



Scottish Information
Commissioner
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Decision Notice 282/2024

Spending of Council Tax

Authority: South Lanarkshire Council

Case Ref: 202201021

Summary

The Applicant asked the Authority for information relating to Council Tax spending. The Authority informed the Applicant that it considered the request to be vexatious and that it was not obliged to comply. During the investigation, the Authority also stated that it did not hold the information requested. The Commissioner investigated and found that the Authority was not entitled to refuse the request on the basis it was vexatious, but he was satisfied that it did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 5 May 2022, the Applicant made a request for information to the Authority. Among other things, she asked for:

“[T]he previous 3 years of receipts for where the council tax funding is being spent. I do not want to see percentages but proof in pounds GBP as to where the annual council tax is being spent.”
2. The full request, including the questions not being considered in this decision notice, is set out in Appendix 1.

3. The Authority responded on 31 May 2022. The Authority provided the Applicant with links to [information published on its website](#)¹ on how the Authority spends Council Tax.
4. On 2 June 2022, the Applicant wrote to the Authority requesting a review of its decision, because she had asked to see “receipts” and not percentages or budgets. On 6 June 2022, the Authority replied to the Applicant, stating that she could request a review and asked her to direct any such request to a specified address. On 10 June 2022, the Applicant again wrote to the Authority, requesting a review of its decision. On 13 June 2022, the Authority replied to the Applicant by resending a copy of its initial response of 31 May 2022. On 14 June 2022, the Applicant wrote to the Authority for a third time requesting a review of its decision.
5. The Authority notified the Applicant of the outcome of its review on 8 July 2022. The Authority notified the Applicant that it now considered her request vexatious in terms of section 14(1) of FOISA, for the following reasons:
 - it interpreted “receipts” to mean “written acknowledgement of having received, or taken into one’s possession, a specified amount of money, good, etc or proof or evidence of expenditure”. Given the considerable volume of the information requested, the Authority considered that complying with the request would impose a significant burden on it
 - there was no serious purpose or value in requesting such an extensive amount of information
 - the purpose of the Applicant’s request (including the questions not being considered in this decision notice) was “in relation to a dispute regarding the liability for Council Tax”
 - the true purpose of the request was to disrupt or harass the Authority in order that the Applicant be relieved of liability for Council Tax.
6. On 15 September 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the Authority’s review because she did not agree her request was vexatious.
7. In her application to the Commissioner, the Applicant only expressed dissatisfaction with the Authority’s response to the question set out in paragraph 1 above. The Commissioner will therefore not consider the other questions in her request (set out in Appendix 1) in his Decision Notice.

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 20 October 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.
10. The Authority provided comments, and the case was subsequently allocated to an investigating officer.

¹ https://www.southlanarkshire.gov.uk/info/200258/what_to_pay/1676/how_we_spend_your_council_tax

Commissioner's analysis and findings

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

Section 14(1) – Vexatious requests

12. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.
13. The Commissioner has published [guidance on the application of section 14\(1\) of FOISA](#).² This states:

“There is no definition of "vexatious" in FOISA. The Scottish Parliament considered that the term "vexatious" was well-established in law and chose to give the Commissioner latitude to interpret the term in that context, so that the interpretation might evolve over time in light of experience and precedent.”
14. In the Commissioner's view, there is no single formula or definitive set of criteria that allow a formulaic approach to be taken to determining whether a request is vexatious. Each request must be considered on the merits of the case, supported by evidence, clear evaluation and reasoning. Although this is not an exhaustive list, the following factors will be relevant to a finding that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:
 - (i) it would impose a significant burden on the public authority
 - (ii) it does not have a serious purpose or value
 - (iii) it is designed to cause disruption or annoyance to the public authority
 - (iv) it has the effect of harassing the public authority
 - (v) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
15. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requester, he also acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering whether a request is vexatious.

The Authority's submissions

16. The Authority argued that, for an organisation of its size, three years' worth of receipts would be a very large amount of information so locating and providing this information would impose a significant burden on it.
17. The Authority accepted that this would not, of itself, make the request in question vexatious. However, it submitted that it was important to put the request in question into context by reference to the other requests made by the Applicant (set out in Appendix 1). The Authority explained that it often received requests for information based on statements of erroneous law challenging the legality of the Council Tax levy and provided the Commissioner with links to websites demonstrating examples of this.

² <https://www.foi.scot/sites/default/files/2023-07/BriefingSection14VexatiousorRepeatedRequests.pdf>

18. The Authority accepted that it may not have been the Applicant's intention to deliberately harass the Authority as she might honestly believe the law as stated on these websites. However, the Authority explained that it was of the view that no reasonable person would expect the Authority to have to provide the volume of information requested when linked to the overall context of the Applicant's request.
19. The Authority submitted that the purpose of the Applicant's request (as a whole, including the other requests set out in Appendix 1) was "in relation to a dispute regarding the liability for Council Tax". The Authority argued that there was no serious purpose or value in requesting such an extensive amount of information and that the true purpose of the request was to disrupt or harass the Authority in order that the Applicant be relieved of liability for Council Tax.
20. The Authority explained that its position that the request in question was vexatious was based on the content of the request (as a whole, including the other requests set out in Appendix 1). The Authority confirmed that there was no other relevant correspondence between it and the Applicant.
21. During the investigation, the Authority reconsidered its position and stated that it did not hold the information requested. The Authority confirmed that it still considered the request in question vexatious in terms of section 14(1) of FOISA, but that, if the Commissioner found that it was not vexatious, then its position was that it did not hold the information requested in terms of section 17(1) of FOISA.

The Applicant's submissions

22. The Applicant denied that her request was vexatious and stated that she was not trying to burden, annoy, disrupt or harass the Authority.
23. The Applicant explained that she believed the Authority would have annual accounts of all expenditure for the past three years, either on a spreadsheet or similar document, from which it could easily access and share the information requested without "any additional costs or excess work".

The Commissioner's view

24. The Commissioner has carefully considered the submissions of both the Applicant and the Authority.
25. As rehearsed earlier, the Authority confirmed during the investigation that it did not hold the information requested. To comply with the request, therefore, would only require the Authority to issue a notice, under section 17(1) of FOISA, that it did not hold the information requested. As a result, the Commissioner will not consider further the arguments the Authority advanced in relation to the burden that complying with the request would impose.
26. The request in question asked for information on how the Authority spent Council Tax. Given the clear public interest in this subject matter, the Commissioner would require strong evidence before deeming such a request had no serious purpose or value.
27. While the request in question was framed in the context of other requests that appear to be challenging legality of the Council Tax levy, the Commissioner has not received sufficient evidence to persuade him that the sole or principal purpose of the request in question was to further a dispute about liability for Council Tax rather than genuinely seeking information. In the circumstances, he is therefore not satisfied that the request in question the request was so lacking in serious purpose that it was vexatious.

28. The Commissioner recognises that some requests may be vexatious because the volume of information requested is so disproportionate to the value of that information. However, he does not accept that this applies to the request in question, given that the Authority has now informed the Commissioner that it does not (and did not, on receipt of the request) hold the information requested – a position it could establish through relatively straightforward enquiries (a position for which – see below – there was always a straightforward and readily intelligible explanation, rooted in the established way in which the Authority is funded).
29. In all of the circumstances, the Commissioner is not satisfied, on the basis of the submissions he has received, that the Authority was entitled to refuse to comply with the request in question on the basis that it was vexatious.
30. The Commissioner therefore finds that the Authority was not entitled to refuse to comply with the request in question on the basis that section 14(1) of FOISA applied.
31. The Commissioner notes that the Authority has now [published information on its website](#)³ regarding information requests that seek to challenge to the legality of the Council Tax levy. He recognises that dealing with such requests can be challenging for public authorities to respond to.
32. Depending on the nature of the request and the specific circumstances, the Commissioner recognises the potential for public authorities to refuse to comply with such requests under the vexatious and manifestly unreasonable provisions within FOISA and Environmental Information (Scotland) Regulations 2004. However, he was not satisfied, in the specific circumstances of this case and given the submissions provided by the Authority, that the request in question in this case was vexatious in terms of section 14(1) of FOISA.
33. The Commissioner will go on to consider whether the Authority holds the information requested.

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

34. 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.
35. 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.
36. 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.

³ https://www.southlanarkshire.gov.uk/info/200258/what_to_pay/2205/council_tax_-_why_you_are_required_to_pay

37. The Commissioner 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 recorded information is actually held by the public authority (or was, at the time it received the request).

The Authority's submissions

38. The Authority noted that the request in question sought information in relation to Council Tax spend and what it was used for. However, it explained that it has several sources of income – one part of which is money raised from Council Tax.
39. The Authority submitted that the information held by it relates to the spending of all monies received by it (including Council Tax), regardless of source, and it was therefore unable to identify any specific expenditure funded by Council Tax alone as all spending comes from a combined fund of several sources of income.

The Applicant's submissions

40. The Applicant believed the Authority would have annual accounts of all expenditure for the past three years, either on a spreadsheet or similar document, from which it could easily access and share the information requested.
41. The Applicant further explained that she believed the information requested should be retained for six years and that, as a taxpayer, she had the right to know how the money was being spent.

The Commissioner's view

42. The Commissioner has carefully considered the submissions of both the Applicant and the Authority.
43. The Commissioner recognises that Council Tax, in conjunction with other income, will be used to pay for all local services. However, the Authority has stated that it does not hold the information requested as it was unable to separate Council Tax funding from other funding as a source of income in relation to specific expenditure.
44. The Commissioner is satisfied with the Authority's explanation. He accepts that, by the close of the investigation, the Authority took adequate and proportionate steps in the circumstances to establish if the information was held and he is satisfied that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.
45. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied that this was not the case.
46. Given that the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant, he does not require the Authority to take any action in response to his finding that it was not entitled to refuse to comply with the Applicant's request on the basis it was vexatious.

Handling of the request

47. As rehearsed earlier (at paragraph 4), the Applicant wrote to the Authority expressing dissatisfaction with its response to her request on three occasions, only the third of which was correctly recognised by the Authority as a requirement for review.
48. Paragraph 10.1.1 of Part 2 of the [Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA](#)⁴ (the Section 60 Code) states that:
- “A request for review is made to the authority, not to an individual officer. It is therefore important that all staff in the authority can recognise a request for review and ensure that it receives an appropriate response.”
49. The Commissioner recommends that the Authority takes steps to ensure all its staff, especially staff handling FOI requests, can recognise a valid request for review and that they are familiar with the Section 60 Code.

Decision

The Commissioner finds that the Authority failed to comply 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 the Authority was not entitled to refuse to comply with the Applicant's request on the basis it was vexatious in terms of section 14(1) of FOISA.

However, given that the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant, he does not require the Authority to take any action in response to this failure in response to her application.

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

3 December 2024

⁴ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

Appendix 1: Information request

Request made on 5 May 2022

"I would like to request proof of where the Resident's Council Tax Payments are being spent.

1. I would like to see the previous 3 years of receipts for where the council tax funding is being spent. I do not want to see percentages but proof in pounds GBP as to where the annual council tax is being spent.
2. I would like to know if my council tax funds South Lanarkshire Police Service, South Lanarkshire Ambulance Service, South Lanarkshire Waste collection and Schools. If so, I would like to know as to what percentages it is distributed?
3. Which law, not legislation, states that council tax must be paid?
4. Which law states that it is a criminal offence to not pay council tax?
5. Please attach a copy of contract in where i agreed to pay for council tax. Please keep in mind that an "assumptuous agreement" does not stand up in court."