



# Decision Notice 070/2024

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## Actions taken regarding antisocial behaviour

**Authority: Stirling Council**

**Case Ref: 202200458**

### Summary

The Applicant asked the Authority for information relating to transcripts of meetings and discussions and actions taken as a result of complaints received from local residents regarding anti-social behaviour in the St Ninians area. The Authority provided the information requested, but the Applicant believed the Authority's response was incomplete. The Commissioner investigated and found that the Authority had complied with FOISA in responding to the Applicant's request.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 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 31 October 2021, the Applicant made a request for information to the Authority. The Applicant asked for information relating to transcripts of meetings and discussions and actions taken as a result of complaints received from residents of Cornhill Crescent and Glencairn Street regarding anti-social behaviour in the St Ninians area.
2. The Authority responded on 8 December 2021 and provided the Applicant with all of the information it said it held falling within the scope of their request subject to the redaction of third party personal information.

3. On 14 December 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because the information disclosed only went back to February 2020 when they had in their possession correspondence as far back as June 2015. The Applicant therefore requested a thorough review and for all of the information they requested to be disclosed.
4. The Authority notified the Applicant of the outcome of its review on 16 February 2022. The Authority disclosed some further information it had located.
5. On 14 April 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated they were dissatisfied with the outcome of the Authority's review because they considered that the further information disclosed at review stage had no bearing to their initial request and that they still believed the Authority was withholding, without cause, information predating the oldest information it had disclosed.

## **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 22 April 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently 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 the Authority carried out, whether it would be expected to, and whether it does, hold further information, details of any relevant retention schedules and the relevance of the information disclosed at review stage.

## **Commissioner's analysis and findings**

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

### ***Section 1(1) – General entitlement***

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 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.
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).

### ***The Authority's submissions about the exemption***

12. The Authority maintained it is satisfied it provided the Applicant with all the information it held falling within the scope of their request and that it only withheld a small amount of information on the basis that it was third party personal data (section 38(1)(b) of FOISA).

13. The Authority provided detailed information on its various failings in responding to the Applicant's request, including:
  - failing to respond in time to the initial request and the request for review;
  - failing to contact the Applicant when it knew it would not respond in time and failing to explain the reasons for this failure when it apologised to the Applicant;
  - initially only asking one of its services to check again whether it held any further information.
14. The Authority also provided details information on the actions it has taken to guard against the reoccurrence of similar failings, including the implementation of a new case management system, the creation of a Lead Solicitor Information Governance role and training being delivered to its Record and Information Governance Team.
15. The Authority also provided evidence of its response rates to FOI requests since the date of the Applicant's request, which show a marked improvement.
16. In terms of the searches it carried out, the Authority stated they were based on the criteria and keywords in the text of the Applicant's request and that it also searched for the Applicant's name, with results then manually filtered to confirm if any of the results related to the issues and keywords in their request.
17. The Authority explained the following services were involved in carrying out searches:
  - Governance, and the Democratic Team, searched for information relating to anti-social behaviour in the areas identified in the request to ascertain whether there were any results in any Council/Committee meeting minutes, reports or other elected member related documentation but there were none;
  - Corporate Services searched its complaints case management system using the keywords in the request and also searched across all elected member, MSP and MP enquiries. This returned a number of results, which were identified and considered as part of the Authority's initial response;
  - The Community Development Team, including the Community Council Liaison Officer, carried out a wide range of searches using the keywords in the request as well as manual searches by sifting through all information and documents held relating to the Applicant to identify any information specifically described in the request;
  - The Safer Communities Team, who held the majority of the information, searched its anti-social behaviour case management system (used to log reports and complaints of anti-social behaviour) using the keywords "Cornhill Crescent" and "Glencairn Street". All results were then crosschecked against the perpetrator name (which would capture any other addresses) and a further search was undertaken using the keyword "drugs" in the area of "St Ninians", with results then crosschecked against the streets named in the request. All results were then manually checked by a senior officer within the Safer Communities Team to ensure that the information identified was within the scope of the request through reference to the criteria in that request;

- All of the above services carried out searches on emails stored in Outlook and Office 365, as well as all relevant case management systems held or used to log all general and specific customer enquiries, complaints and updates;
  - A search was also undertaken on the Authority's "Verint" system, which is used to log complaints about litter, fly-tipping and environmental crime but no relevant information was identified.
18. The Authority stated it disclosed a document to the Applicant in its initial response containing a range of emails, the earliest of which is dated 25 September 2018. The Authority explained it would not be expected to hold further, or older, information relating to the Applicant's request as any older information would have been destroyed in line with its retention schedules.
19. The Authority stated it complies with the relevant retention schedules set out by the Scottish Council of Archives, which is standard practice across local authorities in Scotland, who suggest retention periods of between two to three years for the information requested by the Applicant.
20. The Authority explained its case management system has a built-in retention date and deletes information automatically once this date passes, which is currently set at:
- two years relating to noise complaints;
  - two years for formal warnings and notices issued under anti-social behaviour legislation;
  - three years for general case management records.
21. The Authority noted that it should have explained this to the Applicant at initial response and review stage. The Authority has provided evidence that it has now contacted the Applicant doing so, as well as explaining the nature and effect of its retention schedules and providing the Applicant with advice on assistance on where they might find further information of interest to them.

*The Applicant's submissions about the exemption*

22. The Applicant believes, as they have in their possession information relating to their request dating back to 2014, that the Authority holds much more information that it has provided and that it is withholding that information without cause.
23. The Applicant also stated they are in possession of some 300 emails between staff members at various departments within the Authority and residents of Cornhill Crescent which relate to their request and which date from 2015 to 2022.

*The Commissioner's view about the exemption*

24. The standard of proof to determine whether a Scottish public authority holds information is the civil standard on 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 also considers, 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 it received the request).

25. The Commissioner accepts that the Authority has taken adequate and proportionate steps to establish whether it held any further recorded information that fell within the scope of the Applicant's request.
26. The Commissioner has taken into account the Authority's position, which he considers reasonable, that it would previously have held further information falling within the scope of the Applicant's request but that information had, at the time of the request, been destroyed in accordance with the retention schedules it follows for information relating to noise complaints, formal warnings and notices issued under anti-social behaviour legislation and general case management records.
27. The Commissioner recognises that the Applicant has in their possession information predating the oldest information disclosed by the Authority. However, the Commissioner is satisfied that the reason the Authority has not disclosed any older information is because it has been destroyed in accordance with its retention schedules and it therefore no longer holds that information.
28. The Commissioner is therefore satisfied that the Authority does not (and did not, at the time of this request) hold any further information falling within the scope of the Applicant's request.
29. Consequently, the Commissioner concludes that the Authority was correct to advise the Applicant that it did not hold any further information falling within the scope of their request, thereby complying with section 1(1) of FOISA.

***Relevance of information disclosed at review stage***

30. The Applicant disputed the relevance of the further information the Authority disclosed at review stage, which they considered related to a different area and has no bearing on their initial request.
31. The Authority explained it disclosed the information because it relates to zero-tolerance anti-social behaviour campaigns from 2017 and 2019 which targeted key areas experiencing those problems, including St Ninians.
32. Having reviewed this information, the Commissioner agrees that it relates to anti-social behaviour in St Ninians and notes that it refers to the two streets that the Applicant specified in their request.
33. The Commissioner appreciates why the Applicant does not consider this information relevant, particularly when viewed in the context of their belief that the Authority has withheld other, more relevant information.
34. However, the Commissioner understands why the Authority considers the information relevant as it relates to anti-social behaviour in the area the Applicant requested information in respect of and when it is viewed in the context of their request for review where they stated their belief the Authority had withheld information it should have provided.
35. Taking all of this into consideration, the Commissioner is satisfied the information disclosed by the Authority at review stage is relevant to the Applicant's information request.

***Other matters***

36. While the Commissioner is satisfied that the Authority held no further information falling within the scope of the request, he considers that it should have, in line with its section 15 duty under FOISA, explained to the Applicant *why* it held no further information. In other

words, the Authority should have advised the Applicant of the nature and effect of its retention schedules.

37. The Commissioner also notes that both the Authority's initial response to the Applicant's request and its response to their requirement for review were late.
38. Given that the Authority has since provided an explanation to the Applicant as to why it does not hold any further information falling within the scope of their request and provided evidence to the Commissioner detailing the remedial action it has taken to improve the timeliness and quality of its responses, the Commissioner does not require the Authority to take any further action.

## **Decision**

The Commissioner finds that, in respect of the matters specified in the application, the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002.

## **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.

**David Hamilton**  
**Scottish Information Commissioner**

**30 April 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.”
- ...
- (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.
- ...

#### 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).