

Decision Notice 101/2021

Temporary vehicle activated signs

Applicant: The Applicant

Public authority: Aberdeenshire Council

Case Ref: 202001108



Scottish Information
Commissioner

Summary

The Council was asked for results of the temporary vehicle activated signs on Kinmundy Road for specific dates, alongside minutes of Buchan Area Committee meeting on 25 June 2019.

The Council initially failed to respond to the request, later providing the minutes and details of counts completed, but stating it held no information for the dates specified.

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

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General compliance); 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 2 July 2020, with reference to earlier correspondence, the Applicant made a request for information to Aberdeenshire Council (the Council). The request was for the results of the temporary vehicle activated signs on Kinmundy Road (east) for specified dates and a copy of the Buchan Area Committee meeting on 25 June 2019.
2. The Council failed to respond to the request.
3. On 26 August 2020, the Applicant wrote to the Council requesting a review of its failure to respond to the request.
4. The Council responded to the Applicant on the outcome of its review on 15 September 2020. The Council provided the results it held (which did not relate to dates specified by the Applicant) and explained that no data was held for the dates specified. It provided the requested minutes.
5. On 21 September 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review because he did not accept there were no results for the dates specified.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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 September 2020, the Council was notified in writing that the Applicant 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 undertaken for the requested information and how the Council had determined no information was held.

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 the Applicant and the Council. He 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 under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case. 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.
11. The Applicant requested the results of temporary vehicle activated signs between specific dates. The Council informed the Applicant that no information was held for those dates. The Applicant was dissatisfied as he believed that the information was held and explained that the reason that he considered that the Council held this information was that he was aware of the installation of cameras on those dates on the road specified: the implication being that information must therefore have been created by the installed cameras.
12. The Council was asked to provide further submissions on 9 February 2021, to explain the purpose of the cameras, how they are set up and what they record and how and whether the Council had set up the cameras in the time period stated.
13. The Council explained that they set up the cameras to determine whether traffic calming measures are required in a specific area. The Council also provided details of the standard battery life of the cameras and the type of information recorded and reiterated that no counts were completed on the dates specified and provided details of all counts undertaken on Kinmundy Road between 2017 and 2020, which do not include the dates requested by the Applicant.
14. The Council noted that, although they were not aware if another body installed the cameras on Kinmundy Road in the specified periods, Police Scotland are the responsible authority for speeding issues and may have installed their own equipment/undertaken their own counts. However, the Council was not aware if this had happened and had not been notified. The Council could only state that no Council equipment was installed at that time period. Therefore, no information falling within the scope of that part of the request is held by the Council.
15. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining whether a Scottish public authority holds information, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
16. Having considered all the relevant submissions, the Commissioner accepts that the Council did not hold the information at the time of the request. The requested information was specific, limited and would have been easily identifiable if held by the Council, as shown by

its provision of all counts undertaken between 2017 and 2020. The Commissioner has no reason to doubt the Council's explanation of the information held at the time of the request. The Commissioner, therefore, finds that the Council complied with Part 1 of FOISA in notifying the Applicant that no information was held under section 17(1) of FOISA in responding to this part of the request.

17. The Commissioner notes that the Council suggested Police Scotland, who were aware of the speeding issues at Kinmundy Road, could potentially have deployed a device during the time periods specified by the Applicant, but there are no records of signs being installed by the Council during that period. It is open to the Applicant to request information from Police Scotland.

Decision

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

Appeal

Should either the Applicant 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

18 June 2021

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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