

# Decision Notice

---

## Decision 095/2015: Company A and Glasgow City Council

---

### Costs of HMO licence fee

Reference No: 201500041

Decision Date: 24 June 2015



Scottish Information  
Commissioner

## Summary

---

On 22 April 2014, Company A asked Glasgow City Council (the Council) for information relating to the costs incurred in relation to a specific Houses in Multiple Occupation (HMO) licence application.

The Council stated that the requested information was not held. Following a review which confirmed this, Company A remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had properly responded to Company A's request for information in accordance with Part 1 of FOISA.

## 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) and 21(4) and (5) (Review by Scottish public authority).

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

---

1. On 22 April 2014, Company A made a request for information to the Council. Company A requested information which showed the costs incurred by the Council in relation to a specific HMO (Houses in Multiple Occupation) licence application.

The information requested was:

*For the period 1<sup>st</sup> June 2011 to 1<sup>st</sup> June 2014 or to the date as may be easier, all documents showing or tending to show the application for the HiMO licensing fee...to the expenditure of the HiMO Department of Glasgow City Council in respect of the Student Accommodation scheme at [a named accommodation scheme]...*

and

*All documents showing or tending to show the extent to which the HiMO licensing fee charged in respect of the aforementioned Collegelands scheme exceeded the Council's costs in respect of that individual scheme.*

2. The Council responded on 7 May 2014. The Council stated that it did not hold the information requested but provided Company A with the total HMO fees paid for the named scheme. The Council also explained that the costs incurred in dealing with applications for HMO licences were not recorded by the HMO team.
3. On 4 June 2014, Company A wrote to the Council requesting a review of its decision. Company A argued that the information it sought could be compiled from other information held by the Council, and therefore refused to accept that the information was not held.
4. The Council notified Company A of the outcome of its review on 25 June 2014. The Council maintained that it did not hold the information and went on to explain to Company A how HMO licence fees were determined. It explained that fees were levied at a standard rate per

property and were not directly connected with costs related to individual schemes. The Council invited Company A to make a new request for information relating to the Council's expenditure, if it wished to do so.

5. On 23 December 2014, Company A wrote to the Commissioner. It applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Company A stated it was dissatisfied with the outcome of the Council's review, arguing that there was a reasonable expectation that the requested information would be held and raising other procedural matters.

## Investigation

---

6. The application was accepted as valid. The Commissioner confirmed that Company A made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 16 February 2015, the Council was notified in writing that Company A had made a valid application. The case was then allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, focusing on the steps taken to establish what relevant information it held.

## Commissioner's analysis and findings

---

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Company A and the Council. She is satisfied that no matter of relevance has been overlooked.
10. 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 relevant in this case.
11. The information to be given is that held by the authority at the time the request is received, subject to any amendment or deletion which would have been made, regardless of the receipt of the request, between the date of receipt and the time the information is given (section 1(4)). 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.
12. In response to this request, the Council stated that it did not hold information on the relevant costs at the level of detail requested. It explained that costs were not recorded against individual properties but against the discharge of this statutory function by the authority.
13. As background to this request, the Council explained to the Commissioner that the HMO licensing scheme was introduced in 2000 under the Civic Government (Scotland) Act 1982. A new scheme was introduced in 2011, under the Housing (Scotland) Act 2006. Reading the

statutory scheme in conjunction with the Statutory Guidance<sup>1</sup>, the Council submitted that it was entitled to charge a fee in relation to an application for an HMO licence. That charge must be reasonable and proportionate to the costs of the procedures and formalities under the HMO scheme and must not exceed the cost of those procedures and formalities. The requirement was to ensure that the scheme was cost-neutral at the level of its overall budget, not on an application-by-application basis. Accordingly, it was not required to ensure that expenditure on any single application was exactly the same as the fee levied against the application.

14. Within this context, the Council explained, income and expenditure in relation to each individual licensing scheme was carefully monitored, controlled and audited against various statutory requirements, to ensure cost neutrality within its licensing budgets. This did not mean that information was recorded in a way that allowed the exact cost of a specific application to be calculated. Costs were not recorded against individual properties but against the discharge of this function as a whole. There was no requirement to record at an individual property level.
15. In order to establish property-specific costs and expenditure, the Council stated that it would need a very detailed time recording system for all Council officers, with the ability to record time against every HMO licensed property individually. For the reasons set out above, it was not required to maintain such a system.
16. The Council concluded that that it could not be expected to hold the property-specific cost information sought by the applicant.
17. Having considered the terms of this request and all of the relevant submissions, the Commissioner accepts that the Council does not hold information relating costs attributable to a specific property as it is not required to keep them and its systems are not set up to record them. The Commissioner is satisfied, therefore, that the Council was entitled to rely on section 17 of FOISA in responding to this request, on the basis that it did not hold the requested information.

### **Other matters**

18. Within their application to the Commissioner, Company A argued that the Council had not complied with the requirements of section 21(5) of FOISA, in that it failed to give notice of what it had done under section 21(4) and failed to provide its reasons for doing so. The requirements of sections 21(4) and (5) are set out in full in Appendix 1.
19. The Commissioner has considered the content of the Council's review response of 25 June 2014. She is satisfied that, despite omitting the express phrase that the initial response had been upheld, it met the requirements of section 21(5) of FOISA. The Commissioner would encourage the Council to review its review responses generally to ensure the wording is more comprehensive in future.
20. The Commissioner encourages authorities to disclose as much information as they can at every stage, reminding them that it does not have to be the information specifically requested, but can be contextual information to help the requester's understanding. In this case the Commissioner considers that although the Council was aware of the subject matter of what the requester was seeking, it would have been difficult to provide contextual

---

<sup>1</sup> <http://www.gov.scot/Resource/0038/00387514.pdf>

expenditure information without more clarity, so inviting Company A to make a further information request for expenditure information was appropriate.

## **Decision**

---

The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Company A.

## **Appeal**

---

Should either Company A or Glasgow City 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**24 June 2015**

### 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.

- (2) Subsection (1) is subject to section 19.

#### 21 Review by Scottish public authority

...

- (4) The authority may, as respects the request for information to which the requirement relates-

- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;  
(b) substitute for any such decision a different decision; or  
(c) reach a decision, where the complaint is that no decision had been reached.

- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**