



Scottish Information
Commissioner
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Decision Notice 074/2025

Bids to Shared Prosperity Fund

Authority: City of Edinburgh Council
Case Ref: 202201293

Summary

The Applicants asked the Authority for information relating to bids submitted to one category within a particular fund. The Authority provided some information and withheld other information on the grounds that disclosure of the information would be likely to otherwise prejudice substantially the effective conduct of public affairs. The Commissioner investigated and during the investigation the Authority applied new exemptions to the withheld information. The Commissioner required the Authority to issue the Applicants with a new review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 16(1) (Refusal of request); 25(1) (Information otherwise accessible) and 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 1 September 2022, the Applicants made a request for information to the Authority. They asked for:
 - (i) A copy of all bids submitted to the Edinburgh UK Shared Prosperity Fund Supporting Local Business category by the closing date on 11th July at 12 noon.

- (ii) In respect of the bids submitted to the Edinburgh UK Shared Prosperity Fund Supporting Local Business category by the closing date on 11th July at 12 noon, the identified levelling-up issue each application was tackling and the evidence of need provided.
 - (iii) The anticipated outcomes for under-represented groups as detailed in the bids submitted to the Edinburgh UK Shared Prosperity Fund Supporting Local Business category as at the closing date on 11th July at 12 noon.
 - (iv) The criteria applied to assess each bid, how systematically these criteria were applied, any scoring matrix produced as a result.
 - (v) The organisations comprising the Edinburgh UK Shared Prosperity Fund Supporting Local Business category assessment panel,
 - (a) any notifiable interest raised by those organisations
 - (b) the process applied to identify and address any notifiable interests
 - (c) any organisations involved in the assessment panel or process which had projects proposed for funding
 - (d) the total amount of funding proposed for organisations involved in the Edinburgh UK Shared Prosperity Fund Supporting Local Business category assessment panel or process
2. The Authority responded on 22 September 2022. It notified the Applicants that some of the information was already available in a published report, and it withheld this information under section 25 of FOISA. The Authority provided the Applicants with a weblink to this report. The Authority also withheld some information under section 30(c) of FOISA and disclosed other information to the Applicants.
 3. On 30 September 2022, the Applicants wrote to the Authority requesting a review of its decision. The Applicants stated that they were dissatisfied with the decision because they did not consider that the Authority had handled their request properly. In particular, the Applicants argued that the information withheld under section 25 of FOISA was not contained in the published report referenced by the Authority, and they challenged the Authority's decision to withhold information under section 30(c) of FOISA.
 4. The Authority notified the Applicants of the outcome of its review on 31 October 2022. It upheld its original decision to withhold information under section 30(c) of FOISA and it provided the same weblink for the information it was withholding under section 25 of FOISA.
 5. On 15 November 2022, the Applicants wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicants stated that they were dissatisfied with the outcome of the Authority's review as they did not consider that the Authority had handled their request properly. They commented that the Authority had not clarified what information was being withheld from them, and they argued that it was in the public interest for all of the information they had requested to be disclosed.

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 29 November 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 Applicants. 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 Applicants and the Authority.
11. During the investigation, the Authority released further information to the Applicants and continued to withhold other information.
12. The Authority also stated that, as well as continuing to withhold information under section 30(c) (Prejudice to the effective conduct of public affairs) of FOISA, it was also applying sections 33(1)(b) (Commercial interests and the economy), and 38(1)(a) and 38(1)(b) (Personal information) of FOISA to the remaining withheld information.
13. The Authority withdrew its reliance on section 25(1) (Information otherwise accessible) and acknowledged that some of the information the Applicants had requested, and which it had withheld under section 25(1) of FOISA, was not contained in the published report it had referenced. The Authority stated that the report should instead have been highlighted as useful information for the Applicants.
14. In light of the Authority's change of position, the Commissioner must find that the Authority was not entitled to apply section 25(1) of FOISA to some of the information requested by the Applicants. He finds that the Authority directed the Applicants to a report which did not provide what they had asked for and that, in doing so, it failed to deal with the request in accordance with section 1(1) of FOISA.
15. In their application to the Commissioner, the Applicants expressed dissatisfaction with the Authority's reliance on section 25(1) and 30(c) of FOISA (and with other aspects of the Authority's handling of their request). The Applicants did not know, at the time of making their application to the Commissioner, that additional exemptions would be relied upon, and therefore they did not have the opportunity to challenge them in their application.
16. Given the Authority's change of position, the Commissioner requires the Authority to provide the Applicants with a revised review outcome, which lists all of the exemptions that the Authority is now seeking to apply, and which explains, in detail, why the Authority considers these exemptions to be relevant. This will enable the Applicants to challenge the Authority's reasons for withholding information in a new application, if necessary.
17. The Commissioner notes that during the investigation, the Authority referred to the third-party views of bidders to the fund which the Authority sought in relation to the application.

Section 7 of the [Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information \(Scotland\) Act 2002 and the Environmental Information \(Scotland\) Regulations 2004](#)¹ (the Section 60 Code) gives guidance on when authorities should seek third party views, and the Commissioner is satisfied that consulting them was appropriate in this case.

18. However, the Commissioner wants to make clear that the handling of an information request, and the decisions on what exemptions may or may not be applied, must be made by the authority to which the request is made, on a case-by-case basis. He notes that an authority's responsibility for any such request cannot be delegated. That means that, while the authority may take advice, on the handling of a request, it is not for anyone else, or any other body, to direct how any given request, or part of it, should be handled by the authority.
19. The Commissioner notes that the Authority has previously (both in its review response of 31 October 2022 and in communication with the Applicants) stated its view that the prejudice thought likely to occur in the event of disclosure of the information could lessen over time. In its email to the Applicants of 1 November 2024, the Authority indicated that its view was that the substantial prejudice that would be experienced by both it and the bidders had diminished during the time since the Applicants made their request.
20. However, while the Authority and the Applicants may now both acknowledge the difference which the passage of time may have made to the risk of substantial prejudice, the Commissioner must consider whether the Authority was correct to withhold the information due to the risk of substantial prejudice at the time of the original request, response and review come. He considers that requiring a new review outcome from the Authority will allow it to fully consider the question of substantial prejudice in light of the passage of time (and indeed also allow the Commissioner to consider the same issue in the event of any future appeal).
21. During the investigation, the Authority indicated that it had interpreted the scope of part of the Applicants' request in relation to bid outcomes narrowly. The Commissioner considers that a wider interpretation is likely to capture further information falling within scope of the Applicants' request. He requires the Authority, in its new review outcome, to reconsider the scope of the Applicants' request (particularly, but not exclusively, in relation to the request it admits it interpreted narrowly) and either disclose new information identified as a result of this wider interpretation or notify the Applicants of why any new information is being withheld.
22. In its new review outcome, the Commissioner also requires the Authority to:
 - (i) as part of the reconsideration of the Applicants' request, either disclose a full list of the organisations involved in the Panel (and information relating to whether they had bids proposed and/or accepted) or notify the Applicants of the specific exemptions being relied on to withhold this particular information..
 - (ii) reconsider whether it can disclose redacted information to the Applicants, rather than blanket withholding. If the Authority does withhold entire pages of information, the Commissioner requires it to make clear what exemptions it is relying on to do so.

¹ <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>

- (iii) More generally, clearly indicate to the Applicants what exemptions are now being relied upon in order to withhold information and state why each exemption applies.
- (iv) Ensure all parts of the Applicants' request are addressed, either by disclosing information or withholding it under an exemption.

Decision

The Commissioner finds that the Authority failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicants.

In particular, he finds that the Authority wrongly applied section 25(1) to information that was not otherwise accessible to the Applicants, and in doing so they failed to comply with section 1(1) of FOISA.

He also finds that the Authority failed to comply with section 16 of FOISA, in failing to provide the Applicants with adequate justification for its refusal to disclose the requested information.

He requires the Authority to provide a new response to the Applicants' requirement for review, in terms of section 21(4)(b) of FOISA by **8 May 2025**.

Appeal

Should either the Applicants 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

24 March 2025