



Decision Notice 111/2022

Access to a specific property

Applicant: The Applicant

Authority: Scottish Fire and Rescue Service

Case Ref: 202200035

Summary

The Authority was asked about a fire crew's attempts to gain access to a specific property on a specific date. The Authority notified the Applicant, under section 17(1) of FOISA, that it did not hold this information. Following an investigation, the Commissioner was satisfied that the Authority did not hold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

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 April 2021, the Applicant made a request for information to the Authority. She asked for information relating to a fire crew's attendance at a specific incident. The Applicant had been previously provided with a copy of the Authority's Incident Recording System (IRS) Report for the incident, but she did not agree that this was the only information held by the Authority. The Applicant therefore asked:

Can it be confirmed that, rather than access through the upstairs window access was by breaking down the front door after [a] failed attempt was made to get access through the upstairs window?

2. The Authority responded on 12 May 2021, advising the Applicant that it did not hold any recorded information relating to the incident, other than the IRS Report, which it had issued to the Applicant in a previous response.
3. On 23 September 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because she disagreed that the Authority did not hold the information requested (other than that contained in the IRS Report). She asked the Authority to check its records again.
4. The Authority notified the Applicant of the outcome of its review on 11 November 2021. It confirmed its initial decision, i.e. that the only information it held in respect of the Applicant's request had previously been provided.
5. On 11 January 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Authority's review because she disagreed with its decision that the only information it held that fell within the scope of her request was the IRS Report.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 27 January 2022, the Authority was notified in writing that the Applicant had made a valid application. 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 Authority was invited to comment on this application and to answer specific questions, focusing on the steps it had taken to identify and locate any information that fell within the scope of the request.

Commissioner's analysis and findings

9. The Commissioner has considered all the submissions made to him by the Applicant and the Authority. He is satisfied that no matter of relevance has been overlooked.

Section 17(1) - Notice that information is not held

10. 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.
11. 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 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 this effect.

Submissions from the Applicant

11. In her application to the Commissioner, the Applicant said that she did not accept that the Authority did not hold any additional information, other than the IRS Report, in relation to her request.

Submissions from the Authority

12. In its submissions to the Commissioner, the Authority confirmed the searches and enquiries that it had undertaken to ascertain if it held any recorded information that fell within the scope of the Applicant's request, including the staff it had consulted, the searches carried out and the results of those searches. It explained that the only information it holds on its recording system are IRS Reports and Fire Investigation Reports.
13. By way of background, the Authority explained that, in this case, the Authority was called out to assist another agency, the Scottish Ambulance Service, on what it referred to as a Special Service – Domestic Incident, in obtaining access to a property to assist the occupant. As the incident was not fire-related, a Fire Investigation Report was not required.

Commissioner's conclusions

14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard on the balance of probabilities. In determining where the balance lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
15. Having considered all the relevant submissions and the terms of the request and scope of the investigation in this case, the Commissioner accepts that the Authority interpreted the scope of the Applicant's request correctly. He also accepts, on the basis of the submissions received, that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held.
16. Given the explanations and submissions provided, the Commissioner is satisfied that the Authority does not (and did not, at the time of this request), hold the information requested by the Applicant. The Commissioner accepts that the only information held by the Authority was the IRS Report.
17. Therefore, the Commissioner concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it held no information. Although the Applicant believed and expected additional information to be held by the Authority, the Commissioner is satisfied that this was not the case.

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Authority 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 Authority 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
26 October 2022

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.
- ...

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.

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -

- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

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