



Scottish Information
Commissioner
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Decision Notice 297/2024

Technical specifications of on-road appliances

Applicant: The Applicant

Authority: Scottish Fire and Rescue Service

Case Ref: 202401095

Summary

The Applicant asked the Authority for technical details relating to its on-road appliances deployed north of Inverness. The Authority refused to provide the information requested as it was publicly available and because some of the information was due to be updated and published and was therefore exempt from disclosure. During the investigation, the Authority stated that it did not hold some of the information requested. The Commissioner investigated and found that the Authority had failed to comply with FOISA in responding to the request. He required the Authority to reconsider the request and issue a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Notice that information is not held); 25(1) (Information otherwise accessible); 27 (Information intended for future publication); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 17 April 2024, the Applicant made a request for information to the Authority. He asked for the following information in relation to the limitations that apply to the Authority's on-road appliances deployed north of Inverness:
 - 1) maximum gradient negotiable, laden
 - 2) minimum ground clearance

- 3) minimum height clearance
 - 4) minimum negotiable road or track width
 - 5) minimum negotiable bridge strength
 - 6) minimum turning circle or reversing space.
2. Although the Authority acknowledged receipt of the request on 18 April 2024, it did not respond.
 3. On 17 May 2024, the Applicant wrote to the Authority requesting a review of its decision as he was dissatisfied with its failure to respond to his request.
 4. The Applicant did not receive a response to his requirement for review.
 5. The Applicant wrote to the Commissioner on 20 June 2024, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. This resulted in the Commissioner issuing [Decision 168/2024](#)¹.
 6. The Authority notified the Applicant of the outcome of its review on 26 June 2024. The Authority refused to provide the information requested as, in terms of section 25(1) of FOISA, this information was available via the following links:
 - [Scottish Government's "Building standards technical handbook 2022: domestic"](#)² [\(the Technical Handbook\)](#)
 - [Fleet Details](#)³
 - [Fire Safety and Organisational Statistics, 2022-2023, Guidance Notes](#)⁴
 - [Fire Safety and Organisational Statistics, 2022-2023, Vehicles Dataset](#)⁵
 7. The Authority also explained that an update to the statistics it had linked to would be published on 30 August 2024 and that it therefore regarded that information as exempt under section 27(1) of FOISA.
 8. On 30 July 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he did not believe that the information the Authority had linked him to was relevant to his request and that the Authority had failed to comply with FOISA in responding to his request.

Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

¹ <https://www.foi.scot/decision-1682024>

² <https://www.gov.scot/publications/building-standards-technical-handbook-2022-domestic/2-fire/2-12-fire-rescue-service-access/>

³ <https://external-doc-library.s3.eu-west-2.amazonaws.com/PROD/FleetList.pdf>

⁴ <https://www.firescotland.gov.uk/publications/document/?id=428>

⁵ <https://www.firescotland.gov.uk/publications/document/?id=425>

10. On 1 October 2024, the Authority was notified in writing that the Applicant had made a valid application.
11. 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. The Authority provided its comments.
12. During the investigation, the Authority issued a revised review outcome to the Applicant. The Authority's revised review outcome applied the exemption in section 25(1) of FOISA to parts 3, 4 and 6 of the request and issued the Applicant with a notice, under section 17(1) of FOISA, that it held no relevant information for parts 1, 2, and 5 of his request.
13. The Applicant explained that he was dissatisfied with the Authority's revised review outcome because he still did not consider that it had provided him with any relevant information and because he disagreed that the Authority did not hold any relevant information for parts 1, 2 and 5 of his request.

Commissioner's analysis and findings

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

Section 27(1) – Information intended for future publication

15. Section 27(1) of FOISA provides that information is exempt from disclosure where the following tests are met:
 - the information is held with a view to its being published, by a Scottish public authority or any other person, at a date not later than twelve weeks after that on which the request for the information is made
 - when the request is made, the information is already being held with that view; and
 - it is reasonable, in all the circumstances, that the information be withheld from disclosure until the intended publication date.
16. The exemption is subject to the public interest test laid down by section 2(1)(b) of FOISA.
17. In order for section 27(1) of FOISA to be upheld, the Commissioner must consider whether all of the tests required by this exemption can be met in the circumstances of a particular case.
18. During the investigation, the Authority explained that it had applied use of section 27(1) of FOISA to some statistics it was due to publish that it considered the Applicant may have found useful. The Authority confirmed that the statistics had now been published, but that they were not directly relevant to the Applicant's request. The Authority therefore withdrew its reliance on section 27(1) of FOISA.
19. The Commissioner therefore finds that the exemption in section 27(1) of FOISA did not apply to the Applicant's request.

Section 25(1) - Information otherwise accessible

20. The Authority originally relied on this exemption for each part of the Applicant's request. However, in its revised review outcome, the Authority only relied on this exemption for parts 3, 4 and 6 of the request.
21. Under section 25(1) of FOISA, information which a requester can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25(1) is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.
22. Section 25(1) of FOISA is not intended to prevent or inhibit access to information, but to relieve public authorities of the burden of providing information that an applicant can access readily without asking for it.

The Applicant's submissions

23. The Applicant explained that he was dissatisfied with the Authority's response because he did not consider that it had provided him with any relevant information for any of the six parts of his request. He submitted that the information accessible through the weblinks provided by the Authority did not answer his questions.
24. In terms of the fleet data available through one of the weblinks provided, the Applicant commented that it would only provide the information requested if he were to make further requests to the Authority for the specifications of individual vehicles listed as operational at specific locations.
25. The Applicant submitted that the Authority "must know" from the manufacturers what the performance limitations of its appliances are and that it should not be difficult to ascertain the capabilities of the main operational vehicles currently available north of Inverness. He listed five such vehicles and their locations.

The Authority's submissions

26. The Authority explained that information relevant to parts 3, 4 and 6 of the Applicant's request was available in a table in the Technical Handbook, but it did not specify which table.
27. The Authority commented that it did not "use all the specific terms" used by the Applicant in his request as it was required to adhere to the Technical Handbook.
28. The Authority confirmed that the only information it held relevant to parts 3, 4 and 6 of the request was that in the Technical Handbook – it held no further relevant additional information.

The Commissioner's view

29. The Commissioner has considered the strict wording of the request together with the information available via the weblinks the Authority provided to the Applicant.
30. As stated above, the Authority did not specify which of the tables in the Technical Handbook was relevant to parts 3, 4 and 6 of the Applicant's request. There are several tables in the Handbook. However, the Applicant suggested that it was Table 2.7 ("Access route for fire and rescue service vehicles") that the Authority was referring to.
31. While the Commissioner accepts that some of the information in the Technical Handbook (including Table 2.7) may be of use or of interest to the Applicant, it is not clear that any of the information in the Handbook specifically addressed any of the six parts of his request. He does not consider that the Authority has identified with sufficient clarity, either to him or

the Applicant, what information in the Technical Handbook it considered answered the Applicant's specific questions about the limitations of a subset of the Authority's vehicles.

32. In respect of the information said to be otherwise accessible in the Technical Handbook, there seems, therefore, to be a misunderstanding by the Authority of the information requested by the Applicant. The Applicant has stated that the information in the Technical Handbook is not what he wanted, which clearly indicates that the information he requested and what the Authority thinks he requested is not the same information.
33. The Authority did not provide the Commissioner with any submissions regarding its interpretation of the request, nor did it explain precisely what it meant by its statement that it did not "use all the specific terms" used by the Applicant in his request. It is therefore not clear to the Commissioner what effect the terms used by the Applicant in his request had on the Authority's handling of the request and on whether it held relevant recorded information or not.
34. In all the circumstances, the Commissioner finds that the Authority failed to accurately interpret the Applicant's request. He therefore finds that the Authority failed to comply with section 1(1) of FOISA, and, in doing so, provided an incomplete response to the Applicant.
35. The Commissioner must also find that the Authority was not entitled to rely on the exemption in section 25(1) of FOISA for parts 3, 4 and 6 of the Applicant's request, given that the information that was otherwise accessible did not directly answer the specific questions in the request.
36. The Commissioner therefore requires the Authority to carry out a fresh review and to issue a revised review outcome to the Applicant. In doing so, the Authority must carry out fresh searches for information relevant to the request.
37. The Commissioner would also remind the Authority that when section 25 of FOISA is relied upon, the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA ([the Section 60 Code of Practice](https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/)⁶) sets out good practice (at paragraph 9.5.2) in respect of the use of this exemption:

"The authority should not assume that the applicant will know where and how the information can otherwise be obtained. If the information is already publicly available (e.g. on the authority's website) the authority should tell the applicant how to access it and provide adequate signposting, for example, providing direct links to online information. In all cases the authority should bear in mind its general duty to provide advice and assistance to applicants."

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

38. In its revised review outcome, the Authority issued the Applicant with a notice, under section 17(1) of FOISA, that it did not hold any relevant information for parts 1, 2 and 5 of his request.
39. 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

⁶ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.

40. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). 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.
41. In considering whether a Scottish public authority holds the requested information in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.
42. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.
43. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).
44. In this case, notwithstanding the opportunity given to provide comments and his finding that the Authority failed to accurately interpret the Applicant's request, the Commissioner is not satisfied that the Authority has achieved this. Specifically, the Commissioner finds that the Authority's submissions on searches fall short by failing to provide him with any details or evidence of the searches it carried out.
45. In all the circumstances, therefore, the Commissioner cannot, based on the submissions he has received and the Authority's interpretation of the request, uphold the Authority's claim that it does not hold any relevant information for parts 1, 2 and 5 of the Applicant's request.
46. Consequently, the Commissioner finds that the Authority failed to comply with section 1(1) of FOISA.
47. When reconsidering the Applicant's request, therefore, the Commissioner requires the Authority to carry out fresh searches for information relevant to parts 1, 2 and 5 of the request.

Action required

48. As stated above, the Commissioner requires the Authority to carry out a fresh review and to issue a revised review outcome to the Applicant. In doing so, the Authority must carry out fresh searches for information relevant to the request.
49. The Commissioner also requires the Authority to provide advice and assistance to the Applicant, in terms of section 15(1) of FOISA, with a view to reaching a clear, and mutually shared, understanding of the scope of the request and, on that basis, to carry out a fresh review outcome.
50. The review to be carried out by the Authority, and the notice given to the Applicant of the outcome of that review, should address each part of his request separately. It should also explain which part(s) of the request any information being disclosed relates to and which part(s) of the request any information being exempted from disclosure relates to (with full

details of which exemption is being applied, and why. This includes if information is not held for any part(s) of the request.)

51. The Commissioner requires the Authority to take the above action **by 31 January 2025**.

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.

Specifically, the Commissioner finds that the Authority failed to comply with Part 1 of FOISA in the following respects:

- the Authority was not entitled to rely on section 27(1) of FOISA
- in failing to accurately interpret the Applicant's request and provide a response to this, the Authority failed to comply with Part 1 (and specifically section 1(1)) of FOISA
- the Authority was not entitled to rely on section 25(1) of FOISA in responding to the request
- by failing to satisfy the Commissioner that it does not hold any relevant information for parts 1, 2 and 5 of the request, the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to engage with the Applicant and to carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **31 January 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.

David Hamilton
Scottish Information Commissioner

17 December 2024

