

Decision Notice



Decision 167/2013 Mr L and Scottish Borders Council

Equality Policy for Energie Fitness for Women Galashiels

Reference No: 201301141

Decision Date: 9 August 2013

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Rosemary Agnew

Scottish Information Commissioner

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



Summary

On 22 February 2013, Mr L asked Scottish Borders Council (the Council) for equality policy information for Energie Fitness for Women Galashiels. The Council responded by notifying Mr L that it did not hold the requested information. Following an investigation, the Commissioner accepted that the Council did not hold any relevant, recorded information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 22 February 2013, Mr L wrote to the Council and asked for all information it might hold on Energie Fitness for Women Galashiels. He believed this business practiced a policy of direct discrimination against men or those wrongly perceived as being male, and was particularly interested in any information “that would show this businesses policy of discriminating between the gender of potential customers was actually found to be compliant with HM Equality Act 2010 by the Council, and if so under what basis or exemption it was perceived to be likely lawful”.
2. The Council responded on 4 March 2013 and notified Mr L, in line with section 17 of FOISA, that it did not hold the requested information. It informed Mr L that he should contact the Equality and Human Rights Commission as the relevant regulatory body.
3. On 4 March 2013, Mr L wrote to the Council requesting a review of its decision. He remarked that the Council had, in the past, communicated to him that under no circumstances did it grant licences to businesses/charities/organisations that appeared to breach the Equality Act 2010. Therefore, he believed that Energie Fitness for Women Galashiels should have submitted an equality policy brief within their submission to the Council for a licence.



4. The Council notified Mr L of the outcome of its review on 1 May 2013. It upheld its original decision under section 17 of FOISA, and again explained that the Equality and Human Rights Commission was the appropriate regulatory body for compliance with the Equality Act 2010.
5. On 12 May 2013, Mr L 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 L made a request for information to a Scottish public authority and 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 2 July 2013, the Council was notified in writing that an application had been received from Mr L and was invited to provide comments on the application (as required by section 49(3)(a) of FOISA). In particular, the Council was asked questions focused on the steps taken to identify and locate any relevant information it held. The Council was also asked to comment on related points made by Mr L.
8. A response was received from the Council on 29 July 2013.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr L and the Council. She is satisfied that no matter of relevance has been overlooked.

Section 17 – Information not held

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to qualifications which are not relevant here, that held at the time the request is received.
11. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
12. The Council notified Mr L that it did not hold any recorded information which would fulfil his request.



13. In its submissions, the Council explained that any information which would fulfil Mr L's request would normally be held as an electronic record in the shared network drive for its Equality and Diversity section. The Council also explained that a search of these records was undertaken by an appropriate member of staff prior to responding to Mr L's request, and it was confirmed that no relevant information was held.
14. The Council informed the Commissioner that it had not received a licence application from Energie Fitness for Women Galashiels. It also explained that there was no requirement for the Council to receive a copy of any company's equality policy, and indeed this has never been requested when companies apply to it for a licence.
15. In his application, Mr L commented that the Council had, at various times, had in its possession equality assessments for other businesses which had contracted with it. He believed it should hold an equality assessment for Energie Fitness for Women Galashiels.
16. The Council explained that the only time it would ask for a copy of a company's equality policy would be if it contracted services from that company. With regard to Energie Fitness for Women Galashiels, the Council submitted that it had not contracted any services from it and so does not hold the information requested by Mr L.
17. The Commissioner has carefully considered the submissions from both the Council and Mr L. In all the circumstances, the Commissioner does not find there to be any reasonable expectation that the Council should hold the information requested by Mr L. In any event, she accepts that the searches carried out by the Council for the information were reasonable and proportionate in the circumstances, and should have identified any relevant information if it were held.
18. The Commissioner is therefore satisfied, on the balance of probabilities, that no relevant recorded information is (or was, at the time of receiving Mr L's request) held by the Council. Therefore, the Commissioner finds that the Council acted correctly in notifying Mr L, in line with section 17(1) of FOISA, that no information was held.

DECISION

The Commissioner finds that Scottish Borders Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr L.



Appeal

Should either Mr L or Scottish Borders Council wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
9 August 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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

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.

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