

Decision Notice

Decision 114/2017: Mr Angus Pattison and East Dunbartonshire Council

Petition information

Reference No: 201700681
Decision Date: 17 July 2017



Scottish Information
Commissioner

Summary

The Council was asked about petitions submitted to the Council relating to the Bears Way project. The Council disclosed some information.

Following an investigation, the Commissioner found that the Council had failed to disclose all of the information it held. Given that all of the information was disclosed during the investigation, the Commissioner did not require the Council to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 9 February 2017, Mr Pattison made a request for information to the Council. The information requested was that in two petitions relating to the Bears Way project, together with copies of all communications within the Council relative to these petitions. Mr Pattison asked that the information be provided in hard copy.
2. The Council responded on 14 March 2017. It provided Mr Pattison with the internal reports presenting each of the two petitions, with a copy of one of them. It explained that the names and addresses of the petitioners had been redacted, as those signing the petition would not expect their details to be provided to others.
3. On 15 March 2017, Mr Pattison wrote to the Council, requesting a review of its decision. He reiterated his request that he be provided with the information in hard copy, and noted that that no information had been provided in respect of the second petition. He suggested that information could be missing from communications and identified potential anomalies in the redaction of names. He also suggested that the first part of post codes could be provided.
4. The Council notified Mr Pattison of the outcome of its review on 11 April 2017. It confirmed that hard copies of the information held had since been provided and also provided Mr Pattison with the first part of the postcode of the signatories' addresses, where held.
5. The Council informed Mr Pattison that the second petition was held on an online portal, which it was not responsible for. It provided a web link to where the online petition could be accessed and stated it held no further information.
6. On 12 April 2017, Mr Pattison wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Pattison was dissatisfied as he believed the Council held information relating to the second petition. He explained that a copy had been handed to the leader of the Council, who had issued a receipt and confirmed this in a subsequent letter.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Pattison made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. On 1 May 2016, the Council was notified in writing that Mr Pattison had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, with particular reference to the steps taken to identify and locate any relevant information.
10. The Council provided submissions, confirming that, in addition to the petition information contained within the on-line portal provided at review, it had located a copy of the handwritten petition in its possession. It also located the letter acknowledging the second petition. The Council provided Mr Pattison with a further link to the on-line petition, a copy of the handwritten petition and the letter of acknowledgement, subject to the redaction of personal data.
11. Mr Pattison acknowledged receipt of the information disclosed during the investigation. He accepted the redaction of personal data from the information provided, but remained dissatisfied with the Council's handling of his request (in particular, its failure to identify and locate information earlier). He did not accept that the Council had provided him with all of the information it held regarding the second petition, noting that the on-line version contained a considerably larger number of signatures than the hard copy version provided.
12. Following further correspondence, the Council located further information falling within the scope of the request. This information was provided to Mr Pattison, with personal data redacted.

Commissioner's analysis and findings

13. 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 Pattison and the Council. She is satisfied that no matter of relevance has been overlooked.

Information held by the Council

14. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not relevant in this case.
15. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority does or should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
16. The Commissioner has considered the information disclosed during the investigation, in the light of the submissions received from both Mr Pattison and the Council.

17. In its submissions to the Commissioner, the Council explained the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of Mr Pattison's request, describing the resources searched and parameters and outcomes of these searches (with screenshots relating to the outcomes). Initially, the Council submitted that it was only the handwritten version of the second petition that was held, as the petition submitted on-line was only available on the change.org website (to which Mr Pattison had been directed).
18. Following further communication with Mr Pattison and the Council, the Council was advised that the on-line petition had an entry dated 22 May 2012, which stated that it had been printed off and would be handed to the Council the following day.
19. The Council carried out further searches and confirmed that it did hold a printed copy of the on-line petition, apologising for not locating this sooner. As mentioned above, this was subsequently provided to Mr Pattison.
20. Having considered all relevant submissions and the terms of Mr Pattison's request, the Commissioner accepts that (by the close of the investigation) the Council had carried out adequate, proportionate searches to establish whether it held any further information falling within the scope of the request. She is satisfied that the additional information located has now been provided to Mr Pattison, so he now has all the information held by the Council relating to the second petition.
21. However, it is evident that adequate searches were not carried out in dealing with Mr Pattison's information request and requirement for review. If they had been, the Commissioner believes the relevant information would have been located and provided to Mr Pattison at that time. This might have obviated the need for Mr Pattison to make an application to the Commissioner.
22. The Commissioner is concerned that it took an application to her, and repeated communication from the investigating officer, before the Council conducted adequate searches to provide information it held in relation to what she considers a relatively straightforward request for information.
23. Taking account of all of the circumstances, the Commissioner concludes that the Council failed to comply fully with section 1(1) of FOISA, by failing (in dealing with Mr Pattison's request and requirement for review) to identify, locate and provide all of the information it held and which fell within the scope of Mr Pattison's request.

Decision

The Commissioner finds that, in the respects specified in Mr Pattison's application, East Dunbartonshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Pattison.

In failing to provide Mr Pattison with all the information it held and which fell within the scope of his request, the Council failed to comply with section 1(1) of FOISA.

Given that all of the information has now been provided to Mr Pattison, insofar as falling within the scope of his application, the Commissioner does not require the Council to take any action regarding this failure, in response to Mr Pattison's application.

Appeal

Should either Mr Pattison or the 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
Acting Scottish information Commissioner

17 July 2017

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.

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