

Decision Notice



Decision 004/2013 Mr N and Perth and Kinross Council

School Fund

Reference No: 201201585

Decision Date: 17 January 2013

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Rosemary Agnew

Scottish Information Commissioner

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Summary

Mr N asked Perth and Kinross Council (the Council) for information about a school fund. The Council responded by advising Mr N that the information was exempt under section 25(1) of the Freedom of Information (Scotland) Act (FOISA) as he could obtain it from the school. Mr N remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the information Mr N had asked for could reasonably be obtained by him other than by making a request for it under FOISA, and that it was therefore exempt from disclosure.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible)

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

1. On 14 May 2012, Mr N asked the Council for the following information about a school fund:
 - a. All minutes of meetings held since January 2009.
 - b. All details of requests to the Fund and an indication of what requests were agreed.
 - c. Detailed accounts of all expenditure as signed off by auditors.
 - d. Detail of the balance held in all Bank accounts.
 - e. Details of discussions with Accountants and Auditors seeking to produce legal accounts.
 - f. Details of the addresses of all Auditors involved with the accounts.
 - g. Any other relevant documents connected to the Fund.



2. The Council responded on 11 June 2012. The Council understood that Mr N was a [text redacted] and had [text redacted], and would therefore have access to all the requested information. Therefore, the Council considered that the requested information was otherwise accessible to Mr N in line with section 25(1) FOISA.
3. On 25 June 2012, Mr N wrote to the Council requesting a review of its decision. In particular, Mr N acknowledged that [text redacted] but stated that none of the documents were made available to him. He was concerned that the record of expenditure for the school fund was incomplete.
4. The Council notified Mr N of the outcome of its review on 16 July 2012. It upheld its previous decision without amendment, noting that current minutes relating to the school fund are posted on school notice boards, while previous minutes are available on request from school administrative staff.
5. On 14 August 2012, Mr N wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr N 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. The case was then allocated to an investigating officer.

Investigation

7. On 18 September 2012, the Council was notified in writing that an application had been received from Mr N. As required by section 49(3)(a) of FOISA, the Council was asked to provide comments on the application and, in particular, to justify its reliance on section 25(1) of FOISA.
8. The Council responded on 2 November 2012, providing a copy of the requested information and explaining why the exemption in section 25(1) of FOISA applied in this case.
9. During the investigation, Mr N was given the opportunity to, and subsequently did, explain why he did not consider he could access the information directly from the school.
10. The relevant submissions received from both the Council and Mr N will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the submissions made to her by both Mr N and the Council and is satisfied that no matter of relevance has been overlooked.
12. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25(1) is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
13. The key question, therefore, was whether the information requested was reasonably accessible to Mr N. The Council set out how it was accessible by virtue of Mr N [text redacted] Mr N argued that it was not reasonably accessible because of the consequences to him should he be put in a position of obtaining it through the route open to him as [text redacted].
14. The Commissioner has considered carefully the submissions from both the Council and Mr N. She has also examined the withheld information.
15. The Commissioner accepts that Mr N has genuine concerns about making a direct request to the school for the information. The Commissioner is sympathetic to Mr N's concerns, but finds he has not provided her with sufficient arguments or evidence to demonstrate that the repercussions he fears would be a likely consequence of him requesting the information directly from the school.
16. In the circumstances, the Commissioner finds that the information requested could be reasonably obtained by Mr N other than by requesting it under section 1(1) of FOISA, by virtue of [text redacted]. Consequently, the Commissioner is satisfied that the information was properly withheld under section 25(1) of FOISA.

DECISION

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



Appeal

Should either Mr N or Perth and Kinross 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.

Rosemary Agnew
Scottish Information Commissioner
17 January 2013



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.

...

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

2 Effect of exemptions

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...