

Decision Notice

Decision 005/2016: Mr Graham Sorbie and Transport Scotland

Parking near Hampden Park

Reference No: 201501801

Decision Date: 14 January 2016



Scottish Information
Commissioner

Summary

On 29 July 2015, Mr Graham Sorbie asked Transport Scotland for information about parking near Hampden Park. Transport Scotland disclosed some information and stated that it did not hold other information.

Following an investigation, the Commissioner found that Transport Scotland had provided Mr Sorbie with all of the information it held and which fell within the scope of his request, and had correctly given notice that it did not hold some of the information he had asked for.

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 29 July 2015, Mr Sorbie made a request for information to Transport Scotland. He asked for information about the establishment and authorisation of signage for the Hampden Park major events permit zone. Specifically, Mr Sorbie asked for:
 - a) notes of meetings held at which the above subject matter was raised or debated;
 - b) any correspondence – whether electronic or paper, formal or informal, in relation to the above;
 - c) any notes of relevant telephone conversations;
 - d) any conditions on which the authorisation of these signs was conditional;
 - e) all formal authorisation papers.
2. Transport Scotland responded on 25 August 2015, and gave notice in line with section 17(1) of FOISA that it did not hold information falling within parts (a), (b) and (d) of the request. It disclosed some information in response to parts (c) and (e) of the request and provided some general information in response to part (d) of the request.
3. On 7 September 2015, Mr Sorbie wrote to Transport Scotland requesting a review of its decision as he believed that Transport Scotland had not disclosed all the information it held. Mr Sorbie also raised a number of questions in relation to Transport Scotland's response.
4. Transport Scotland notified Mr Sorbie of the outcome of its review on 30 September 2015, which confirmed the original decision without modification. Transport Scotland also responded to the questions raised by Mr Sorbie in his request for review.
5. On 2 October 2015, Mr Sorbie applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Sorbie stated he was dissatisfied with the outcome of Transport Scotland's review and reiterated that he did not consider that Transport Scotland had disclosed all relevant information.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Sorbie made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. Transport Scotland is an agency of the Scottish Ministers (the Ministers). Subsequent references to contact with or submissions from Transport Scotland should be read as including contact with or submissions made by the Ministers on behalf of Transport Scotland.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 2 November 2015, the investigating officer notified Transport Scotland in writing that Mr Sorbie had made a valid application. Transport Scotland was invited to comment on this application and to answer specific questions. These questions focused on the searches it had conducted to identify information covered by the request. Transport Scotland responded on 17 November 2015.

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 her by both Mr Sorbie and Transport Scotland. She is satisfied that no matter of relevance has been overlooked.

Was all relevant information identified, located and provided by Transport Scotland?

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 in section 1(6) which are not relevant 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) of FOISA. This is not necessarily the information applicant believes the authority does hold or should hold. If the authority does not hold the information which has been asked for, the authority is required to give the applicant notice of this (section 17(1) of FOISA).
12. Mr Sorbie considered that Transport Scotland held more information than it had identified and disclosed in its response. Transport Scotland submitted that it had provided all the information it held that fell within the scope of parts (c) and (e) of Mr Sorbie's request and did not hold the remaining requested information.

Searches carried out by Transport Scotland

13. Transport Scotland explained that parking restrictions are in force in the streets around Hampden Park during events at the venue. The Restricted Parking Zone (RPZ) was a scheme promoted by Glasgow City Council (the Council) and was the subject of a Traffic Regulation Order (TRO) which came into force on 1 July 2012. The RPZ was initially set up to deal with parking in streets near Hampden Park during the Olympic Games; however, its purpose was also to deal with parking in the area during major events in the long term.
14. Transport Scotland noted that the relevant roads authority, in this case the Council, has powers under the Road Traffic Regulation Act 1984 to restrict parking in a designated area for a set time, subject to making of a TRO.

15. Transport Scotland explained that it is the Council that makes the TRO and is responsible for implementing it correctly. There is no specific organisation responsible for checking that orders are implemented correctly. Any person prosecuted under an order who seeks to challenge the implementation of that TRO in relation to the placing of signs could do so as part of their defence.
16. Transport Scotland submitted that it did not authorise the parking scheme and has no role in this process. There was no requirement for the Council to discuss the proposed scheme with Transport Scotland nor did they choose to do so.
17. The Scottish Ministers authorised the erection and use of certain traffic signs in the Hampden Park area under their powers in sections 64 and 65 of the Road Traffic Regulation Act 1984. They stated that the first time the Scottish Government /Transport Scotland were aware of the scheme was when the Council sought approval to use these signs on 24 January 2012.
18. Transport Scotland had confirmed to Mr Sorbie that:
 - the promotion of the Traffic Management Scheme and associated TRO were entirely matters for the Council. Any concerns on these should be taken up directly with the Council.
 - Transport Scotland's only involvement was the authorisation of the Non-Prescribed Signs by the Scottish Ministers under sections 64 and 65 of the Roads Traffic Regulation Act 1984.
 - Transport Scotland did not authorise the Traffic Management Scheme or the TRO under which the authorised signs were placed. Nor did they have any involvement in the placing of these signs to indicate the effect of the TRO.
 - The Scottish Ministers cannot cancel a TRO made by another roads authority.
 - No meetings or discussions were held with the Council and Transport Scotland on the implementation of the scheme, so no records of such meetings or discussions exist.
 - Copies of the TRO (which Transport Scotland obtained from the Council), the application from the Council for the use of Non-Prescribed Signs and the authorisation were provided to Mr Sorbie. Transport Scotland stated that these are the only documents held by the Scottish Government on this matter.

The Commissioner's findings

19. Having considered all the relevant submissions, the Commissioner is satisfied that Transport Scotland has taken adequate and proportionate steps to establish the information it held which fell within the scope of Mr Sorbie's request, and that it does not hold any further information covered by that request.
20. In reaching this conclusion, the Commissioner has given weight to the following:
 - The Council is the responsible party and has powers under the Road Traffic Regulation Act 1984 to restrict parking in a designated area.
 - Transport Scotland did not authorise the parking scheme and has no role in this process. There was no requirement for the Council to discuss the proposed scheme with Transport Scotland.

- The explanation provided by Transport Scotland for not holding further information is reasonable, in the circumstances outlined above.
 - The information previously available on the Council's website about parking near Hampden Park¹ substantiates Transport Scotland's position that the Council is responsible party.
21. The Commissioner is satisfied, on the balance of probabilities, that Mr Sorbie has received all the information held by Transport Scotland that falls within the scope of parts (c) and (e) of his request. She accepts that Transport Scotland does not hold any information falling within the other parts of Mr Sorbie's request, and that it correctly gave him notice of this, as required by section 17(1) of FOISA.

Decision

The Commissioner finds that Transport Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Graham Sorbie.

Appeal

Should either Mr Sorbie or Transport Scotland 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

14 January 2016

¹ <https://glasgow.gov.uk/index.aspx?articleid=7270> (content no longer on website)

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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