



Scottish Information
Commissioner

**Decision 032/2008 Mr Alexander Plunkett and Dumfries and Galloway
Council**

Parking at Merrick Leisure centre

**Applicant: Mr Alexander Plunkett
Authority: Dumfries and Galloway Council
Case No: 200701579
Decision Date: 26 February 2008**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 032/2008 Mr Alexander Plunkett and Dumfries and Galloway Council

Information relating to parking facilities at Merrick Leisure Centre –information not held

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections: 1(1) (General entitlement) and 17(1) (Notice that information is not held).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Alexander Plunkett (Mr Plunkett) requested a copy of the planning application for Merrick Leisure centre, specifically information relating to the designated parking from Dumfries and Galloway Council (the Council). The Council responded by providing Mr Plunkett with a copy of a Road Officer's report and a copy of the relevant plan, alongside a explanatory covering letter. Mr Plunkett was not satisfied with this response and, following further clarification, asked the Council to review its decision. The Council carried out a review and, as a result, notified Mr Plunkett that it did not hold the information he specifically requested following the clarification of his request. Mr Plunkett remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Plunkett's request for information in accordance with Part 1 of FOISA. He did not require the Council to take any action.



Background

1. On 25 September 2007, Mr Plunkett wrote to the Council requesting a copy of the planning application for Merrick Leisure Centre, and particularly information relating to the designated parking for the centre and a plan showing this.
2. On 24 October 2007, the Council wrote to Mr Plunkett in response to his request for information. The Council supplied Mr Plunkett with a copy of a Road Officer's report, a copy of the relevant plan and an explanatory covering letter.
3. On 25 October 2007, Mr Plunkett wrote to the Council requesting a review of its decision. In particular, Mr Plunkett felt that the information supplied was out of date and clarified that he was specifically seeking information which related to works carried out in 2004/05.
4. On 20 November 2007, the Council wrote to notify Mr Plunkett of the outcome of its review. The Council acknowledged Mr Plunkett's request, following his clarification, specifically related to work carried out in 2004/05. Following further searches carried out, the Council informed Mr Plunkett that the information he sought was not held in terms of section 17 of FOISA.
5. On 22 November 2007, Mr Plunkett wrote to my Office, stating that he was dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Plunkett had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

The Investigation

7. On 17 January 2008, the Council was notified in writing in terms of section 49(3)(a) of FOISA that an application had been received from Mr Plunkett and was asked to provide my Office with specified items of information required for the purposes of the investigation. The Council was also asked to provide comments on the application and to respond to specific questions about the application.



8. The Council responded to my Office on 31 January 2008. The Council provided a full explanation as to why it did not hold the specific information sought by Mr Plunkett, along with details of the searches undertaken to determine this and a full explanation of the manner in which Mr Plunkett's request was dealt with.

The Commissioner's Analysis and Findings

9. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Plunkett and the Council and I am satisfied that no matter of relevance has been overlooked.
10. Within its submissions to my Office, the Council explained that Mr Plunkett's request of 25 September 2007 was one of a number of requests under FOISA relating to parking at Merrick Leisure Centre, some of which have already been considered by my Office (Decision 206/2007 Mr Alexander Plunkett and Dumfries and Galloway Council). The Council also supplied my Office with evidence of its ongoing correspondence with Mr Plunkett.
11. With regard to this particular request, the Council referred my Office to the explanatory note provided to Mr Plunkett in its response of 24 October 2007.
12. The Council explained to Mr Plunkett that alterations, extension and change of use of the school games hall to leisure centre at the Douglas Ewart High School (Merrick Leisure Centre) was the subject of a "Notification of Intention to Develop" (development by the Council) in March 2000. The Council explained that this process differed from a planning application in that details of the proposal are discussed/agreed with the Council as planning authority, the proposal is then the subject of a statutory advertisement under the Town and Country Planning (Scotland) Act 1997 and where no representations are received in response to the advertisement, as in this particular case, the proposal is taken to have "deemed consent". Deemed consent for this development was effective from 2 June 2000.
13. The Council further highlighted to Mr Plunkett that planning conditions are not attached to "deemed consents" as they may be with planning permissions since all the details are agreed in advance i.e. parking provision in the context of Mr Plunkett's request.



14. Within its submissions to my Office the Council also supplied a copy of the information which was supplied to Mr Plunkett alongside its explanatory covering letter of 24 October 2007. The Council supplied Mr Plunkett with a copy of the relevant plan of the Leisure Centre and a copy of the Road Officer's report which specifically deals with the parking issues relating to the change of use of this particular property.
15. Following Mr Plunkett's clarification of his request, the Council conducted further research to ascertain if it held further information which related to works carried out at the Leisure Centre in 2004/05. The Council concluded that the information sought by Mr Plunkett was not held in terms of section 17 of FOISA. The Council explained that the work referred to by Mr Plunkett which was carried out in 2004/05 was "permitted development" in planning terms in that it was works carried out by the Council under £100,000 and was based on local discussions between the relevant Services and there was no record of these discussions.
16. From the information provided, it is clear that the Council has made sufficient efforts to establish whether, and what, information covered by Mr Plunkett's request is held. On the evidence of the searches carried out by the Council and the information the Council has already provided to Mr Plunkett, I am satisfied that the Council holds no further information that falls within the scope of Mr Plunkett's request.
17. I am therefore satisfied that the Council has complied fully with the provisions of FOISA in dealing with Mr Plunkett's request.

Decision

I find that Dumfries and Galloway Council (the Council) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Plunkett.



Appeal

Should either Mr Plunkett or the 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.

Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

Margaret Keyse
Head of Investigations
25 February 2008



Appendix

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.

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.

[...]