

Decision Notice



Decision 034/2014 Livingstone Terrace Residents Action Group and Falkirk Council

Response timescales

Reference No: 201302448
Decision Date: 19 February 2014

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Scottish Information Commissioner

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Summary

On 30 July 2013, Livingstone Terrace Residents Action Group (LTRAG) asked Falkirk Council (the Council) for the exact response times to an elected member's email or written request (amongst other matters). The Council's response did not answer this request and in its review response it stated that it did not hold this information. LTRAG remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, in which the Council provided general guidance to LTRAG to about response times to correspondence from elected members, the Commissioner found that the Council had dealt with LTRAG's request for information in accordance with Part 1 of FOISA. The Commissioner was satisfied that the Council did not hold information regarding exact response times.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 30 July 2013, LTRAG asked the Council to provide an answer to the first sentence of a previous request dated 27 November 2011, which stated:

"Under the Freedom of Information Act can Falkirk Council give an exact response time to an Elected Member's E-mail or written request to a Director or Chief Executive of Falkirk Council."

LTRAG also raised other questions in its email of 30 July 2013, which are not considered in this decision.



2. The Council responded on 20 August 2013. The Council provided a copy of the response it had sent to LTRAG's earlier request of 27 November 2011 (response sent on 28 December 2011). The Council also provided a copy of a published document "Information Governance – Right To Complain"¹, which specifies that information requests must be responded to within 20 working days.
3. On 23 August 2013, LTRAG emailed the Council requesting a review of its decision. LTRAG complained that the Council's response of 28 December 2011, sent on 20 August 2013, had not answered its request of 30 July 2013, which sought information about exact response times.
4. The Council notified LTRAG of the outcome of its review on 23 September 2013. The Council stated that the first sentence of LTRAG's request of 27 November 2011 had been answered in its response of 28 December 2011, in which the Council had stated that the information was not recorded (and therefore, in effect, not held).
5. On 21 October 2013, LTRAG emailed the Commissioner, stating that it was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that LTRAG made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 30 October 2013, having examined the terms of the application, the investigating officer contacted LTRAG to clarify that the investigation and decision would focus on LTRAG's request for response times to elected members' correspondence.
8. On 30 October 2013, the Council was notified in writing that an application had been received from LTRAG and was asked to provide its comments on the application (as required by section 49(3)(a) of FOISA) and to respond to specific questions. The Council was asked to comment on whether it held any information regarding response times to elected members' correspondence. The Council responded on 6 November 2013.

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http://www.falkirk.gov.uk/services/chief_executive/governance/information_governance/freedom_of_information/foi_right_to_complain.pdf



9. The investigating officer and the Council entered into dialogue regarding the scope of LTRAG's request and what information could fall within scope. The Council provided a letter it had issued on 19 November 2013 in response to another request from LTRAG. Within this letter the Council stated that no formal policy existed with respect to response times, but officers generally endeavoured to reply to enquiries from elected members in five days.
10. In correspondence with the investigating officer, LTRAG pointed out that a letter it had previously received from the Council, dated 17 January 2012, stated that requests sent to a Director or Elected Member would be considered by that Director and responses would normally sent within seven working days, although there might be circumstances in which this was not possible, in which case it would be at the Director's discretion. The Council was asked to comment on this statement, and the apparent discrepancy over whether responses should be provided within five or seven working days.
11. On 10 January 2014, the Council provided the investigating officer with a copy of the letter sent to LTRAG on 17 January 2012. The Council explained that the reference in the letter to "seven working days" was understood to be intended as "seven days", i.e. five working days; two forms of expression had been confused.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to her by both LTRAG and the Council. She is satisfied that no matter of relevance has been overlooked.
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. This is subject to certain qualifying provisions which do not apply here. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If the authority does not hold any information covered by the request, it is required to give the applicant notice in writing to that effect, under section 17(1) of FOISA.
14. LTRAG asked for "...an exact response time to an Elected Member's E-mail or written request to a Director or Chief Executive of Falkirk Council." The Commissioner considers that there was some ambiguity about the information LTRAG wished to obtain through this request, which could be reasonably interpreted in two different ways:
 - a. information showing the exact response times to (unspecified examples of) elected members' correspondence;
 - b. information about general response times (i.e. targets for response timescales) to elected members' correspondence.



Exact response times

15. In its submissions of 6 November 2013, the Council took the view that by requesting “an exact response time”, LTRAG was seeking specific, not general, information. The Council stated that it had already tried to explain to LTRAG that the information was not recorded.
16. The Council provided a copy of a letter sent to LTRAG on 19 November 2013, in which it explained that the Council has no formal policy with regard to response times:

“Replies are governed by the terms of the Council’s complaints procedure where applicable. Guidance was issued in 1999 by the then Director of Law and Administration. This guidance was superceded by the introduction of multi member wards. Generally officers endeavour to reply to enquiries from elected members in 5 days. This is done in a variety of ways albeit a written response to a written enquiry is normally provided.”
17. The Council also provided the Commissioner with copies of documents sent to LTRAG along with its letter of 19 November 2013, including a document entitled: “A Protocol For Members’ Enquiries”, which confirmed that written responses should be provided within five working days, and one entitled “Information Governance – Right To Complain”, which specifies that information requests are responded to within 20 working days.
18. Having considered the Council’s submissions, and the information in the documents provided to LTRAG, the Commissioner is satisfied that the Council does not hold information which specifies the **exact** response time to elected members’ correspondence. She accepts that the Council does not routinely record this information. The Commissioner is therefore satisfied that the Council complied with section 17(1) of FOISA by informing LTRAG in its review response that it did not record the information, and effectively giving it notice that the Council did not hold the information that LTRAG had asked for.

General response times

19. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
20. In this case, LTRAG’s request (30 July 2013) was made on the back of a previous request (27 November 2011), which had not been answered to LTRAG’s satisfaction. However, as noted earlier in this decision, the Commissioner finds that the request currently under consideration could be interpreted in more than one way because of the ambiguous way in which it was phrased. In this context, it seems likely that LTRAG could have benefited from advice and assistance from the Council in order to resolve any difficulties about what information it was seeking by making this request.



21. The Council responded to the request of 30 July 2013 by re-issuing its response to the earlier request of 27 November 2011, although LTRAG had made clear its view that this response had not addressed the request made in the first sentence of its email of 27 November 2011. It appears that the Council did not fully take into account the specific terms of the request dated 30 July 2013 when it responded to that request.
22. During the investigation, the Council was informed that, having considered the terms of LTRAG's request, the Commissioner considered that the request could be interpreted as one seeking either an exact response time or general information about response times to elected members' correspondence. As previously described, the Council then provided LTRAG with additional information about general response times to such correspondence.
23. The Commissioner considers that if the Council had provided LTRAG with this information when first responding to its request, this would either have fulfilled LTRAG's information request or prompted LTRAG to re-phrase its request to make it clearer what information was required. However, the Commissioner accepts that the way the Council interpreted the request was reasonable, in the circumstances, and its failure to provide information about target timescales for responding to elected members' correspondence does not amount to a breach of section 15 of FOISA.
24. The Commissioner therefore accepts that the Council complied with Part 1 of FOISA in responding to LTRAG's request.

DECISION

The Commissioner finds that Falkirk Council (the Council) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Livingstone Terrace Residents Action Group (LTRAG).

The Commissioner finds that by informing LTRAG that it did not hold information about exact response times, the Council complied with Part 1, and, in particular, section 17(1) of FOISA.

The Commissioner notes that the Council has now provided LTRAG with information about general response times and does not require the Council to take any further action.



Appeal

Should either LTRAG or Falkirk Council 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.

Margaret Keyse
Head of Enforcement
19 February 2014



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...