

Decision Notice



Decision 042/2014 Mr Paul Hutcheon and the City of Edinburgh Council

Scaffolding jobs

Reference No: 201302331

Decision Date: 26 February 2014

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Rosemary Agnew

Scottish Information Commissioner

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Summary

On 21 May 2013, Mr Paul Hutcheon asked the City of Edinburgh Council (the Council) for information about scaffolding jobs given to a named company. The Council disclosed some information and withheld the remainder. Mr Hutcheon remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Council disclosed the remaining information.

The Commissioner found that, in dealing with Mr Hutcheon's request, the Council had incorrectly withheld information which should have been provided to him under section 1(1) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (General entitlement)

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

Background

1. On 21 May 2013, Mr Hutcheon made the following information request:
 - a. *Since June 27 2012, how many individual scaffolding jobs has the council given to Action Scaffolding Contracts? Please state how much money ASC has received for these jobs.*
 - b. *Before June 27th 2012, how many individual scaffolding jobs did the council give to Action Scaffolding Contracts, going back to January 1st 2009? Please state how much money ASC received for these jobs.*
2. The Council responded on 19 June 2013. It provided Mr Hutcheon with the total monies paid to Action Scaffolding Contracts (ASC) during the two time periods specified in his request. The Council estimated that it would cost more than £600 to provide the remaining information; consequently it gave Mr Hutcheon notice that, by virtue of section 12(1) of FOISA, it was not obliged to comply with his request.



3. On 22 July 2013, Mr Hutcheon emailed the Council requesting a review of its decision. Mr Hutcheon considered that the Council should be able to provide details of the number of jobs given to ASC for both time periods and then match these jobs to payments.
4. The Council notified Mr Hutcheon of the outcome of its review on 30 September 2013. The Council provided Mr Hutcheon with an estimate of the costs that would be likely to be incurred in the identification and provision of the requested information. The Council considered that the information was environmental information and, taking the above costs and the diversion of staff time to provide the information into consideration, it concluded that the request was manifestly unreasonable in line with regulation 10(4)(b) of the EIRs.
5. On 8 October 2013, Mr Hutcheon emailed the Commissioner, stating that he 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. By virtue of regulation 17 of the Environmental Information (Scotland) Regulations 2004 (EIRs), Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications.
6. The application was validated by establishing that Mr Hutcheon had made a request for information to a Scottish public authority and had 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 24 October 2013, the Council was notified in writing that an application had been received from Mr Hutcheon and was asked to on the application (as required by section 49(3)(a) of FOISA) and to respond to specific questions. The Council was asked to clarify whether it still considered the withheld information was environmental information as defined by the EIRs and it was also requested to provide submissions to support its consideration that the request was manifestly unreasonable in line with regulation 10(4)(b) of the EIRs.
8. The Council informed the investigating officer on 25 November 2013, that it did not consider that the requested information was environmental information, and the request should have been dealt with under FOISA. The Council also stated that it would disclose the requested information to Mr Hutcheon.
9. On 17 January 2014, the Council disclosed the information for time period 27 June 2012 onwards to Mr Hutcheon. Then, on 17 February 2014, the Council disclosed the information for time period prior to 27 June 2012 to Mr Hutcheon. The Council confirmed in writing that the information provided to Mr Hutcheon was a full disclosure of the requested information.
10. On 19 February 2014, Mr Hutcheon was asked by the investigating officer whether he wanted to continue with his application to the Commissioner. Mr Hutcheon confirmed that he still required a decision from the Commissioner.



11. On 20 February 2014, the Council explained why it had initially withheld information that was later disclosed.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of relevant submissions, or parts of submissions, made to her by both Mr Hutcheon and the Council. She is satisfied that no matter of relevance has been overlooked.

FOISA or EIRs?

13. In reaching a decision, the Commissioner must consider the circumstances that prevailed at the date when the authority issued its review response. In this case, the Council informed Mr Hutcheon that it was responding to his review request under the EIRs as the Council considered the information to be environmental in nature.
14. Early in the investigation, the Council informed the investigating officer that it considered that it should have responded to the request under FOISA, as the withheld information comprised invoices solely and was not environmental information.
15. Having considered the nature of the requested information, the Commissioner has concluded that the information is not concerned with measures or activities affecting, or likely to affect, the elements of the environment, and is not environmental information as defined in regulation 2 of the EIRs. The Council should therefore have responded to the review request under FOISA. The Commissioner considers that the Council was incorrect to inform Mr Hutcheon in its review response that the response was being provided under the EIRs. As the Council has now disclosed all the information falling in scope of the request (as discussed below), the Commissioner does not require the Council to take any action with respect to this matter.

Information disclosed

16. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.
17. During the investigation, the Council disclosed all the information falling within the scope of the request. In its submissions, the Council stated that it should have disclosed the requested information in its review response, and had been incorrect to withhold this information. The Council explained that it had not identified the correct methodology and timescales for retrieving and collating the information until the case was under investigation by the Commissioner.



18. On the basis of the Council's submission, the Commissioner has concluded that the Council failed to comply with section 1(1) of FOISA in initially withholding information from Mr Hutcheon. As the information was disclosed during the investigation, the Commissioner does not require the Council to take any further action as a result of this failure.

DECISION

The Commissioner finds that the City of Edinburgh Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Paul Hutcheon.

The Commissioner finds, by wrongly withholding information which was later disclosed, the Council, failed to comply with section 1(1) of FOISA. As the information has now been provided, the Commissioner does not require the Council to take any action in respect of this failure.

Appeal

Should either Mr Hutcheon or the City of Edinburgh 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
26 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.