

Decision Notice 025/2022

Information regarding a complaint made to the SPSO

Applicant: the Applicant

Public authority: Scottish Public Services Ombudsman

Case Ref: 202100796



Scottish Information
Commissioner

Summary

The SPSO was asked for the information it held in relation to a decision it had issued. The SPSO disclosed information, but the Applicant believed the SPSO held more information than it had disclosed. The Commissioner was satisfied that the SPSO had disclosed the information it held which fell within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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. The Applicant was unhappy with the way Fife Council (the Council) dealt with his complaints about a planning application and referred the matter to the Scottish Public Services Ombudsman (the SPSO). The SPSO published its decision on one of his complaints in November 2020.
2. On 19 January 2021, the Applicant made a request for information to the SPSO in relation to this decision. He asked for all:
 - correspondence between the SPSO and the Council;
 - correspondence originating at the SPSO;
 - reports from advisors and
 - correspondence involved to the case.
3. The SPSO responded on 19 February 2021. It treated the Applicant's request for his own personal data as a Subject Access Request (SAR) under the UK General Data Protection Regulation. The remaining information was considered to be exempt from disclosure under sections 38 (Personal information) and 26(a) (Prohibitions on disclosure) of FOISA.
4. On 6 April 2021, the Applicant wrote to the SPSO requesting a review of its decision. He did not believe he had received all of the documents which were relevant to his request.
5. The SPSO notified the Applicant of the outcome of its review on 5 May 2021. The SPSO confirmed that there was no additional information to provide. The SPSO commented that case in question did not deal with all of the complaints he had made to the SPSO and asked the Applicant to let them know if he wanted information held on the other files.
6. On 30 June 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of SPSO's review because, in his view, the SPSO held information which it had not disclosed to him. He specified the information in question. He did not question the exemptions applied by the SPSO.

Investigation

7. 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.
8. On 2 August 2021, the SPSO was notified in writing that the Applicant had made a valid application.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPSO was asked to provide a sample of the information falling within scope of the request, and disclosed in response to the Applicant's SAR. The SPSO was also invited to comment on this application and to answer specific questions, specifically in relation to the information which the Applicant considered to be missing and the searches conducted to identify the recorded information falling in scope of the request.
10. The SPSO provided submissions, supporting its position that it had identified all relevant information falling within scope of the request and no further information was held.
11. The Applicant was provided with a summary of the investigation. In response, he highlighted information he considered was held and fell within scope of his request but had not been provided to him.
12. The investigating officer raised the above matters with the SPSO both in writing and by telephone. The SPSO provided further comments.

Commissioner's analysis and findings

13. 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 SPSO. He is satisfied that no matter of relevance has been overlooked.

Does the SPSO hold more information?

14. 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.
15. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4).
16. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, 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. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

The Applicant's submissions

17. The Commissioner has taken account of the arguments in both the Applicant's requirement for review and his application, in which he provides reasons as to why he considers the SPSO should hold further information falling within the scope of his request.
18. The Applicant stated that he had not been provided with:
 - Emails from a named Council employee (Person A)
 - The sunlight test risk assessment
 - The report from a named Council employee (Person B) (it is clear from correspondence with the Applicant that he believed the SPSO must hold this information)
 - Proof that a reassessment had been carried out by a named Council employee

The SPSO's submissions

19. As part of the investigation, the investigating officer provided the SPSO with details of the information the Applicant considered to be missing from that provided.
20. The SPSO told the Commissioner that it had identified all of the information falling within scope of the request. It provided details of the searches it had conducted and of the information it had located, including the correspondence obtained from the Council regarding the planning decision and the documents used by the Council's Planning Officer in his assessment (which included a sunlight daylight test). This information had been disclosed to the Applicant in response to the SAR, as had a copy of two reports from the Independent Planning Advisor on the Council's Planning decision and a copy of its correspondence with the Advisor.
21. The SPSO also told the Commissioner that the hard copy complaint file had been checked against the electronic record to ensure there was no additional paperwork. The SPSO Complaints Reviewer that handled the complaint also double checked their records to ensure nothing was missing.
22. The SPSO Complaints Reviewer, who investigated the Applicant's complaint, did not identify any further information within the complaint record that had not been provided. He confirmed that he had not obtained the emails from Person B as that was not part of the investigation in question, and related to a separate matter.

The Commissioner's conclusions

23. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the SPSO took adequate, proportionate steps in the circumstances to establish whether it held any further information that fell within the scope of the request. He has considered the reasons provided by the SPSO which explain why no further information is held, and why information identified by the Applicant as missing is not held by the SPSO.
24. The Commissioner is satisfied that the searches described by the SPSO would have been capable of identifying any further information relevant to the request. The Commissioner is therefore satisfied, on the balance of probabilities, that the SPSO does not (and did not, on receipt of the request) hold any further information falling within the scope of the request.

Decision

The Commissioner finds that Scottish Public Services Ombudsman 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 SPSO 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.

Daren Fitzhenry
Scottish Information Commissioner

7 March 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.

...

- (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.

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