

Decision Notice

Decision 079/2019: Mr Y and East Renfrewshire Council

Audit Scotland reports

Reference No: 201802150

Decision Date: 16 May 2019



Scottish Information
Commissioner

Summary

The Council was asked about matters raised in an Audit Scotland report.

The Council considered that responding to the request would cost more than £600, meaning it was not obliged to comply with the request.

The Commissioner was asked to consider whether the Council had provided adequate advice and assistance and whether it had responded to the request within the prescribed timescales.

The Commissioner investigated and found that the Council had complied with FOISA in responding to this request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 10(1) (Time for compliance); 15(1) (Duty to provide advice and assistance)

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.

Background

1. On 30 September 2018, Mr Y made a request for information to East Renfrewshire Council (the Council). Mr Y requested all recorded information regarding an Audit Scotland report discussed at an Audit and Scrutiny Committee meeting on 27 September 2018. Mr Y also sought all information held by the Council related to the matters raised by the report.
2. The Council responded on 24 October 2018. The Council confirmed to Mr Y that there were two Audit Scotland reports and explained why these reports were not available as part of the Audit and Scrutiny Committee papers. With regard to his request for related documents, the Council considered this to be extremely wide and estimated that the cost of locating and retrieving the information requested would exceed the statutory maximum of £600 and therefore it was not obliged to comply with the request. The Council explained that many of the matters listed had been subject to reports to the Council or one of its committees over time and provided a link to where Mr Y could access past agendas and minutes.
3. On 13 November 2018, Mr Y wrote to the Council, requesting a review of its decision on the basis that the Council had not provided him with adequate advice and assistance on narrowing his request to bring it within the cost limit. He was also dissatisfied with the time taken to respond to his request.
4. The Council notified Mr Y of the outcome of its review on 12 December 2018. The Council continued to rely on section 12(1) of FOISA (Excessive costs) but acknowledged that it could have provided more advice and assistance. The Council explained why the request was considered so wide-ranging and provided an estimated costing to illustrate why complying with the request would be excessively costly.
5. On 13 December 2018, Mr Y wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Y stated he was dissatisfied with the

outcome of the Council's review because he had not been provided with adequate advice and assistance. He also submitted that the Council had failed to respond to his request within the prescribed timescale.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Y made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 14 January 2019, the Council was notified in writing that Mr Y had made a valid application.
8. 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 to answer specific questions, focusing on the points raised by Mr Y in his application. The Council responded with comments.

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 him by both Mr Y and the Council. He is satisfied that no matter of relevance has been overlooked.

Section 15(1) of FOISA – duty to provide advice and assistance

10. Section 15 of FOISA requires a public authority to provide advice and assistance, insofar as it is reasonable to expect it to do so, to someone making (or proposing to make) an information request. Where the cost of complying with a request is estimated to exceed the £600 limit, the public authority should consider what information could be disclosed free of charge or within the cost limit, in order to comply with the duty to provide advice and assistance. Where appropriate, this should include advice on narrowing the scope of the request.
11. Mr Y submitted that the Council had failed to provide him with adequate advice and assistance to allow him to take his request forward. He made specific reference to the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code of Practice)¹. The Section 60 Code of Practice provides (Part 2, section 9.4.3) that where a request is refused on cost grounds, it is good practice for the authority's response to provide clear advice on how the application could submit a new, narrower request within the cost limit.
12. The Council submitted that it provided Mr Y with advice and assistance such as would satisfy its obligations in terms of section 15. Its initial response to Mr Y, the Council submitted, identified that the scope of his request would require to be refined "so as to properly evaluate the overall costs of providing the relevant information". This was further enhanced on review, the Council submitted, when an estimated calculation was provided to Mr Y intimating the expected cost level.

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

13. The Council explained that the inherent difficulty in providing conclusive advice and assistance to bring the costs within the cost threshold was the vagueness of the request itself, which encompassed all information “regarding” a number of general matters.
14. The Council submitted that it attempted to illustrate, on review, what the scope of his request entailed, in order to allow Mr Y to provide a more focussed and restricted wording. The Council submitted that it had met its obligations in terms of section 15 of FOISA, in providing the advice and assistance that could reasonably be expected of it in the circumstances.

The Commissioner’s findings on section 15(1) of FOISA

15. The Commissioner has considered the Council’s responses to Mr Y’s request and the advice and assistance provided therein. He notes that the Council’s initial response explained to Mr Y that it considered his request to be “extremely wide” and that reference to the issues listed in some way or another could be the subject of a significant number of documents in various formats throughout the Council. The response goes on to provide a link to where past agendas, reports and minutes may be searched by keyword, to locate some information which might fall within the scope of his request.
16. The Council’s review outcome provided Mr Y with further explanation as to why it considered his request to be extremely wide-ranging. To illustrate the point, the Council took one of the subject matters, described the information that would be captured and provided an indicative costing related to processing his request.
17. The Council’s review acknowledged that it had not provided Mr Y with an estimated costing in its initial response, but explained that the scope of his request made it difficult to gauge with any real certainty the actual costs involved. On review, it accepted that some more detail could have been offered in the initial response regarding the costs envisaged.
18. As stated by the Commissioner’s guidance², any advice or assistance provided to the requester in this context should be realistic and take account of the likely consequences of narrowing a request in a particular way. Equally it is not appropriate to offer options for narrowing the request which are unlikely to meet the purpose of bringing the cost of compliance within the £600 limit.
19. The Commissioner accepts that the Council could have provided further detail to Mr Y (on the estimated costs) in its initial response, but is satisfied that this was rectified at review. Beyond this, the Commissioner is satisfied that the Council, so far as is reasonable, provided Mr Y with adequate advice and assistance. The illustrative example and the explanations provided by the Council were adequate to inform Mr Y to allow him to submit a new request, should he have wished to do so, without raising expectations unrealistically. Consequently, the Commissioner is satisfied that the Council complied with its duties under section 15(1) of FOISA in this case.

Timescales

20. In his application, Mr Y complained that the Council had failed to respond to his request within the prescribed timescale.
21. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request of information. This is subject to qualifications which are not met in this case.

² http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees_and_charging/ChargingFOISA.aspx

22. Mr Y's request was received by the Council on 30 September 2018 and a response, meeting all the requirements of section 16(4) and (6) of FOISA, was issued by the Council on 24 October 2018 – 18 working days following receipt of Mr Y's request.
23. The Commissioner is satisfied that the Council responded to Mr Y's request within 20 working days and therefore complied with section 10(1) of FOISA.

Decision

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

Appeal

Should either Mr Y 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
Head of Enforcement

16 May 2019

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.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

(a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

(b) in a case where section 1(3) applies, the receipt by it of the further information.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

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