

Decision Notice

Decision 106/2019: Mr L and Enjoy East Lothian Limited

Details of meetings between specific individuals

Reference No: 201900188

Decision Date: 11 July 2019



Summary

EELL was asked about meetings held between EELL's general manager and a named councillor.

EELL provided some information and explained that it did not hold other information.

The Commissioner investigated and found that EELL had partially breached FOISA in responding to the request. While the Commissioner was satisfied that EELL did not hold any further information falling within scope, he found that it had failed to provide a full response to one element of the request. The Commissioner required EELL to provide a revised review outcome.

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); 21(1) 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 24 November 2018, Mr L made a request for information to Enjoy East Lothian Limited (EELL). The information requested was a schedule of the undernoted details of all meetings - both formal and informal - between EELL's General Manager and a named Councillor from 1 January 2012 to the date of the request:
 - Date and venue.
 - Purpose, and whether or not minutes were available.
 - If a meal was involved, who paid.
2. EELL responded on 17 December 2018 and provided some information relating to formal meetings. This comprised dates and venues and, for one meeting, the purpose. EELL informed Mr L, in terms of section 17(1) of FOISA, that no minutes were held, nor did it hold any records of informal meetings. It also confirmed that no meals were provided at any of the meetings.
3. On 20 December 2018, Mr L wrote to EELL, requesting a review of its decision on the basis that he believed the response was incomplete, omitting a number of meetings that took place between 2012 and 2015.
4. EELL notified Mr L of the outcome of its review on 16 January 2019, modifying its original decision. It had identified additional formal meeting dates and venues, and provided these. In terms of section 17(1) of FOISA, EELL confirmed that it held no minutes or any record of meals being provided for these additional meetings. It reiterated that it held no documented record of any informal meetings.
5. On 24 January 2019, Mr L wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr L stated he was dissatisfied with the outcome of EELL's review

because he believed the information provided remained incomplete and excluded specific meetings.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr L made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 11 March 2019, EELL was notified in writing that Mr L had made a valid application and the case was 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. EELL was invited to comment on this application and to answer specific questions, with particular reference to the searches carried out to identify and locate the information requested.
9. EELL provided submissions in response.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both Mr L and EELL. He is satisfied that no matter of relevance has been overlooked.

Whether EELL held any further information

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 by 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.
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 of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
14. The Commissioner has taken account of the arguments in both Mr L's requirement for review and his application, in which he provides reasons as to why he considers EELL should hold further information falling within the scope of his request.

15. In its submissions to the Commissioner, EELL stated that it used Microsoft Outlook's calendar function to arrange and schedule meetings, and to allocate time to specific tasks. It explained that the General Manager was responsible for maintaining his own calendar and meeting requests, and did not have a personal assistant or further administrative support to manage this on his behalf.
16. For all formal meetings, EELL explained, an individual is assigned the task of taking a note or minute, which is thereafter circulated to all invitees and stored electronically as per EELL's records and retention schedule.
17. EELL submitted that the initial request had been passed to the General Manager, who completed the initial search. The information identified, which was believed to be an accurate reflection of the meetings held between the General Manager and the named Councillor, was disclosed. EELL submitted that the review had been carried out by its Marketing Manager, and had resulted in additional information being identified and disclosed.
18. EELL explained and provided supporting evidence of the searches it had undertaken, to identify the information falling within the scope of the request:
 - A search of the General Manager's electronic diary was carried out for the period in question to identify all recorded meetings. This involved a manual check plus an electronic search, using the name of the Councillor as the search term. These searches identified meeting dates and venues, which were subsequently disclosed.
 - An electronic search of EELL's shared folders was carried out, using the same search term to identify any meetings or minutes (nothing further was identified).
 - An electronic search of the General Manager's personal folders was carried out, using the same search term, to identify any further record, or any meetings or minutes – again, no further information was identified.
 - At review stage, the initial findings were reviewed and secondary checks of the General Manager's diary, desktop and mobile devices were undertaken. This identified further meeting dates, which were disclosed.
19. EELL submitted that, for the meetings identified (for which information on the dates and venues had been disclosed), no formal records or minutes had been taken, and no records were held regarding the provision of meals. As such, EELL was satisfied that it held no information falling within scope for these elements of the request.
20. EELL further explained that the electronic diary entries did not identify the purpose of the meetings. While these meetings generally would be to discuss local issues relating to the named Councillor's ward, a number of them were unscheduled. As no minutes or notes were available, EELL was satisfied it did not hold this information.
21. For the specific lunch meetings referred to by Mr L in his application, EELL acknowledged that these had taken place. However, they were not recorded in the General Manager's electronic diary, given that they were informal lunches which had taken place on an unplanned personal basis.
22. In respect of a specific business-growth event also referred to in Mr L's application, EELL explained that the General Manager had been invited to the event by Racecourse Management - not by the named Councillor - and he was one of many invited participants in attendance. While the named Councillor was also in attendance, EELL did not consider this

constituted a “meeting” with the named Councillor and so did not consider it fell within the scope of the request.

23. In conclusion, EELL considered, given the circumstances and the extent and results of the searches carried out, these were sufficient to allow it to conclude that no further information was held.
24. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that EELL took adequate, proportionate steps in the circumstances to establish whether it held any further information that fell within the scope of the request. He has considered the reasons provided by EELL which explain why no further information is held, and why information relating to specific meetings was not recorded, or was considered to fall outwith the scope of the request.
25. The Commissioner is satisfied that the searches described by EELL would have been capable of identifying any further information relevant to the request. The Commissioner is therefore satisfied, on the balance of probabilities, that EELL does not (and did not, on receipt of the request) hold any further information falling within the scope of the request. He finds that EELL was therefore correct to give notice, in terms of section 17(1) of FOISA, where it did not hold the information requested.

Section 21(1) of FOISA – Review by Scottish public authority

26. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.
27. In its submissions to the Commissioner, EELL acknowledged that it had failed to provide a full and specific response to the part of Mr L’s request that sought details of the “purpose” of the meetings. EELL apologised for this oversight, confirming that (with the exception of one meeting for which the purpose was disclosed), details of the purpose of the meetings were not held. EELL submitted it wished to apply section 17(1) of FOISA for this part of the request.
28. It is a matter of fact that EELL did not provide a full review outcome to that part of Mr L’s request seeking details of the purpose of the meetings, so the Commissioner finds that it failed to comply with the requirements of section 21(1) of FOISA to that extent. He requires EELL to carry out a fresh review and issue a revised review outcome, which fully addresses the “purpose” element of Mr L’s request.

Decision

The Commissioner finds that Enjoy East Lothian Limited (EELL) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr L.

The Commissioner finds EELL was correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested relating to certain elements of the request, and so complied with Part 1.

However, by failing to provide a review outcome for one part of the request, the Commissioner finds that EELL failed to comply with section 21(1) of FOISA.

The Commissioner therefore requires EELL to carry out a fresh review and issue a revised review outcome, which fully addresses the “purpose” element of Mr L’s request, by **26 August 2019**.

Appeal

Should either Mr L or EELL 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 EELL fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that EELL has failed to comply. The Court has the right to inquire into the matter and may deal with EELL as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

11 July 2019

Appendix 1: 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.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

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