



Decision Notice 030/2023

Payments from a named person's bank account

Applicant: The Applicant

Authority: Fife Council

Case Ref: 202101431

Summary

The Applicant asked the Authority for information relating to payments made from a named bank account with a particular reference number between 1 December 2001 and March 2003. The Authority informed the Applicant that it did not hold the information. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

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 10 August 2021, the Applicant made a request for information to the Authority. He asked for information relating to payments taken from a named person's bank account, with a specified payment reference number, that were paid into a second named bank account that the Applicant believed belonged to the Authority. The dates provided by the Applicant were between 1 December 2001 and March 2003.
2. The Authority responded on 10 August 2021 with a notice under section 17(1) of FOISA that the information requested was not held by it. The Authority explained why the information requested was not held by it. As the Applicant had raised the question of a possible criminal

act, the Authority informed him that Police Scotland could submit their own requests for information directly to the Authority.

3. On 20 August 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant was dissatisfied with the decision, because he did not understand why he had not received the information he had requested.
4. The Authority notified the Applicant of the outcome of its review on 14 September 2021, upholding its original decision. It explained that, after consulting with several departments within the Authority, no link to the payment reference number or payment information could be found. The Authority also explained that, for some departments, information was not retained as far back as 2003.
5. On 21 December 2021, 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 the Authority's review because the Authority could not find the information he had requested and he considered that the information he had requested should be held by the Authority.

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 21 January 2022, the Authority was notified in writing that the Applicant had made a valid application and 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. These related to the searches and enquiries undertaken by the Authority to establish what information (if any) it held falling within the scope of the Applicant's request.
9. The Authority provided submissions to the Commissioner and these are considered below. The Applicant too has supplied comments to the Commissioner.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

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

11. 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.
12. 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 that effect.

13. The Authority in its submissions explained that it had been unable to identify a financial system within the Authority with the reference number provided by the Applicant.
14. The Authority referred to investigations that had been previously carried out by its Corporate Fraud Team, Council Tax and Health & Social Care Services following allegations made by the Applicant. It explained that the bank account noted in the request had been confirmed as not being one belonging to the Authority and that, as such, it was unable to identify whose account it was.
15. The Authority provided the Commissioner with an explanation of the searches it had conducted across various services, the search terms used and the staff consulted. These services had been identified as having different rights of access to the financial and benefits systems, or had been involved in investigations into allegations made by the Applicant. The Authority highlighted that the outcomes of these previous investigations had been provided to the Applicant.
16. The Authority confirmed that, in line with its retention policy, paper files relating to the person named by the Applicant in his request had been destroyed in 2010. A further search of electronic records was made, but no information relating to the reference number or amounts stated in the request were found.
17. The Authority explained that it may have held data relating to payments made to Social Work, but that all financial records are held for six years plus one, as per the Authority's retention policy. The Services contacted had all searched their systems again using the data available:
 - the Applicant's name
 - the account number
 - the reference number
 - the business noted
 - the person named in the account (and that person's address)
18. It confirmed that no information was found falling within the scope of the request.
19. The Applicant was clearly concerned that potentially some kind of fraudulent activity had occurred relating to the person named in his request. He had provided the Commissioner with copies of documentation that he held relating to this matter, and believed that the Authority should be able to assist him further in identifying what had happened from the information he had provided in his request and subsequent correspondence.
20. 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 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 must also consider, 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 of the request).

21. Having considered all of the relevant submissions, the Commissioner is satisfied that the Authority took adequate, proportionate steps to establish whether it held any information falling within the scope of the request.
22. The Commissioner is satisfied that the searches described by the Authority would have been capable of identifying any information relevant to the request. The Commissioner also notes the possibility that, due to the Authority's retention policy, it is not possible to say whether information was held in the past. The Commissioner is therefore satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the request. He finds that the Authority was therefore correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Decision

The Commissioner finds that 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

29 March 2023

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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