



Scottish Information
Commissioner
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Decision Notice 256/2024

Decision-making around council tax charging

Authority: Glasgow City Council

Case Ref: 202400360

Summary

The Applicant made a multi-part request which asked the Authority for information related to its decision-making on council tax charging. The Authority responded to some parts of the request, disclosing some information. The Authority determined that some of the other requests were not valid requests in terms of FOISA.

During the investigation, the Authority disclosed some more information. The Commissioner investigated and found that the Authority was entitled to withhold some information under section 38(1)(a) of FOISA but was not entitled to withhold other information.

The Commissioner agreed that some parts of the request did not ask for recorded information and so were not valid requests.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1) Notice that information is not held); 38(1)(a) and (2A); 47(1) and (2) (Application for decision by Commissioner)

United Kingdom General Data Protection Regulation (the UK GDPR) articles 4(1) (Definitions); 15 (Right of access by the data subject)

Data Protection Act 2018 (the DPA 2018) sections 3(2) and (3) (Terms relating to the processing of data)

Background

1. On 3 August 2023, the Applicant made an 11-part request for information to the Authority through its online portal. He asked for general information regarding council tax exemption criteria and the Authority's appeals process, and he also asked for specific information in relation to his council tax payments, minutes of specific appeal meetings and evidence that the Authority had followed the relevant procedures and guidelines.
2. The Authority failed to respond to the request.
3. On 28 September 2023, the Applicant wrote to the Authority requesting a review of its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 26 October 2023. The Authority stated that it had no record of previously having received the request, and it apologised to the Applicant. It notified the Applicant that it was withholding some information under section 38(1)(a) of FOISA, as it comprised his own personal data, and it was withholding other information under section 25(1) of FOISA, as it was publicly available on its website. The Authority refused to comply with two requests, as it did not consider them to be valid requests for information, it disclosed some information in relation to one request, and it provided advice and assistance to the Applicant in relation to some of his other requests.
5. On 6 March 2024, 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 he did not consider that the information he asked for had been provided.

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 20 March 2024, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information 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 how it identified and located information falling within scope of the requests and its reasons for withholding information under sections 25(1) and 38(1)(a) of FOISA. The Authority was also asked to explain why it did not consider certain requests to be valid requests for information.

Commissioner's analysis and findings

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

Scope of the investigation

10. During the investigation, the Applicant stated that he was not seeking the names, details, complaints or comments of other constituents, parties or individuals and that he expected the Authority to redact this information. Given this, the Commissioner will not consider the information the Authority has withheld as third-party personal data under section 38(1)(b) of FOISA.
11. Furthermore, the Applicant has not expressed any dissatisfaction with the Authority's response to request (vi), and so this will not be considered in this decision.

Section 1(1) - General entitlement

12. 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 in section 1(6) are not applicable in this case.
13. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with the information that an applicant believes an authority should hold. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
14. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information an applicant believes the authority should hold.
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 lies, the Commissioner considers the scope, 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. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

Requests (i), (ii) and (iv)

- (i) *A list of Council tax Payments and a overall Total for 820490223 from Aug 2015 to present.*
- (ii) *A list of Council tax Payments and a overall Total for 805462514 from 1st Jun 2010 to present.*
- (iv) *A copy of the minutes, of the Appeal(s) referenced by GCC CT Finance Dpt.*
16. Requests (i) and (ii) sought information about council tax payments made, over specific time periods, by the Applicant.
17. Request (iv) sought copies of meeting minutes that had been referred to in other correspondence between the Applicant and the Authority.

18. In its review outcome, the Authority withheld all of the information falling within the scope of requests (i), (ii) and (iv) under section 38(1)(a) of FOISA, arguing that it was the Applicant's own personal data. By way of advice and assistance, the Authority informed the Applicant of the procedure he should follow to obtain his own personal data by submitting a subject access request (SAR) under the UK General Data Protection Regulations (UK GDPR).
19. During the investigation, the Authority amended its position in relation to request (iv) and submitted that it now considered that only some of the information captured by request (iv) was the Applicant's own personal data, with the remainder being the personal data of third parties.
20. The Applicant challenged the Authority's response to these requests. He submitted that he had asked the Authority for this information and it had failed to provide it.

Section 38(1)(a) – Personal information (requester's own personal data)

21. Section 38(1)(a) of FOISA contains an absolute exemption in relation to personal data of which an applicant is the data subject. The fact that it is absolute means that it is not subject to the public interest test set out in section 2(1) of FOISA.
22. This exemption exists under FOISA because individuals have a separate right to make a request for their own personal data under the GDPR. This route is more appropriate for individuals accessing their personal data, as it ensures that it is disclosed only to the individual rather than, as all disclosure under FOISA is, disclosed into the public domain. Section 38(1)(a) does not deny individuals a right to access information about themselves, but it ensures that the right is exercised under the correct legislation (the GDPR) and not under FOISA.
23. Personal data are defined in section 3(2) of the DPA 2018 which, read with section 3(3), incorporates the definition of personal data in Article 4(1) of the GDPR:

" ... any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person."
24. It is clear from the Authority's response to these requests that it considered the requests to be a SAR under Article 15 of the GDPR. During the Commissioner's investigation, the Authority invited the Applicant to follow its procedures to obtain his personal data in this way, under the GDPR.
25. The Commissioner has seen the information withheld from the Applicant in relation to requests (i) and (ii). It comprises lists of payments made by the Applicant, on specific dates and times, including the amounts of those payments and the balance of the council tax accounts. The information also contains the Applicant's name, address and council tax reference numbers.
26. The Commissioner has also considered the information the Authority is withholding under section 38(1)(a) of FOISA in response to request (iv). He notes that it includes the Applicant's name and address and the circumstances of his appeal to the Authority. It is clear that all of this information relates to the Applicant directly. There can be no doubt that this is the Applicant's own personal data. That being the case, the Commissioner finds that the Authority was entitled to withhold the information under section 38(1)(a) of FOISA.

27. The Commissioner has also considered the information that the Authority originally withheld under section 38(1)(a) of FOISA, but which it is now withholding under section 38(1)(b) of FOISA. The Commissioner will not reach a decision on whether this information is the personal data of third parties (as the Applicant has excluded this from his investigation) but he can clearly see that the information is not the personal data of the Applicant, and therefore he must conclude that it was wrongly withheld under section 38(1)(a) of FOISA.

Request (iii)

A copy of GCCs Long Term Empty Home Requirements/Exemptions/Criteria etc similarly Major Repair and Structural Alteration Requirements/Exemptions/Criteria etc

28. In request (iii) the Applicant asked for copies of the Authority's approach to long term empty properties and the council tax exemption criteria for properties undergoing (or requiring) major repair and structural alteration.
29. The Authority notified the Applicant that this information was exempt from disclosure under section 25(1) of FOISA, because it was published on the Authority's website and was therefore reasonably accessible to him, without having to request it under FOISA. The Authority provided the Applicant with links to the relevant web pages.
30. The Applicant was dissatisfied with this response. He stated that he found the information available via the web links to be limited. He commented that there were no criteria for his situation and, although he had asked for the Authority's own guidance, protocols, framework, legislation, etc. on this matter, it had not been provided. He also submitted that the web links were no longer current.
31. In its submissions to the Commissioner, the Authority explained that its website had moved to a new platform in recent months which had broken the previously issued web links. During the investigation, the Authority provided the Applicant with new links to the web pages it had previously referred to.
32. The Commissioner notes that the Applicant stated that he was dissatisfied with the Authority's response to request (iii) because he could not find any criteria that were particular to his situation in the information published online. However, having considered the wording of request (iii), the Commissioner also notes that the phrasing of this request is general in nature and does not make any reference to the Applicant's particular circumstances.
33. The Commissioner was not satisfied with the searches that the Authority had carried out for information falling within the scope of request (iii). He considered it likely that other information may be held, that would meet the terms of the Applicant's request. During the investigation, following additional searches, the Authority identified other information (internal documents and procedures) that fell within the scope of request (iii), and it disclosed this information to the Applicant.
34. As the Authority did not identify and disclose all of the information it held which fell within the scope of request (iii) in its response to the Applicant's requirement for review, the Commissioner must find that the information disclosed by the Authority was not exempt from disclosure and that the failure to disclose it in response to the initial request was a breach of section 1(1) of FOISA.

Request (v)

A copy of GCCs Appeals process/guidance/framework relative to CT Appeals.

35. In its response to request (v) the Authority stated that this information was exempt from disclosure under section 25(1) of FOISA, because it was published on the Authority's website, and it provided links to the relevant web page. The Authority also explained to the Applicant that the published information did not include information in relation to the Long-Term Empty Premium because that was a discretionary decision taken by a panel of senior officers from a specific department.
36. In its submissions to the Commissioner, the Authority explained that the web links given to the Applicant in its review outcome were incorrect, and it disclosed the correct, and updated web links to the Applicant during the investigation.
37. The Applicant remained concerned that he had not been given the information he had asked for.
38. As the Authority has acknowledged that it had provided an incorrect web link to the Applicant in its review outcome, the Commissioner must find that the Authority failed in its duty under section 15(1) of FOISA, by not providing adequate advice and assistance in directing the Applicant to where he could find the information he asked for.
39. During the investigation, following additional searches, the Authority identified other information within scope of the request, contained within its internal procedure "Guidance for Staff Dealing with a Council Tax Grievance or Appeal". Although this internal guidance had been updated since the time of the request, the Authority disclosed the information to the Applicant.
40. As the Authority did not identify or disclose this information when responding to the Applicant's requirement for review, the Commissioner must find that the Authority failed to comply with section 1(1) of FOISA in providing the Applicant with the information he asked for in request (v).

Request (vii)

Evidence within the CT guidance/rules/framework that a double penalty charge is legally enforceable on a owner who is and has been actively trying to reinstate there property yet this remains uninhabitable due to inactivity from there insurer.

41. In request (vii) the Applicant asked for information about the enforceability of double penalty charging in relation to council tax. In its review outcome, the Authority noted that the legal basis for charging an additional premium for long term empty properties is held within the following regulation: Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 (as amended). The Authority also provided the Applicant with the date that it implemented the charging of the long-term empty premium of 100%.
42. In its submissions, the Authority argued that the wording of the Applicant's request was particularly specific to his personal circumstances and, as a result, it argued that the precise information he sought did not exist. The Authority explained that it responded to the Applicant by way of providing advice and assistance, and that it gave him information on the relevant legislation.
43. The Applicant was dissatisfied with the Authority's review outcome as he did not consider the Authority had provided him with the evidence he had requested.

44. The Commissioner has carefully considered the wording of the request and the Authority's response.
45. It is a matter of fact that the provisions of the quoted legislation (Council Tax regulations) confer powers on local authorities to vary, by reducing or increasing, the amount of council tax charged to unoccupied dwellings. The maximum increase allowable under the terms of this legislation is 100 per cent, i.e. a doubling of the charge. The Commissioner can therefore accept that the Authority has provided reasonable advice and assistance in responding to the first part of request (vii).
46. However, the Commissioner also accepts, on balance, that the Authority does not hold any information which would adequately respond to the specific circumstances laid out in the complete request, including the phrase "... yet this remains uninhabitable due to inactivity from there [sic] insurer."
47. That being the case, the Commissioner finds that the Authority should have issued a notice under section 17(1) of FOISA, advising the Applicant that it did not hold the information he had requested. In failing to do so, the Authority failed to comply with section 17(1) of FOISA.

Request (viii)

Evidence that GCC Finance has made various attempts to undertake meetings, have an open door policy, attempted to explain and evidence the situation without resorting to sending template closed door responses.

48. The Authority explained to the Applicant in its review outcome that freedom of information legislation entitles applicants to recorded information that the Authority holds. It stated that it did not consider request (viii) to be a valid request for recorded information, under FOISA.
49. The Applicant submitted that as the Authority had closed some of their offices, it was no longer possible for a member of the public to speak to the Authority in person. He argued that the Authority had refused to facilitate a meeting or have a telephone conversation with him, and had, instead, provided him with a single, dismissive, unevidenced response. He argued that the Authority was failing to provide a customer service and was not fulfilling its duties to the public. He wanted the information he had requested.
50. The Commissioner has examined the wording used in request (viii). Although the request asked for "evidence", the evidence sought related to whether the Authority had made any attempt to carry out its duties in a manner acceptable to the Applicant. Furthermore, the Commissioner considers the phrasing of the request suggests that, if any information was held, it would be the Applicant's own personal data (and exempt under section 38(1)(a) of FOISA) as it is seeking evidence of the steps taken by the Authority in relation to his own particular circumstances.
51. The Commissioner acknowledges that the Applicant has deep frustration at his experience with the Authority, in attempting to resolve and understand his situation. However, the Commissioner's remit extends to FOI law, and in that regard the Commissioner finds that request (viii) was not a valid request under FOISA, because it did not seek recorded information.

Request (ix)

Provide evidence that GCC Finance followed and honoured the advertised 'Responsibility of the Council' - to provide relative advice and assistance to help owners bring back these

homes into residential use. Or "when charging a premium might cause hardship or act as a disincentive to bring the home back into use..."

52. In its review outcome, the Authority explained to the Applicant that it considered request (ix) to be a request for his own personal data and, as such, this information was exempt from disclosure under section 38(1)(a) of FOISA.
53. During the investigation, the Authority argued that it did not consider request (ix) to be a request for recorded information and it stated that it did not hold any such information. The Authority submitted that discussions between its officers and the Applicant had taken place by telephone but no recorded information existed. The Authority argued that in order to evidence that it had acted responsibly in its dealings with the Applicant over his council tax, it would have to create information, and this would be contrary to paragraphs 46 and 47 of the Commissioner's guidance in relation to [section 17 of FOISA](#)¹.
54. The Applicant submitted that he was concerned that the Authority was not following relevant guidelines regarding the avoidance of placing citizens in financial hardship and was abusing its position.
55. The Commissioner recognises that the Applicant has genuine concerns about the practices of the Authority, and whether it has followed its own procedures. However, the Commissioner can only consider whether or not information is held, he cannot reach a view on or investigate whether an authority's actions and decision-making has complied with its own policies.
56. The Commissioner notes that the Authority has confirmed that it did have telephone discussions with the Applicant, but it held no records of those communications. The Commissioner's role is to determine whether an authority has responded to a request in line with the requirements of FOISA, he has no legal powers to compel an authority to record certain information. While he considers it would have been good practice to make a note of telephone communications with the Applicant, he cannot find the Authority in breach of FOISA for not doing so.
57. In any case, as he did previously for request (viii), the Commissioner has examined the wording used in request (ix). As before, although the request asked for "evidence", the evidence sought related to whether the Authority had made any attempt to carry out its duties in accordance with relevant guidance, and internal policies and procedures. The Commissioner is not satisfied that this was a valid request for recorded information.
58. The Commissioner therefore finds that request (ix) was not a valid request under FOISA.

Request (x)

Why GCC Finance has not provide a mechanism to discuss this matter, instead states the matter is closed.

59. The Authority explained to the Applicant in its review outcome that it did not consider request (x) to be a valid request for information.
60. The Applicant again argued that he was concerned that the Authority was not following appropriate guidelines, and that the Authority needed to demonstrate that it was acting within

¹ <https://www.foi.scot/sites/default/files/2022-03/BriefingSection17Informationnotheld.pdf>

the law and in accordance with guidance, protocols and policies related to council tax and council tax appeals.

61. The Commissioner has carefully considered the wording of request (x). He finds that the request asks “why” the Authority has taken a particular view. While it is possible, in some instances, that a “why” request may capture recorded information (if the rationale for a decision or course of action was recorded) in this instance the Commissioner does not accept that the request would capture any recorded information.
62. The Commissioner has published [guidance](#)² for requesters on how to ask for information under FOISA. Within that guidance he notes that requesters should:

“...avoid asking for an employee’s opinion or views on an issue, as this is unlikely to be recorded”

63. The Commissioner considers that this request is seeking an explanation from the Authority (he is asking the Authority to explain its actions) rather than recorded information. Given this, he is satisfied that request (x) is not a valid request under FOISA for recorded information.

Request (xi)

Why GCC Finance advised Cllr Andrew that an Appeal process would be required and there were no dates in the calendar for this in the foreseeable future, then issued within days an apparent (generic) Appeal response.

64. The Applicant stated that he had requested this information because he wanted to establish that the Authority’s decision making had been in accordance with the relevant procedures, policies, guidelines and legislation.
65. The Authority initially responded to request (xi) stating that it was unable to provide the information requested because it considered it was the Applicant’s own personal data and, therefore, was exempt from disclosure under section 38(1)(a) of FOISA.
66. In its submissions to the Commissioner, the Authority changed its position. It stated that it no longer considered request (xi) to be a valid request under FOISA, because the request did not seek recorded information.
67. As with requests (viii), (ix) and (x), the Commissioner is not satisfied that request (xi) is seeking recorded information, and he does not consider it to be a valid request, in terms of section 1(1) of FOISA.
68. As with request (x), this request is also asking the Authority to explain “why” it followed a particular course of action, rather than asking for recorded information that might be held.
69. The Commissioner acknowledges that the Applicant submitted this request in order to determine whether the Authority’s decision-making had followed due process, but he is not satisfied that the wording of the request would capture any recorded information. He finds that request (xi) is not a valid request, under FOISA, for recorded information.

² https://www.foi.scot/sites/default/files/2022-03/Tips_for_Requesters.pdf

Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that by correctly withholding personal data under section 38(1)(a) of FOISA in responding to requests (i), (ii) and (iv), the Authority complied with Part 1 of FOISA.

However, the Authority failed to comply with Part 1 of FOISA by;

- failing to identify and disclose internal documents and procedures falling within scope of request (iii),
- failing to give appropriate advice and assistance under section 15(1) of FOISA in providing the Applicant with an incorrect web link in response to request (v),
- failing to identify and disclose an internal procedure falling within scope of request (v), and
- failing to issue a notice under section 17(1) of FOISA that it held no information within scope of request (vii).

Given that the Authority has since disclosed information falling within the scope of requests (iii) and (v), the Commissioner does not require it to take any further action in relation to these failures.

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.

Euan McCulloch
Head of Enforcement

11 November 2024