



Decision Notice 078/2024

Levels of home working

Authority: Dumfries and Galloway Council

Case Ref: 202201337

Summary

The Applicant asked the Authority for information relating to levels of home working. The Authority informed the Applicant it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Background

1. On 5 November 2022, the Applicant made a request for information to the Authority. He asked for the figures for working for home rates at their highest and what those rates were now.
2. The Authority responded on 10 November 2022 with a notice, under section 17(1) of FOISA, that it did not hold the information requested. The Authority explained that it held no information relating to the figures for levels of home working as it did not track this information.
3. On 14 November 2022, the Applicant wrote to the Authority, requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not consider it credible that the Authority would not hold the information requested and submitted that the Authority may be avoiding publishing out of embarrassment.
4. The Authority notified the Applicant of the outcome of its review on 21 November 2022, upholding its original decision and informing the Applicant that it was in the process of establishing a system to track levels of home working.
5. On 23 November 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he considered the information he had requested had not been provided to spare the Authority embarrassment.

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 30 November 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice of the application in writing and invited its comments.
8. The Authority provided comments and the case was subsequently allocated to an investigating officer.
9. The investigating officer sought further comments from the Authority, but it did not provide any.

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) of FOISA. 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 standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities.
14. The Commissioner will 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 recorded information is actually held by the public authority (or was, at the time it received the request).

The Applicant's submissions

15. The Applicant submitted that it was not credible that the Authority held no information on the levels of home working.
16. The Applicant further submitted that he considered high levels of home working had led to disruption to the services provided by the Authority and that it had not provided him with the information requested to avoid embarrassment.

The Authority's submissions

17. The Authority submitted that it did not hold the information requested because it did not track working arrangements, including levels of home working.
18. The Authority explained that there were plans to develop its systems to allow it to track working arrangements, including levels of home working, but these systems were not operational at the time of the request.
19. The Authority also submitted that it would not consider high levels of home working to be embarrassing, if it were the case that there were high levels of home working, as it encourages and supports home working.

The Commissioner's view

20. Given the explanations provided by the Authority, particularly that it did not hold the information requested because it did not track that information at the time of the request, the Commissioner is satisfied, on balance, that the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant.
21. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide. Neither can he, as noted in [Decision 050/2021](#)¹ (at paragraph 23), instruct a public authority to change its record keeping systems.
22. However, the Commissioner notes that the Authority stated that it was developing its systems to allow it to record information on the working arrangements of its employees and that, when completed, it will commence recording those arrangements (including working from home arrangements).
23. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case.
24. While the Commissioner considers that it would have been useful for the Authority to have responded to his request for further submissions, he nevertheless concludes, on balance, that the Authority was correct to give the Applicant 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.

¹ <https://www.itspublicknowledge.info/decision-0502021>

Cal Richardson
Deputy Head of Enforcement

3 May 2024