



Scottish Information
Commissioner
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Decision Notice 007/2025

Cost of parking provision services

Authority: City of Edinburgh Council

Case Ref: 202201022

Summary

The Applicant asked the Authority for information about the costs charged to it by a third-party parking provision service provider. The Authority withheld the information, believing it to be commercially sensitive. The Commissioner investigated and found that the Authority was not entitled to withhold the information, and he required the Authority to disclose it.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Information not held); 33(1)(b) (Commercial interests and the economy); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 15 July 2022, the Applicant made a request for information to the Authority. He asked for information about the Authority's car parking service and the commercial relationship it had with RingGo. Alongside other requests not discussed in this decision, he asked
 - (ii) How much did the Authority pay RingGo for providing their service in each of the last three financial years?
 - (iii) If the fee referred to in point 2 is variable (rather than being a fixed amount), please provide details of how it is calculated.

2. The Authority responded on 15 August 2022. For request (ii), the Authority provided details of the costs paid to RingGo in each of the previous three financial years. In response to request (iii), the Authority explained that there was both a fixed element and a variable element to the charges paid by the Authority to RingGo, but it withheld details of the variable element under section 33(1)(b) of FOISA on the grounds that it was commercially sensitive information.
3. Later that same day, on 15 August 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision. He commented that he wanted to question the amounts given in response to request (ii) because they seemed “very close for such large numbers” and he disagreed that the information he asked for in his request (iii) was commercially sensitive.
4. The Authority notified the Applicant of the outcome of its review on 12 September 2022. The Authority reaffirmed its response to request (ii) and upheld its decision in relation to request (iii).
5. On 14 September 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated he was dissatisfied with the outcome of the Authority’s review because he disagreed that the information he had asked for in request (iii) was commercially sensitive.

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 19 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.
8. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information
9. The case was subsequently allocated to an investigating officer.

Commissioner’s analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant(s) and the Authority.

The withheld information

11. The withheld information comprised two change of control notes amending the Authority’s contract with RingGo.

Section 17(1) – Information not held

12. During the investigation, the Authority indicated it that it had reviewed its position in relation to request (iii). Specifically, the Authority submitted that it now took the view that it held no recorded information in relation to how the variable element of the fee levied by Ringo was

calculated. The Authority submitted that it was now relying on section 17(1) of FOISA, for request (iii), and that it would give the Applicant notice of this change of position, if required to do so by the Commissioner.

13. The Authority argued that the percentage of the total parking revenue charged by RingGo was a fixed amount, but that the cash value of that amount varied according to the amount of parking revenues received. The Authority explained that this is what it had previously termed as the “variable element” when it responded to the Applicant’s request.
14. The Commissioner has carefully considered the wording of the Applicant’s requests (ii) and (iii). The requests are clearly linked. In request (iii), the Commissioner understands that the Applicant has reasonably anticipated that the Authority’s response to request (ii) might not be a simple uniform fee. In request (iii), the Commissioner understands that the Applicant anticipated that the amount of money paid by the Authority was likely to vary, depending on a number of factors. In request (iii), the Applicant sought specific information about how that “variable” fee was calculated.
15. It is clear from the withheld information, and from the information disclosed by the Authority in response to request (ii), that the amount of money paid by the Authority each year (to RingGo) is variable, depending on a number of factors and that there is a clear method of calculating the fee paid by the Authority.
16. The Authority submitted that it did not hold any information falling within the precise scope of request (iii), that is, “how this variable element was calculated”. The Commissioner cannot accept this very narrow interpretation of the Applicant’s request, and he considers the Authority does hold information that falls within the scope of request (iii).
17. The Commissioner therefore finds that the Authority is not entitled to rely on section 17(1) of FOISA.
18. The Authority has also argued that the information it has identified as falling within the scope of this request (and which it has provided to the Commissioner) is exempt from disclosure under section 33(1)(b) of FOISA. It is not clear to the Commissioner how the information that is being withheld under section 33(1)(b) of FOISA, differs from the information the Authority claims not to hold; however, having determined that the withheld information falls within the scope of the request, the Commissioner will now go on to consider the Authority’s arguments in support of section 33(1)(b) of FOISA.

Section 33(1)(b) – Commercial interests

19. Section 33(1)(b) of FOISA, provides that information is exempt information if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority). This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
20. There are a number of elements an authority needs to demonstrate are present when relying on this exemption. In particular, it needs to establish:
 - (i) whose commercial interests would (or would be likely to) be harmed by disclosure,
 - (ii) the nature of those commercial interests and
 - (iii) how those interests would (or would be likely to) be prejudiced substantially by disclosure.

21. The prejudice must be substantial, in other words of real and demonstrable significance. Where the authority considers the commercial interests of a third party would (or would be likely to) be harmed, it must make this clear. Generally, while the final decision on disclosure will always be one for the authority, it will assist matters if the third party has been consulted on the elements referred to above.

The Authority's submissions about the exemption

22. The Authority submitted that its own commercial interests, as well as the commercial interests of RingGo would, or would likely, be prejudiced substantially by disclosure of the information. It argued that, given how important proper parking provision is within the City of Edinburgh, the arrangements between both parties would be jeopardised if the information was disclosed.
23. The Authority submitted that the information requested related to a live commercial arrangement. While the Authority recognised that it might be the case, as time passed, that the likelihood of harm would diminish as a result of changes to prices, service delivery methods or market conditions, the Authority maintained that, at that time, the information was exempt from disclosure under section 33(1)(b) of FOISA.
24. The Authority explained that it had not sought the views of RingGo regarding the implications of disclosing the information, because it would not have impacted the decision-making process on whether to disclose the information or not.
25. As discussed previously, the Authority explained what it had meant by the term "variable element" in its response to the Applicant's request (iii). The Authority submitted that its own commercial interests and those of its commercial partner (RingGo) would be substantially prejudiced if the specific detail of the charges levied by RingGo were disclosed. It argued that the prejudice to the Authority would arise because disclosure of these details would be highly likely to prevent the Authority from receiving competitive tenders. The Authority also submitted that the financial interests of RingGo would be highly likely to be prejudiced by disclosure, due to the current competitive market.
26. The Authority latterly argued that the commercial interests of NSL would also be affected by disclosure of the information. It noted that the Authority does not contract directly with RingGo but that RingGo is subcontractor through its primary parking contractor NSL. The Authority argued that the contract and its details/arrangements are between those two parties and not between the Authority and RingGo.

The Applicant's submissions about the exemption

27. The Applicant submitted that other public authorities had no problem in providing full disclosure of fees charged by RingGo, without fear of commercial sensitivity.
28. He argued that other public authorities, who had provided him with similar information, had not stated that their arrangements involved payment of processing fees to RingGo. Consequently, he felt it was in the public interest to know why the Authority had a different arrangement and how much that arrangement cost the public.

The Commissioner's view about the exemption

29. The Commissioner has carefully considered the arguments put forward, along with the withheld information.

30. Given the Authority's submissions and the nature of the withheld information, the Commissioner is satisfied that the interests identified above are commercial interests for the purposes of the exemption in section 33(1)(b) of FOISA. These interests concern a commercial arrangement regarding the charges paid for parking provision.
31. The Commissioner notes that the Authority was content to disclose the total amount paid by the Authority to RingGo over the last 3 financial years, in response to request (ii), but it maintains that the calculation involved in obtaining those total amounts is commercially sensitive.
32. The Commissioner has considered the Authority's arguments regarding NSL and its comments that the contract is between RingGo and NSL and not between RingGo and the Authority. However, he notes that the Authority did not provide him with any substantive reasoning explaining why NSL's commercial interests would be prejudiced substantially by disclosure, and so he cannot give those arguments any weight.
33. The Commissioner accepts the Authority's argument that the provision of parking is a contentious subject. However, contentious subjects do generally attract scrutiny. The public are entitled to know the decision-making processes involved in such contentious issues and there is strong public interest in ensuring that public money is achieving best value.
34. The Applicant submitted that he had received similar information from other public authorities. Indeed, the Commissioner notes that a number of public authorities publish similar information, in some cases full details, about their commercial arrangements with RingGo.
35. The Commissioner is not satisfied that the Authority has made any argument to properly demonstrate why its own commercial interests, or those of RingGo (or NSL) would be, or would likely be, prejudiced substantially by disclosure of the information. In this regard, he notes that the Authority has made no effort to obtain the views of either contractor as to the impact of disclosure on their respective commercial interests: there is generally value in doing so in situations like this, even if ultimate responsibility for justifying the application of any exemption rests with the authority itself.
36. The Commissioner finds, therefore, that the Authority was not entitled to rely on section 33(1)(b) to withhold the information that fell within scope of the Applicant's request (iii).
37. He requires the Authority to disclose the information to the Applicant.

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 section 33(1) of FOISA was wrongly applied to the withheld information, with the result that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to disclose

- the charge levied on the Authority per transaction (in pence per transaction), and
- the percentage element of the total transaction amount levied on the Authority for the provision of parking services.

The Authority is required to disclose this information by **3 March 2025**.

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.

Euan McCulloch
Head of Enforcement

17 January 2025