotland did not inform Mr Robertson that it did not hold the information requested until 27 June 2005.



31. Audit Scotland indicated that it took more than 20 days to respond because it was considering other correspondence from Mr Robertson and assessing whether further correspondence with Mr Robertson should continue given that the auditor's findings had been explained on a number of occasions.
32. Audit Scotland advised that there was no review nor was there internal correspondence relating to the requests. Audit Scotland indicated that it saw no reason not to release PwC's letters. As regards Mr Robertson's second request it had already ascertained that the information Mr Robertson requested did not exist. This had been discussed at the meeting with Mr Robertson in December 2004. Audit Scotland advised that it informed Mr Robertson and confirmed the position after checking again with PwC.
33. Audit Scotland provided correspondence in support of its submissions.

Commissioner's analysis and findings

34. Both Mr Robertson and Audit Scotland have supplied me with copies of correspondence relating to Mr Robertson's concerns about North Lanarkshire Council's purchase of housing stock from Cumbernauld Development Corporation in 1996 and the related information requests. While I have read all of this correspondence I will only address those points which are relevant to this investigation. Mr Robertson applied to me for a decision in respect of the evidence or background papers he had sought. Therefore I will make no comment on his request for copies of the letters that PwC sent to Audit Scotland, copies of which Mr Robertson already possesses.
35. For the sake of clarification this investigation has focussed on two aspects:
 - Whether Audit Scotland holds the evidence or background papers requested by Mr Robertson
 - The way in which Audit Scotland dealt with Mr Robertson's request for information
36. I will be deal with each aspect in turn.

Is the information requested held by Audit Scotland?

37. Audit Scotland has submitted that it does not hold the evidence or background papers requested by Mr Robertson.



38. In this case I can only investigate Audit Scotland's statement that it does not hold the information requested by Mr Robertson. FOISA does not oblige an authority to create new information. Only information held by an authority at the time the information is requested is covered by FOISA.
39. Mr Robertson has complained that Audit Scotland did not even make an official request for the worksheets/evidence from PwC. However, under FOISA there is no obligation on a Scottish public authority to retrieve information from another body or authority to enable it to respond to a request for information. The authority is only obliged to respond in respect of the information it actually holds.
40. It is also outwith the scope of this investigation for me to comment on whether Audit Scotland should hold this information.
41. I accept Audit Scotland's statement that where it requests an auditor to carry out an audit into complaints Audit Scotland relies on the response it receives from the auditors and does not generally hold underlying papers that auditors may have obtained or produced as part of their enquiries.
42. Further I accept that any underlying papers or evidence held by the auditors in such circumstances are not held by that body on behalf of Audit Scotland for the purposes of section 3(2)(b) of FOISA. While appointed by Audit Scotland, the auditors are required to carry out their functions independently.
43. In its submissions to me Audit Scotland advised that prior to Mr Robertson's request it had already ascertained that the information sought did not exist. However, on receiving Mr Robertson's request it confirmed with PwC that this was indeed the case and offered to inspect PwC's files if it was felt that this might contain any information which could meet or even partially meet Mr Robertson's request. In taking this action Audit Scotland went beyond its obligations under FOISA. Audit Scotland advised that PwC did not have any evidence of the kind sought by Mr Robertson.
44. In all of the circumstances of the case, I am satisfied that Audit Scotland took all reasonable steps to determine that it did not hold the information requested by Mr Robertson.

Did Audit Scotland handle the request in accordance with FOISA?

45. There has been regular correspondence between Mr Robertson and Audit Scotland over a period of years. In March 2005 Mr Robertson requested the report sent by PwC to Audit Scotland under FOISA. This report, in the form of two letters, was supplied to Mr Robertson. However, it is clear that in his letter of 29 April 2005 Mr Robertson made a new request for information, that is, for the evidence forming the basis of the statement that "£15.93 million was borrowed and paid to the Scottish Office".



46. Although this letter was acknowledged on 11 May 2005 by Audit Scotland no substantive response was received within 20 working days as required by FOISA. Audit Scotland has advised me that this delay was caused because it was assessing other correspondence from Mr Robertson and also considering whether such correspondence should continue. However, FOISA does not permit an extension of the 20 working day time limit for any reason.
47. On 18 June 2005 Mr Robertson submitted a request for review because he had received no response to his letter of 29 April 2005 and considered this to be a refusal of his request.
48. Audit Scotland finally responded to Mr Robertson's original request on 27 June 2005. In fact, Audit Scotland's letter of 27 June 2005 should have been a notice of review.
49. Following further prompting from Mr Robertson Audit Scotland acknowledged his request for review on 21 July 2005 and responded substantively on 3 August 2005.
50. Therefore Audit Scotland did not respond to Mr Robertson's original request or his request for review within 20 working days. Further, neither letter made any reference to the rights of review that Mr Robertson initially had in respect of Audit Scotland and subsequently in respect of me.
51. In my decision *046/2005 - Mr Nick Stevenson and Shetland Islands Council* I emphasised that all requests for information received in writing by a Scottish public authority are covered by FOISA. Therefore even in cases where there is ongoing correspondence between two parties a request for information must be identified and dealt with in terms of FOISA.



Decision

I find that Audit Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in stating that it does not hold the information requested.

I find that Audit Scotland failed to comply with Part 1 of FOISA by failing to:

- a) issue a notice under section 17(1) in conformity with FOISA
- b) respond to the request for information and request for review with 20 working days in accordance with section 10(1) of FOISA
- c) specify the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1) in accordance with section 19(b) of FOISA.

I do not require Audit Scotland to take any remedial steps.

Kevin Dunion
Scottish Information Commissioner
20 December 2005