



Scottish Information
Commissioner
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Decision Notice 048/2024

Period dignity officer/period dignity regional lead officer

Applicant: The Applicant

Authority: Dundee and Angus College

Case Ref: 202201206

Summary

The Applicant asked the Authority for all correspondence relating to the post of period dignity officer/ period dignity regional lead officer and the minutes and agenda for all past and forthcoming meetings of the Tay Cities period dignity working group. The Authority refused to respond to the request on the basis that it was invalid. The Commissioner investigated and found that the request was valid. Consequently, he required the Authority to review its handling of the request and notify the Applicant of the outcome of that review.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (3) and (6) (General entitlement); 8(1) (Requesting information); 47(1) and (2) (Application for decision by Commissioner); 73 (Interpretation)(definition of “information”)

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 7 September 2022, the Applicant made the following request for information to the Authority:

“This is a freedom of information request.

Please could you send me all correspondence relating to the post of period dignity officer/ period dignity regional lead officer – including the decision to create the post, the appointment, and the decision to scrap the position.

In addition, please could you supply me with minutes and agenda for all past and forthcoming meetings of the Tay Cities period dignity working group.”

2. The Authority responded on 12 September 2022. The Authority refused to respond the request, stating that:

“[the information requested] is not within the scope of FOISA. This is because you have requested copies of correspondence and documents which may or may not contain the information you are seeking. FOISA does not confer the right to request copies of documents but instead the right to ask for specific information which a public body may hold.”

3. On 14 September 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because, while FOI law provides a right to “information” and not “documents”, the Commissioner’s view (at paragraph 17 of [his guidance on the matter](#)¹) is that, where a requester has asked for a copy of a document and it is reasonably clear that it is the information recorded in the document that the requester wants, the public authority should treat the request as valid and respond accordingly.
4. The Applicant also noted that the Commissioner’s guidance refers to paragraph 5.2.1 of the *Scottish Ministers Code of Practice on the discharge of functions under FOISA and the EIRs (the Section 60 code)*², which states that “authorities should not refuse requests for copies of documents (e.g. a report, a minute or a contract) as long as it is reasonably clear from the request that it is the information recorded in the document that the applicant wants”.
5. The Authority notified the Applicant of the outcome of its review on 13 October 2022. The Authority upheld its initial response because, under section 8(1)(c) of FOISA, a requester must describe the information they are requesting for a request to be valid” and “the requestor did not request information, rather, copies of correspondence and documents which may or may not contain information the requestor might want”. The Authority therefore “deemed that the request was not a valid request for information [and] therefore not within the scope of FOISA.”
6. The Authority also quoted the below extract from decision of the Court of Session (at 43) in [Glasgow City Council and Dundee City Council v Scottish Information Commissioner](#) [2009] CSIH 73³ (“the Glasgow City Council case”):

“[I]t is implicit in the definition [of information under section 1(1) of the FOI(S)A] that a distinction is drawn between the record itself and the information which is recorded in it.... What a person can request, in terms of section 1(1), is the information which has been recorded, rather than the record itself. The right conferred by section 1, where it applies, is therefore to be given the information, rather than a particular record (or a copy of the record) that contains it. Put shortly, the [FOI(S)A] provides a right of access to information, not documentation.”

¹ [RighttoInformationorCopies \(1\).pdf \(itspublicknowledge.info\)](#)

² <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

³ <https://www.scotcourts.gov.uk/search-judgments/judgment?id=cc8f86a6-8980-69d2-b500-ff0000d74aa7>

7. On 31 October 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Authority's review because she had made it "very clear" the information she had requested.

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 7 November 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments. The Authority replied on 13 December 2022.
10. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

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

Validity of the request

12. The Applicant's request is quoted in full in paragraph 1 (above) and will not be repeated here, nor will the arguments of the Authority or the Applicant, which are similar in substance to those stated above.
13. Section 8(1) of FOISA sets down the basic requirements for a valid request for information made in terms of section 1(1). Section 8(1)(c) specifies that a request must describe the information requested. The interpretation of section 8(1)(c) must be consistent with the overall aim of FOISA, which is to achieve openness with a minimum of formal requirements. Accordingly, the only requirement is that the description is clear enough to allow the information to be identified and located.
14. The purpose of requiring a description of the information is to allow the public authority to identify and locate the information requested. While, as the Court of Session found in the Glasgow City Council case, FOISA provides a right to information and not documents, a request which describes information by reference to a document will still be valid when it is reasonably clear from the request that the applicant is seeking the information recorded in that document.
15. The Applicant's request made clear that she was seeking information under FOISA. The request sought an identifiable type of information (i.e. correspondence, minutes, agenda) and referred to a clearly identifiable subject (i.e. post of period dignity officer/ period dignity regional lead officer and Tay Cities period dignity working group). The request even specified what information the Applicant would expect to be included (i.e. the decision to create the post, the appointment, and then to "scrap" the post).
16. The Authority referred to the Court of Session judgment in the Glasgow City Council case, but did not explain why. The Commissioner can see no words or phrases in the request in this case that would suggest it would be invalid for the reasons given in the Glasgow City Council case. For example, the Applicant did not refer to "original documents" or "records",

and in her requirement for review (where she quoted from the Commissioner's guidance on the matter), she made it clear to the Authority that she was requesting information.

17. The Authority has not explained what the specific difficulty was in identifying the information requested. In its comments to the Commissioner, the Authority said that the information requested "was too broad for us to identify or locate information as the information requested had not been adequately described" and that:

"... we conclude that the request for "all copies" of any document related to a broad topic neither specifies a document which may contain the information requested nor describes the information requested."

18. The Authority has not explained why the request is broad other than that the word "all" is used in "all correspondence" about a specific subject. The Commissioner does not regard the request as particularly broad. Even if it were, that alone does not mean that the information requested is not adequately described and that it cannot be identified. The Commissioner also notes that he frequently receives applications relating to valid requests for information where the request seeks "all correspondence" regarding a specific subject.
19. The Authority is correct to regard the Court of Session as authoritative in the interpretation of FOISA and to apply FOISA in the light of the Court's decisions. Recently, in [Scottish Ministers v Scottish Information Commissioner](#) [2023] CSIH 46⁴, the Court of Session commented (at 37) that:

"The policy underlying FOISA is the desirability of making information available to the public, in the interests of promoting open, transparent and accountable government. There should be no scope for the introduction of technicalities and unnecessary legal concepts calculated to over-complicate matters. Such an approach would be liable to restrict the disclosure of information in ways that run counter to the clear legislative policy".

20. In all of the circumstances of this case, the Commissioner is satisfied that the description of the information requested by the Applicant was clear and that her request complied fully with the requirements of section 8(1)(c) of FOISA.
21. Consequently, the Commissioner finds that the Authority was obliged to respond to the request in terms of Part 1 of FOISA. The Commissioner requires the Authority to do so now, by carrying out a review in terms of section 21 of FOISA.
22. For the avoidance of doubt, the Commissioner's decision requires the Authority to, in line with section 1(4) of FOISA, review its handling of the request with reference to the information held by it at the time the request was received, not to any information that the Authority may now hold that it did not hold at the time of the request.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

⁴ https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2023csih46.pdf?sfvrsn=b234127a_1

In the circumstances, the Commissioner has concluded that that the Applicant's request to the Authority met the requirements of section 8(1) of FOISA and so was a valid information request for the purposes of section 1(1). On this basis, the Authority was under an obligation to respond to the request.

The Commissioner therefore requires the Authority to conduct a review in relation to the Applicant's request in accordance with section 21 of FOISA, on the basis that the Applicant made a valid request for information, by **14 May 2024**.

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Cal Richardson
Deputy Head of Enforcement

28 March 2024

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.”
- (3) If the authority –
 - (a) requires further information in order to identify and locate the requested information; and
 - (b) has told the applicant so (specifying what the requirement for further information is),then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.
...
 - (6) This section is subject to sections 2, 9, 12 and 14.

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
 - (a) is 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) states the name of the applicant and an address for correspondence; and
 - (c) describes the information requested....
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- (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).

73 Interpretation

In this Act, unless the context requires a different interpretation –

...

“information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

...