

Decision Notice 180/2021

Minute of meeting and associated matters

Applicant: The Applicant

Public authority: Grampian Housing Association Ltd

Case Ref: 202000998



Scottish Information
Commissioner

Summary

GHA Ltd was asked for information about an internal investigation panel.

GHA Ltd provided the Applicant with some explanations and told him that it held no recorded information in relation to the meeting.

The Commissioner investigated and found that GHA Ltd had 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); section 3(1)(a)(ii) (Scottish public authorities); 15(1) (Duty to provide advice and assistance); 17(1) (Information not held)

Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the 2019 Order)

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 11 July 2020, the Applicant made a request for information to Grampian Housing Association Ltd (GHA Ltd). He sought information on a number of matters, as follows:
 - (i) The apparent existence of more than one version of an investigation report. The Applicant referred to a draft report (dated 25 August 2019), but did not specifically request it.
 - (ii) An informal meeting of GHA's Board, held some time in August 2019.
 - (iii) Correspondence sent in February 2020, in which the Applicant had been named.
 - (iv) Points relating to the appointment of an internal investigation panel.
2. GHA Ltd responded on 7 August 2020, providing answers to elements of part (i) of the request and confirming that it held no information for the other elements of part (i). It also provided answers to all questions in part (ii). It stated that part (iii) would be dealt with separately, as a subject access request under the General Data Protection Regulation. Answers were provided to elements of part (iv), while GHA Ltd notified the Applicant that it held no information for others.
3. On 10 August 2020, the Applicant wrote to GHA Ltd requesting a review of its decision on the basis that he considered much of the response to be unclear or obscure. The Applicant raised the following in particular (and, in addition, other points which do not fall within the scope of this investigation):
 - there was confusion over who was being discussed when reference was made to the Chair/Acting Chair
 - the purpose of an informal meeting of Board members in August 2019 was still unclear, as was whether there were any minutes of this meeting

- he was unclear as to the number of versions of the investigation report produced, suggesting inconsistencies with information disclosed in response to a previous request.
4. GHA Ltd notified the Applicant of the outcome of its review on 25 August 2020. Insofar as falling within the scope of this investigation, it:
- clarified who was being referred to by the terms “Chair” and “Acting Chair”
 - confirmed there were no minutes of the informal meeting of Board members held in August 2019, while providing a brief explanation of its purpose
 - provided tabular chronology of events around the circulation and approval of the draft and final reports
 - informed the Applicant of a document comparison exercise carried out between the draft (25/08/19) and final (30/08/19) reports, identifying the changes made.
5. On 31 August 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 GHA Ltd’s review because he did not consider GHA Ltd had answered the questions raised, specifically the purpose of the informal meeting, the number versions of the report (compared to what he was told previously) and remaining confusion over the terms “Chair” and “Acting Chair”.

Validation

6. The Commissioner firstly considered whether GHA Ltd was a Scottish public authority for the purposes of FOISA.
7. “Scottish public authority” is defined in section 3 of FOISA. Under section 3(1)(a)(i), a body designated under section 5(1) of FOISA is a Scottish public authority.
8. Under the 2019 Order (which came into force on 11 November 2019 and which is set out in full in the Appendix), the Ministers, using their powers under section 5(1), extended the coverage of FOISA to:
- registered social landlords (RSLs) as defined in section 165 of the Housing (Scotland) Act 2010 (the 2010 Act) and
 - connected bodies under section 164(c) of the 2010 Act
- in relation to certain specified functions.

Description

9. GHA Ltd is an RSL as defined by section 165 of the 2010 Act (and was at the time of the Applicant’s request). The first part of the definition is therefore fulfilled.

Function

10. The Applicant has asked for minutes of board meetings and details of an investigation.
11. As noted above, the 2019 Order extended the coverage of FOISA to RSLs in relation to certain specified functions. These are:
- any activity in relation to the prevention and alleviation of homelessness

- any activity in relation to the management of social housing accommodation (i.e. where an RSL has granted a Scottish secure tenancy or short Scottish secure tenancy)
 - any activity in relation to the provision and management of sites for gypsies and travellers
 - supplying information to the Scottish Housing Regulator (SHR) in relation to its financial well-being and standards of governance
12. In this case, the Commissioner is satisfied that the information requested deals with matters relating to the supply of information to the SHR in relation to GHA Ltd's financial well-being and standards of governance. The second part of the definition is therefore fulfilled.
13. The Commissioner is therefore satisfied 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.

Investigation

14. On 29 October 2020, GHA Ltd was notified in writing that the Applicant had made a valid application. GHA Ltd was asked to send the Commissioner any information withheld from the Applicant. GHA Ltd confirmed that there was no information withheld and the case was allocated to an investigating officer.
15. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. GHA Ltd was invited to comment on this application and to answer specific questions.

Commissioner's analysis and findings

16. 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 GHA Ltd. He is satisfied that no matter of relevance has been overlooked.

Information held by GHA Ltd

17. 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 this effect.

Purpose of the meeting

18. The Applicant asked GHA Ltd for the purpose of the informal meeting of Board members held in August 2019. One means of determining the purpose of a meeting, as identified by the Applicant in seeking a review, would be through the minutes of the meeting.
19. In its submissions, GHA Ltd confirmed that it held no minute of the meeting and that, after contacting Board members who had attended, it was clear that no minute had been taken.
20. During the investigation, GHA Ltd provided the Applicant with a further explanation (from unrecorded information) of the purpose of the informal meeting.
21. 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 reasons offered by the public authority to explain why the information is not held.

22. Having considered the relevant submissions, and given the informal nature of the meeting, the Commissioner accepts that GHA Ltd does not hold any minutes or other recorded information relating to the purpose of the informal meeting of board members held in August 2019. The Commissioner, therefore, finds that the Council complied with Part 1 of FOISA in notifying the Applicant that no information was held in this respect.

Investigation report of 25 August 2019

23. The Applicant did not believe the existence of the 25 August 2019 investigation report was consistent with information disclosed in response to a previous request (now with the Commissioner, case 202000178). GHA Ltd acknowledged the existence of the 25 August draft in its submissions, as it had in its review outcome.
24. The Commissioner considers this matter more properly falls within the scope of the Applicant's earlier information request. The Applicant has sought a decision from the Commissioner in relation to this and it is the Commissioner's view that it would be more appropriate to comment on the matter in that decision. Having considered all relevant submissions and the Applicant's request, requirement for review and application, the Commissioner can identify nothing in this particular area of dissatisfaction that relates directly to any part of the request under consideration here.

Advice and assistance

25. In his request for review, the Applicant expressed confusion over which individuals were being referred to as "Chair" and "Acting Chair" in GHA Ltd's response to him.
26. In response, GHA Ltd tried to explain the position to the Applicant, but the Applicant remained dissatisfied with the explanation.
27. As GHA Ltd correctly noted in its submissions to the Commissioner, it is not required to create information under FOISA to respond to a request for information. However, it is (in terms of section 15(1) of FOISA) required to provide requesters with reasonable advice and assistance.
28. During the investigation, the Commissioner's investigating officer suggested to GHA Ltd that it provide the Applicant with the information in tabular form, showing who was in the positions of Chair and Acting Chair and on what dates, to assist with clarification. GHA Ltd subsequently did this. However, even in the absence of this additional information, the Commissioner is satisfied that GHA Ltd had, at review stage, complied with its duty to provide reasonable advice and assistance to the Applicant, given that the explanation focussed on the terms of his information request and not on the position more generally.

Decision

The Commissioner finds that Grampian Housing Association Ltd 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 GHA Ltd 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

8 November 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.

...

3 Scottish public authorities

- (1) In this Act, “Scottish public authority” means-

- (a) any body which, any other person who, or the holder of any office which-

...

- (ii) is designated by order under section 5(1); or

...

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.

...

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.

The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019

1 Citation, commencement and interpretation

- (1) This Order may be cited as the Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 and comes into force on 11 November 2019.
- (2) In this Order, “the 2010 Act” means the Housing (Scotland) Act 2010.

2 Extension of coverage of the Freedom of Information (Scotland) Act 2002

The persons described in column 1 of the table in the schedule of this Order are designated under section 5(2)(a) of the Freedom of Information (Scotland) Act 2002 as a Scottish public authority in relation to the functions specified in column 2 of that table.

Schedule

<i>Column 1 Description of persons</i>	<i>Column 2 Function</i>
A registered social landlord as defined in section 165 of the 2010 Act and a connected body under section 164(c) of that Act.	<p>Any activity in relation to housing services as defined in section 154 of the 2010 Act, subject to the following –</p> <p>(a) paragraph (b) is limited to the management of housing accommodation for which a registered social landlord has, under the Housing (Scotland) Act 2001, granted a Scottish secure tenancy as defined in section 11 or a short Scottish secure tenancy as defined in section 34 of that Act, and</p> <p>(b) omit paragraph (c).</p> <p>The supply of information to the Scottish Housing Regulator by a registered social landlord or a connected body in relation to its financial well-being and standards of governance.</p>

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