

Decision Notice 171/2019

Records relating to a café

The Applicant

Public authority: Glasgow City Council

Case Ref: 201901240 and 201901241



Scottish Information
Commissioner

Summary

The Council received two information requests for records relating to a named café. It disclosed information. The Applicant believed that further information was held.

The Commissioner investigated and found that the Council did not hold any additional information.

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. On 9 November 2018 (request 1) and on 1 February 2019 (request 2), the Applicant requested information from Glasgow City Council (the Council). These requests sought all Council records held in relation to a specified café for specified time periods. The Applicant described the documentation and correspondence he expected to be disclosed.
2. The Council responded on 3 December 2018 (request 1) and 28 February 2019 (request 2). It disclosed information subject to the redaction of third party personal data. The Council also disclosed the Applicant's personal data, but did so on the basis that it was exempt under section 38(1)(a) of FOISA (Personal information).
3. In relation to request 2, the Council also stated that title information related to the café was reasonably accessible to the Applicant, in line with section 25(1) of FOISA.
4. On 23 January 2019 (request 1) and on 23 April 2019 (request 2), the Applicant requested reviews of the Council's decisions as he believed that the Council had not sent him all the information that he had requested. In the request for reviews, the Applicant described specific information he considered had not been provided. In relation to request 2, the Applicant also questioned the redaction of information from one document.
5. The Council notified the Applicant of its review response to request 1 on 20 February 2019. The Council confirmed that it had conducted further searches, which identified additional documents which it disclosed. The Council also upheld its reliance on the previously cited exemptions.
6. The Council notified the Applicant of its review response to request 2 on 16 May 2019. It responded to the matters raised by the Applicant, confirmed that no further information was held and upheld its reliance on the previously cited exemptions. The Council also confirmed that the information redacted from the named document consisted of third party personal data to which section 38(1)(b) had been correctly applied.
7. On 16 June 2019, the Applicant wrote to the Commissioner in relation to both requests. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's reviews of his requests (request 1 and 2) on the basis that the Council had not sent him the information he had

requested. The Applicant clearly believed the Council held further information that it had not disclosed to him.

Investigation

8. The applications were accepted as valid. The Commissioner confirmed that the Applicant made requests for information to a Scottish public authority and asked the authority to review its responses to those requests before applying to him for a decision.
9. On 6 August 2019, the Council was notified in writing that the Applicant had made valid applications.
10. 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 the applications and to answer specific questions. These included addressing the areas where the Applicant believed further information might be held.
11. The Council responded separately to each application on 21 October 2019.

Commissioner's analysis and findings

12. 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.

Information held by the Council

13. 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.
14. 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, although an applicant's reasons may be relevant to the investigation of what is actually held.
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 where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.

Submissions from the Applicant

16. The Applicant was not satisfied that he had been provided with all of the information falling within the scope of his requests. He believed the Council had withheld information from him that related to his "numerous unanswered complaints", the Council's inspections and visits to the café and correspondence with the leaseholder and owner of the café.

Searches conducted by the Council

17. The Council provided an overview of the searches carried out to locate any information falling within the scope of the Applicant's requests.
18. The Council explained that it had been dealing with information requests and complaints from the Applicant for a number of years. Officers within the Information and Data Protection team were able to identify relevant departments that would be likely hold information falling within the scope of the requests. These Officers sent the requests to the following Council departments:
 - (i) Planning and Building Control who sit within the Council's Development & Regeneration Services,
 - (ii) Environmental Health, within the Council's Neighbourhoods & Sustainability department, and
 - (iii) the Complaints team.
19. The Council explained that, as the Applicant had been in contact with it for a number of years regarding this subject, he has established direct contact with named officers within the above departments. The Council considered it was therefore likely that these officers would hold the Applicant's own correspondence about the café. In addition, Environmental & Health, Planning and Building Control have been involved with the café when investigating complaints made by the Applicant and other related matters.
20. The Council provided the Commissioner with a list of named individuals working within those named departments who it considered likely to hold the information requested. The Council confirmed that those individuals searched their records from the date identified in request 1 (4 October 2018), to the date that request 2 was received (1 February 2019).
21. The Council provided screenshots of the search request issued and the search responses from staff.
22. The Council submitted that it is satisfied that it has conducted thorough searches across all departments that are likely to hold information falling within the scope of the requests. Searches were conducted and a substantial amount of information was identified as falling within the scope of the requests and disclosed. Given the nature of the requests, the Council explained that the majority of information provided was created by the Applicant himself.

The Commissioner's findings

23. Having considered the details of the searches conducted and the explanations provided by the Council, the Commissioner is satisfied, on the balance of probabilities, that the Council does not hold any other relevant information further to that already provided to the Applicant. In reaching this view, he has considered the information disclosed by the Council, the searches undertaken and the explanations provided as to why these would capture the information requested.
24. Taking into account all of the above, the Commissioner is satisfied that, the Council identified and disclosed all the information falling within the scope of the Applicant's requests. In reaching this conclusion he has taken account of the fact that he can only consider what information is actually held, not what information the Council might be expected to hold.

Decision

The Commissioner finds that the 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

28 November 2019

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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