



Scottish Information
Commissioner
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Decision Notice 298/2024

Specified premises in Dunfermline

Authority: Fife Council
Case Ref: 202201099

Summary

The Applicant asked the Authority for information concerning specified premises in Dunfermline. The Authority disclosed information in response to the request. The Commissioner investigated and found that the Authority had failed to fully respond 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) (General entitlement) and 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 18 January 2022, the Applicant made a request for information to the Authority. He asked for:
“[All] correspondence, minutes, documents etc., regarding [specified address], and the premises above the ground floor of that address that has a postal address of [specified address].”
2. The Authority wrote to the Applicant on 19 January 2022, asking him to clarify his request. The Authority asked the Applicant to advise it of the names of employees or areas of the Authority where relevant information may be held and to advise it of a subject matter and timescale for the information requested.

3. On the same day, the Applicant responded to the Authority's request for clarification. He explained that he had been advised that the premises specified in his request would be used to carry out several activities that would normally be the remit of the Authority. He clarified that he was interested in information relating mainly but not only to the setting up of Dunfermline First, First Dunfermline and Dunfermline Delivers as Arms-Length Organisations (ALEOs) of the Authority in relation to the premises specified in his request and to their duties as ALEOs.
4. The Authority responded on 18 February 2022. It disclosed some information in response to his request and withheld some information from disclosure under the exemptions in sections 38(1)(a) and section 38(1)(b) of FOISA. As part of its duty under section 15 of FOISA to provide advice and assistance, the Authority advised the Applicant that he could submit a subject access request to obtain the information withheld under the exemption in section 38(1)(a) of FOISA.
5. On the same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he considered the Authority's response was incomplete and explained that:

"For the avoidance of doubt, I would expect to see all correspondence, meetings, agreements, etc. between [the Authority] and the ALEO's involved in the above premises, namely Dunfermline First, First Dunfermline and Dunfermline Delivers, but not limited to those bodies."
6. The Authority notified the Applicant of the outcome of its review outcome on 31 March 2022, in the following terms:
 - it noted that the Applicant was interested in information "on the set up and financial monitoring of community groups" that operated out of the premises specified in his request. As part of its duty under section 15 of FOISA to advise and assist, it explained that Dunfermline First, First Dunfermline and Dunfermline Delivers were not owned by the Authority, nor did they operate as ALEOs
 - it confirmed that it did enter into a Business Improvement District Agreement with Dunfermline Delivers, which agreed certain funding for that group. It disclosed a copy of that agreement, as well as an extract of the Local Community Planning budget listing grants made to Dunfermline Delivers and copies of the relevant Committee agenda papers and minutes
 - it confirmed that it held no further financial monitoring information
 - it disclosed other emails and correspondence (subject to redactions under section 38(1)(b) of FOISA) it considered fell within the scope of the request, which it stated it had interpreted as being for:

"[All] correspondence directly to or from any community groups operating out of [specified premises] and all minutes of meetings, agreements etc. relating to the set up and financial monitoring of those community groups."
 - As part of its duty under section 15 of FOISA to advise and assist, it confirmed that it had sold the premises specified in the request and it attached a copy of the updated Title Sheet

7. On 4 October 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated he was dissatisfied with the outcome of the Authority's review because he considered that the Authority had failed to fully respond to his request.

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 21 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.
11. While the Authority withheld some information under section 38(1) of FOISA, the Applicant did not challenge this in his application. The Commissioner's decision will therefore only consider whether the Authority identified and located all relevant information relative to the Applicant's request.

Commissioner's analysis and findings

12. The Commissioner has considered the submissions made by the Applicant and the Authority.

Section 1(1) of FOISA – General entitlement

13. 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 (6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in 1(6) are not applicable in this case.
14. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4) of FOISA.
15. The standard of proof to determine whether a Scottish public authority holds the information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
16. The Commissioner also considers, where appropriate, any reasons 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 information is (or was, at the time the request was received) held by the public authority.

The Applicant's submissions

17. The Applicant submitted that he did not believe the Authority had provided him with all relevant information falling within the scope of his request.
18. Specifically, the Applicant expressed concerned that:

- (i) he had been given no information “about the genesis of the Hub” at the specified premises
 - (ii) he had received “practically nothing” regarding ongoing calls on public funds to manage and operate the specified premises
 - (iii) he had not been provided with minutes of meetings at which it decided to change the nature of the facility from charitable to commercial
 - (iv) he had not been supplied with information relating to the decision to sell the specified property (including details of the process whereby that sale was carried out and the evaluation of bids)
19. The Applicant stated that he wanted to know “the full story” to allow him to make a complaint to Audit Scotland, but he had been prevented from doing so “by a lack of pertinent information” received from the Authority in response to his request. He also stated that the bulk of the information provided was superfluous.

The Authority’s submissions

20. The Authority position at review outcome is rehearsed earlier. In its submissions to the Commissioner, the Authority responded to points raised by the Applicant in his application (as set out above at paragraph 18).
21. In response to point (i), the Authority stated that it held no information as it “did not set up the community group” (which was, as it explained in its review outcome, an “independent company”).
22. In response to point (ii), the Authority confirmed that all the information it held had been provided in the form of minutes, along with the details of specific pages within minutes where relevant information could be found. The Authority also noted that it had provided funding details in its initial response.
23. In response to point (iii), the Authority reiterated that it held no information as the community group was an independent company.
24. In response to point (iv), the Authority stated that:
- “The nature of [the Applicant’s] request made it clear he was interested in information on the set up and financial monitoring of the community groups that operated out of the property. Therefore, it is believed that it was a reasonable interpretation of his request to limit it to this information.”
25. In response to the Applicant stating that the bulk of the information it provided was “superfluous”, the Authority stated that the information provided all contained details of the specified premises and that its searches did not rely on the specified premises as a “specific term” but went further in order to provide all relevant information held falling within the scope of the request.

The Commissioner’s view

26. The Commissioner has carefully considered the terms of the Applicant’s initial request and the clarifications he provided to the Authority prior to its initial response and as part of his requirement for review.

27. Given the nature of the Applicant's original request, the Commissioner considers it was appropriate for the Authority to have sought clarification. He welcomes the Authority's engagement with the Applicant in this respect.
28. While the Applicant clarified his request prior to the Authority's initial response, the Commissioner does not consider that his clarification was particularly clear. However, the Applicant did clearly set out in his requirement for review that he was seeking the following information:
- "For the avoidance of doubt, I would expect to see all correspondence, meetings, agreements, etc. between [the Authority] and the LEO's involved in the above premises, namely Dunfermline First, First Dunfermline and Dunfermline Delivers, but not limited to those bodies."
29. Despite this, the Authority confirmed in its review response that it had interpreted the Applicant's request as being for:
- "[All] correspondence directly to or from any community groups operating out of [specified premises] and all minutes of meetings, agreements etc. **relating to the set up and financial monitoring** of those community groups." [emphasis added]
30. By limiting the scope of the request to the "set up and financial monitoring" of the groups specified by the Applicant, the Commissioner does not consider that the Authority accurately interpreted the Applicant's request. He cannot, therefore, find that the Authority has discharged its duties under section 1(1) of FOISA in relation to the Applicant's request.
31. Notwithstanding the Authority's interpretation of the request, it falls to the Authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it holds no more information than it has identified and located in response to the 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 adequately describe the searches it carried out or to provide any real detail or evidence of those searches.
32. When the Commissioner requested comments from the Authority, he asked it to read his guidance on what is needed from public authorities in order for him to come to a decision. In respect of a "incomplete response", the Commissioner's guidance specifically states that he requires the following information:
- Which searches were carried out, including:
 - search terms used and timeframe searched against; why these were considered likely to retrieve the information
 - who carried out the searches and why were they the people best placed to carry out the searches
 - which sets of records or data were searched (information may be held on WhatsApp, mobile phones, etc.)
 - If no searches were carried out, why did you consider no searches were needed?
33. In the circumstances, the Commissioner cannot uphold the Authority's claim that it does not hold any further information relevant to the Applicant's request.

34. The Commissioner 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. He requires the Authority to issue the Applicant with a revised review outcome.
35. Given the terms of the Applicant's clarified request and some of the information he has expressed a specific interest in receiving, the Commissioner would suggest to the Applicant, notwithstanding the outcome of the Authority's review, that he consider making a new, more focused, request to the Authority. He considers it unlikely that some of the information the Applicant has expressed a specific interest in receiving (e.g. relating to the decision to sell the specified property) will fall within the scope of his clarified request.
36. The Commissioner would urge requesters to take care to ensure that they are as specific as they can be when making requests for information. Information requests that are vague or too wide-ranging can lead to requests being refused on cost grounds or requesters being provided with information that is of no interest to them. Equally, when responding to a request from a public authority to clarify a request, requesters should take care to clearly specify the information that they are interested in receiving while, at the same time, not inadvertently excluding other information that is of interest to them.

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.

In failing to accurately interpret the Applicant's request and in failing to satisfy the Commissioner that it does not hold any further information in addition to that disclosed already, the Authority failed to comply with Part 1 (and specifically section 1(1)) of FOISA.

The Commissioner therefore requires the Authority to carry out a fresh review and to issue a revised review outcome to the Applicant, by **3 February 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

18 December 2024