

If asked anything, the answer is NO.

Posted by Newsline - 21 Oct 2018 17:04

Freedom of Information Request

Good Morning,

As always I hope that you guys are well.

Could you oblige and please send me all recorded information in connection with the

Summary of Early Retirement/Redundancy Costs to 31 March 2018 – Report by Deputy Chief Executive

I am interested in the report itself and all other recorded information.

I would like the information provided as electronic copies.

I understand that it is my right to receive your response within 20 working days of receipt of this request.

Kind Regards

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Re: Is NO the standard reply trained into every member of ERC staff?

Posted by Newsline - 22 Oct 2018 08:19

Reply

Please find attached the Audit and Scrutiny Committee report – Summary of Early Retirement/Redundancy Costs to March 2018.

S38(1)b of the Freedom of Information Act provides for an absolute exemption from release where disclosure would breach the Data Protection Act. The detailed information that informs the report would constitute the personal data of identifiable living individuals and its release would breach the DPA. There is no additional recorded information.

Kind regards,

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Re: Is NO the standard reply trained into every member of ERC staff?

Posted by Newsline - 22 Oct 2018 08:22

Review Request

Good Evening Mr Mahon,

I request a review of how East Renfrewshire Council have handled my request for information.

My reasons for requesting a review are as follows.

Your Ms Dick has in my view failed to comply with the FOISA legislation.

I am also concerned that your Ms Dick has taken 15 days to respond, with nothing more time consuming than what is in effect a 'no'.

As you are aware FOISA requests require to be responded 'As soon as possible' and I would suggest that a 'no' response should not take 15 days.

Your Ms Dick states that Section 38(1)(b) of FOISA provides an absolute exemption.

Both you and I are aware that is untrue, the public interest test must be applied.

I can see no evidence that she has applied this test.

I would submit that either your Ms Dick has little or no knowledge of the FOISA legislation, and in such case I would have to question why she is making decisions in such a matter.

Or is this yet another indication of what I perceive as the endemic actions of many ERC staff to delay and obstruct FOISA requests, which I have corresponded with you on previously.

In addition am I to believe that there are no documents that relate to this matter that do not contain personal data.

As we are both aware the DPA which your Ms Dick quotes, permits, as does FOISA the release of information if the subject permits this. I see no evidence that your Ms Dick made any attempt to provide an explanation as to why she was apparently unwilling to seek this permission, or was she unaware of this requirement?

Also if your Ms Dick believes that the recorded information cannot be disclosed due to personal data, why was she not prepared to consider 'redaction'?

I am also of the opinion that your Ms Dick having quoted the DPA (no year) has failed to take into account that the exemptions in section 38(1)(b) regulate the relationship between FOISA, The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA 2018)

In addition we are both aware that council officers of a certain grade and above have no automatic right to anonymity, according to the FOISA commissioner.

I can see no evidence that your Ms Dick has applied this to her reasoning for refusal.

As you are aware irrespective of your decision with regards this review I will be taking my concerns to the commissioner.

I understand that it is my right to have a response within 20 working days.

Kind Regards

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Re: If asked anything, the answer is NO.

Posted by Ernhw Ltd - 02 Nov 2018 15:18

New and separate request from the one above.

Same response = No

Dear Mr Taylor

I refer to your letter regarding two Audit Scotland reports discussed at the Audit and Scrutiny Committee meeting on 27 September 2018.

Your letter refers to comments you understand were made by a representative of Audit Scotland at the meeting on various issues which you listed as follows:-

- History of revenue under spend, currently £7.3 million
- Information security policy not updated since October 2014 despite a warning given in 2017
- The council should closely monitor ERCLT's financial position
- Make better use of buildings

- Make more efficient use of office accommodation
- Lack of business case regarding an exit package where the cost of the package was higher than the cost of the lowest option

Your letter also commented that you could see no record of a report displaying these items on the Agenda; and referred to a summary of an Audit Scotland report being indexed at pages 8 and 9, but these pages being blank on the Agenda.

Two reports on the Agenda for the meeting were regarding Annual Accounts and related issues.

Taking your second query first, Item 4 (Pages 3 – 28 of the Agenda) was a report specifically on the 2017/18 Annual Accounts for the Council's Charitable Trusts and related reports and documentation, some of which were prepared by the External Auditor. If I have understood your query correctly, you have questioned why Pages 8 and 9 of the East Renfrewshire Council Trust Funds Trustees' Annual Report and Financial Statements for Year Ended 31 March 2018 (see Pages 13 to 28 inclusive of the Committee Agenda) were blank. This was because at a later stage Pages 8 and 9 of the final version of the document were to feature the final version of the Independent Auditor's Report. The proposed text of that section features on Pages 7 – 9 inclusive of the Committee Agenda, this being Appendix A to a letter to the Chief Financial Officer dated 27 September 2018.

Item 5 of the Agenda was the much more detailed report on the 2017/18 Annual Accounts and Draft Annual Audit Report for the Council (see Pages 29 - 218 of the Agenda). There are various references to the issues you have itemised in the Draft Annual Audit Report (see Pages 41 to 84 inclusive of the Committee Agenda), but all are also referred to in Appendix 1 to it where the 2017/18 Action Plan is provided (see Pages 73 to 78 of Committee Agenda).

The Minute of the meeting will be published at 3pm on Friday, 26 October as part of the Agenda for the Council meeting that is to take place on 31 October.

Regarding your request to be provided with all recorded information regarding the Audit Scotland report into these matters together with any recorded information that the Council is in possession of regarding the 6 matters itemised above, your request is considered to be extremely wide. Taken collectively, it is estimated that reference to these issues in some way or another could be the subject of a significant number of documents in various formats throughout the Council. On that basis it would not be possible to accede to this request in its current format. Section 12 of the Freedom of Information (Scotland) Act allows for refusal of requests where responding to them would exceed the cost limits prescribed in the

Act and associated Regulations.

However, many of these issues have been the subject of reports to either the Council or one of its Committees on previous occasions over time. For example regarding revenue underspend, budget related reports are submitted to the Cabinet periodically; the Estimated Revenue Budget Out-Turn for 2017/18 and the Financial Performance for the year ended 31 March 2018 were the subject of reports to the Cabinet on 5 April and 21 June 2018 respectively. As a further example you may wish to note that, at the request of the Audit and Scrutiny Committee, a report is to be submitted to its next meeting on various accommodation matters.

I have included below a link to where past Agendas, reports and Minutes may be searched by you by entering key words which I hope is helpful.

www.eastrenfrewshire.gov.uk/article/3559...-reports-and-minutes

Yours sincerely

Linda Hutchison

Senior Committee Services Officer/Children's Panel Liaison Officer

Corporate and Community Services Department /Democratic and Partnership Services

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Re: If asked anything, the answer is NO.

Posted by Ernhw Ltd - 02 Nov 2018 15:24

Dear Ms Hutchison,

Thank you for your response to my request under FOISA legislation.

Firstly I must highlight that I am disappointed that it has taken 18 working days to respond, when we are both aware that the legislation states a request requires to be responded to as soon as possible.

Your response basically amounts to a no, and as such I will be adding this to a matter of concern your Mr Mahon is aware I will be raising with the FOISA commissioner.

Turning to your response and in particular that of Section 12 FOISA.

You consider my request to be too wide, possibly the FOISA commissioner may take another view on that.

However we may not require to go to that stage.

You also inform me that a lot of the recorded information is displayed within the council web site, if that is the case would that not reduce the amount of 'significant number of documents' held within the council that would fit within my FOISA request.

You will also be aware of Sections 9, 13 and 15 FOISA.

They provide clarification on Section 12 of the Freedom of Information (Scotland) Act which as you say allows for refusal of requests where responding to them would exceed the cost limits prescribed in the FOISA.

However that is not the end of the matter.

Public authorities have a duty to provide reasonable advice and assistance to requesters under section 15 of FOISA.

This means that, where an authority estimates that the cost of responding to a request will exceed £600, it is good practice for the authority to discuss the request with the requester to find out if their request could be narrowed to bring it under the £600 limit.

The following is a quote from the commissioners guidance on this subject.

“When refusing a request on cost grounds, it is good practice for the authority’s response to provide clear advice on how the [requester] could submit a new, narrower request within the cost limit. In giving advice, [the authority] may wish to take account of how much the cost limit has been exceeded.”

It would be helpful if you were to provide me that that advice, and let me know what you estimated the cost to the council of providing my requested information to be.

You are also aware that the upper £600 limit and in line with the fees regulations a council can only charge the member of staff's hourly rate. IE. £8.50 up to a maximum of £15 per hour.

In addition the council can only charge the requester 10% of the fee and that the £600 limit covers on the salary rates I quoted staff requiring to take between 40 and 70 hours work on the FOI request, depending on their salary scale to reach the £600 limit.

I would hope for a speedy response on this please.

Kind Regards

Tom

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Re: If asked anything, the answer is NO.

Posted by ErnHW Ltd - 02 Nov 2018 15:24

Ms Hutchison,

If you do not intend to answer my further points would you be kind enough to inform me of this in order that I can produce this as evidence for my review request and my subsequent matters of concern I will be taking to the commissioner.

Close of business today would be great as this request has suffered from too many delays already, I feel.

Kind Regards

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