



Scottish Information
Commissioner
www.foi.scot

Decision Notice 048/2025

Cost of watering hanging baskets

Applicant: The Applicant

Authority: Clackmannanshire Council

Case Ref: 202300985

Summary

The Applicant asked the Authority for the cost of watering hanging baskets in a specific area and who was responsible for this. The Authority supplied some information, but the Applicant was dissatisfied because the Authority had not told him the cost. The Commissioner investigated and was satisfied that the Authority did not hold the information requested relating to the cost.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 8 May 2023, the Applicant made a request for information to the Authority. He asked:
 - “Can you please tell me if [the Authority] is putting up and maintaining/watering hanging baskets/flower tubs in Alva.”
 - “If so is the [Authority] doing this or a contractor doing this work, what is the total cost of this and what budget is the money coming from.”
2. The Authority responded on 6 June 2023, in the following terms:

- for part (i) of the request, it stated that the hanging baskets were in place and being watered
 - for part (ii) of the request, it stated that the local community pay for the baskets.
3. Later that day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because the Authority had not answered his request. Specifically:
- for part (i) of the request, he commented that he knew that the hanging baskets were in place and had been watered – he wanted to know by whom
 - for part (ii) of the request, he wanted to know whether the local community was paying the Authority for the watering. He also asked the Authority to explain what it meant in its initial response by “the local community”.
4. The Authority notified the Applicant of the outcome of its review on 14 June 2023, in the following terms:
- for part (i) of the request, it explained that the hanging baskets were watered by the Authority’s Land Services and the large flower tubs were managed and maintained by the Alva Community Council.
 - for part (ii) of the request, it explained that the hanging baskets were provided to the Alva Community Council as part of the streetscape improvement project. The Community Council organised the filling of the baskets and flower tubs and any maintenance, while the Authority watered the hanging baskets during the summer period. It explained that this work was carried out by the Authority’s Land Services as part of the local Grounds maintenance team and formed part of their daily tasks in the area. It stated that “there are no additional costs or private contractors used”.
5. On 4 August 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority’s review because it had not provided the information he requested regarding costs. He disagreed that there were no additional costs as more work meant there must be additional costs.

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 24 August 2023, 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. The Authority provided a short statement, and the case was subsequently allocated to an investigating officer.
8. In his application, the Applicant expressed dissatisfaction with the Authority’s response to part (ii) of his request as it relates to the cost of watering the hanging baskets specified in the request only. The Commissioner will therefore only consider this element of the request in his decision notice.
9. During the investigation, further comments were sought from the Authority on the steps it had taken to establish whether it held information regarding the cost of watering the hanging baskets specified in the request. The Authority provided further comments.

Commissioner's analysis and findings

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

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

11. 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.
12. 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.
13. 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.
14. 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 Applicant's submissions

15. The Applicant was dissatisfied with Authority's review because he had not been provided with the information on cost.
16. In his application, the Applicant explained he had asked for the cost of watering the hanging baskets because the Authority had explained that this was carried out as part of the service daily tasks in the area. While the Authority had said that there were no additional costs, he believed there must be as extra work must be accompanied by extra costs.

The Authority's submissions

17. During the investigation, the Authority was asked to explain how it had established what recorded information was covered by the request and to describe the searches carried out, including the records which were searched and any keywords and other search parameters used.
18. The Authority acknowledged that it had not stated clearly to the Applicant that it did not hold recorded information regarding the cost of watering the hanging baskets specified in the request. It stated that it considered it should have issued the Applicant with a notice, in terms of section 17(1) of FOISA, for this information. It confirmed that no searches took place as the person responding to the Applicant's request was aware of the hanging basket project.
19. The Authority explained that watering the hanging baskets was carried out by Land Services, a dynamic service that carries out a variety of community requests, as part of Streetcare

operations and approved maintenance budgets. It confirmed that it did currently did not retain or hold recorded information in relation to the individual costs of the drivers for the wide range of activities carried out. These include grounds maintenance, Streetcare activities across the county (e.g. hedge cutting, weed spraying, small civils projects, public realm maintenance and improvements) and responding to road traffic accidents and storm and winter service requests.

20. In relation to hanging baskets, the Authority explained that it was working in partnership with the local community council to assist with watering but that it did not hold or record information regarding the time or costs involved. It submitted that this was in alignment with the "Place Service based approach" and that it did not charge for this service, which is done "on an ad hoc basis if resources are available at the time of need". In the future, these works may be carried out by others within the community or Alva Community Council.
21. In summary, the Authority confirmed that no recorded information was held that fell within part (ii) of the request regarding the cost of watering the hanging baskets specified in the request.

The Commissioner's view

22. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any recorded information that fell within the scope of part (ii) of the Applicant's request relating to the cost of watering the hanging baskets specified in the request.
23. In the circumstances, the Commissioner accepts that the Authority has provided a reasonable explanation of why it does not hold recorded information regarding the cost of watering the hanging baskets. He is therefore satisfied, on balance, that the Authority does not (and did not, on receipt of the request) hold this information.
24. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.
25. While he considers it reasonable to conclude that a task carried out by the Authority's staff may as a matter of fact or logic involve a cost or an extra cost to the Authority, the Commissioner's remit is limited to considering the recorded information the Authority actually holds.
26. For the reasons set out above, the Commissioner is satisfied, on balance, that the Authority does not hold recorded information relating to the cost of watering the hanging baskets specified in the request.
27. The Commissioner notes that the Authority acknowledged that it had not been as clear as it could have been when responding to part (ii) of the Applicant's request regarding the cost of watering the hanging baskets (i.e. that it held no recorded information).
28. While the Authority stated at review outcome that "there are no additional costs or private contractors used", the Commissioner must find that, by failing to give notice to the Applicant that it did not hold recorded information relating to the cost of watering the hanging baskets specified in the request, the Authority failed to comply with Part 1 (and, in particular, section 1(1)) of FOISA in responding to the request.

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, by failing to give notice in terms of section 17(1) of FOISA that it did not hold recorded information on the cost of watering the hanging baskets for part (ii) of the request, the Authority failed to comply with Part 1 (and in particular section 1(1)) of FOISA.

As the Commissioner accepts that the Authority did not hold this information, he does not require it to take any action in response to this failure in response to the Applicant's 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.

Cal Richardson
Deputy Head of Enforcement

24 February 2025