

Decision Notice

Decision 100/2019: Mr N and North Ayrshire Council

Claims made for pothole damage

Reference No: 201801673

Decision Date: 4 July 2019



Scottish Information
Commissioner

Summary

The Council was asked for information relating to pothole reports, claims and payments. The Council provided some information and stated that it did not hold anything further. During the course of the investigation, the Council located and disclosed further information.

The Commissioner found that the Council had failed to comply with section 1(1) of FOISA as it did not provide all the information it held until after his investigation had begun. However, the Commissioner was satisfied that, by the end of his investigation, the Council had carried out appropriate searches and had disclosed all the relevant information it held.

Relevant statutory provisions

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

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 12 June 2018, Mr N made a request for information to the Council. The information requested was–
 - Number of pothole claims from 01/10/17 to 31/03/18;
 - A list of the claims paid out, showing date, location, road defect, amount claimed, amount paid and date paid;
 - A list of faults reported at the location where Mr N's car hit a pothole, showing date reported, fault, date of inspection, work done and date of work done.
2. The Council responded on 20 August 2018. It provided some information to Mr N but cited section 17(1) of FOISA (Notice that information is not held) for the “amount claimed” and “date paid”, stating that this information is no longer held once a claim has been closed.
3. On 5 September 2018, Mr N wrote to the Council requesting a review of its response, submitting that he had not received all the information he had requested.
4. The Council notified Mr N of the outcome of its review on 2 October 2019. It upheld its original response and stated that it held no further information.
5. On 15 November 2018, Mr N wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr N stated he was dissatisfied with the outcome of the Council's review because he believed further information should be held. He also raised other matters which are not within the remit of the Commissioner.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr N 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 21 November 2018, the Council was notified in writing that Mr N had made a valid application and the case was allocated to an investigating officer.
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. These related to the searches carried out to ascertain whether any further information might be held.
9. Submissions were also sought from Mr N as to his particular areas of dissatisfaction. On 1 April 2019 Mr N updated the investigating officer with clarity on the areas he was still dissatisfied with. Mr N stated that he wanted to know whether:
 - (i) the “amount claimed” should be held;
 - (ii) the “date paid” should be held;
 - (iii) any further pothole reports should be held other than the four already provided by the Council.
10. Mr N also stated that he was unhappy because the Council’s automated system for logging reports of potholes did not seem to be programmed correctly to record every call received about potholes. He stated that he would like the Commissioner to physically examine the Council’s systems for recording pothole complaints and related compensation claims, in order to establish whether or not these were fit for purpose. The investigating officer explained that this would not be within the Commissioner’s remit, but went back to the Council in relation to the points set out in the previous paragraph.
11. The Council responded to the investigating officer with confirmation that it only held the four pothole reports that had already been provided to Mr N. It did, however, provide some further information to Mr N contained within a table it had created. The table contained the actual “amounts claimed” (although this could have been made clearer) and estimates of the “dates paid out” (based on the date which each claim was marked as finalised). This information was provided to Mr N.
12. After further discussions between the investigating officer and the Council, the Council spoke to its Finance Team and further searches were carried out. During these searches the Finance Team was able to retrieve the actual “dates paid out”. This information was also provided to Mr N.
13. Mr N remained unhappy with the adequacy of the Council’s pot-hole data recording systems. Although it was reiterated that these matters did not fall within the Commissioner’s remit, he suggested that the Commissioner should investigate and report on them jointly with the Scottish Public Services Ombudsman (the SPSO).

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to him by both Mr N and the Council. He is satisfied that no matter of relevance has been overlooked.
15. Mr N has raised matters relating to the functionality and management of the Council's recording systems. These do not fall within the Commissioner's remit: in this context, he can only consider what relevant information is (or was, at the time the request was received) held on the systems in question and not whether they are fit for purpose or being used appropriately. As the Commissioner has no power to look at these other matters raised by Mr N, there can be no question of a joint investigation of them with the SPSO.

Is any further relevant information held by the Council?

16. 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 applicable in this case.
17. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information an applicant believes the authority 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.
18. The Council described the searches carried out, referring to the systems searched and the parameters used. It provided evidence of these searches.
19. The Council also submitted that its systems did not record instances of every report received about a pothole. Once the pothole had been flagged up in the system, further reports about the same pothole were not input to the system. The Council submitted that this might be why the number of pot-hole reports held by it may not tally with the number that Mr N thinks it should hold.

The Commissioner's conclusions

20. Given the submissions and responses received from the Council, the Commissioner is satisfied, on the balance of probabilities, that the Council does not hold any further information falling within the scope of the request made by Mr N. He would reiterate that he can only reach a finding on the information held and not on the information that a requester believes should be held.
21. Clearly, however, not all of the relevant information was identified, located and provided in response to Mr N's request or his requirement for review. In this respect, the Council failed to comply with section 1(1) of FOISA. It also misapplied section 17(1) of FOISA in claiming that it did not hold certain information.

Decision

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

As some of the information requested was disclosed during the Commissioner's investigation, by failing to provide this information when responding to Mr N' request or requirement for review, the Council failed to comply fully with section 1(1) of FOISA. By claiming at that point that certain information was not held, the Council also misapplied section 17(1) of FOISA.

However by the end of the investigation, the Commissioner was satisfied that the Council had carried out adequate searches and did not hold any information beyond that provided to Mr N, initially or during the investigation.

Appeal

Should either Mr N 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

4 July 2019

Appendix 1: 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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