

Decision Notice

Decision 151/2016: Mr Angus Files and Argyll and Bute Council

CCTV footage of an incident

Reference No: 201600232

Decision Date: 7 July 2016



Scottish Information
Commissioner

Summary

On 3 November 2016, Mr Files sent two emails, each asking Argyll and Bute Council (the Council) for CCTV footage.

For one email, the Council initially withheld information as personal data under section 38(1)(b) of FOISA. Following review, it found it could extract information specific to Mr Files' complaint and disclosed this to Mr Files. For the other email, it informed Mr Files no footage was held. Mr Files remained dissatisfied with the response to his first email and applied to the Commissioner for a decision.

The Commissioner investigated and was satisfied that the Council correctly identified and disclosed all the information it held.

Relevant statutory provisions

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

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 3 November 2015, Mr Files sent two separate emails to the Council, each containing a request for CCTV footage for two separate alleged incidents.

Email 1:

"Could you under Freedom of Information, supply the CCTV footage from your reception area showing the incident below. Complaint submitted on 22 October 2015, currently at stage 2 of the corporate complaints process." Mr Files provided the complaint reference number.

Mr Files made the complaint in person (with two others) and the Council recorded a note of it. The note says the complaint is "against a man who cleared away the signs at the back entrance of Kilmory at today's special Council meeting." It also describes the man's clothing and noted that he was speaking in the meeting (i.e. identifying him as a council employee).

Email 2:

"Could you under Freedom of Information supply the CCTV footage for your upstairs main reception hall and canteen area showing the incident, after the meeting had finished between [named Councillor] and myself at the 'cuts' meeting on the 22nd October 2015."

2. The Council responded to email 1 on 30 November 2015, refusing this information request. It withheld the information which it held under section 38(1)(b) of FOISA, explaining that it could not extract the footage for the particular incident and considered it would breach the data protection principles if it supplied footage of all those entering and leaving the building that day. It did not mention email 2 in this response.

3. On 10 December 2015, Mr Files wrote to the Council, requiring a review of its decision on the basis that he did not accept there was any technical difficulty with extracting the specific footage. He did not request a review for email 2 in this item of correspondence, or at any other point.
4. The Council notified Mr Files of the outcome of its review on 8 January 2016, addressing both of Mr Files' emails. It was clear that it wished to address both emails in this review. For email 1 the Council explained it had now found a means of copying the CCTV footage onto a disc. It had done this and sent Mr Files a copy. For email 2, it stated it held no CCTV footage for the alleged incident.
5. On 4 February 2016, Mr Files wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Files stated he was dissatisfied with the outcome of the Council's review, in respect of email 1, because he had only been given a selected portion of the footage and he expected more in relation to "who is responsible for ejecting the boards and banners".
6. As Mr Files made no reference to any elements of his second email in his application and as (in any event) he did not request a review of the response to email 2, the Commissioner cannot consider email 2 to be within the scope of this application. She will not consider it further in her decision below.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Files made a request for information (email 1) to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. On 7 April 2016, the Council was notified in writing that Mr Files had made a valid application. The Council was asked to send the Commissioner the information withheld from Mr Files. The Council provided the information and the case was allocated to an investigating officer.
9. 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, with a view to confirming whether all relevant information had been identified, located and provided to Mr Files.
10. Both the Council and Mr Files provided comments during the investigation. The Council also supplied further CCTV footage from the relevant location.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Files and the Council. She is satisfied that no matter of relevance has been overlooked.
12. Mr Files complained about the response to his first email. He was dissatisfied that:
 - a) the Council had extrapolated only a "selective portion" of CCTV footage;
 - b) this did not show the boards being "kicked, booted and thrown" outside and he wanted to identify the officer responsible for this.

13. The Council maintained that there was no footage of boards/banners being “kicked, booted and thrown”, as described by Mr Files. It had, however, released all the footage it had of the Council officer identified in the request removing the boards/banners.

Has all the relevant information held by the Council been disclosed?

14. Under 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. This is subject to qualifications which are not relevant in this case
15. The Council confirmed that it had disclosed all the footage it held of the boards/banners being removed by the Council officer identified in Mr Files’ complaint. It only considered footage of this officer to be relevant to the request. Having considered the request, the Commissioner agrees.
16. The matter the Commissioner must consider here is whether all the information held by the Council and capable of addressing Mr Files’ request has been identified, located and disclosed by the Council.
17. The Commissioner has viewed footage of the full period during which the boards/banners were in place and in the vicinity of the relevant entrance. She has identified no footage of the relevant Council officer handling the boards/banners, in addition to that disclosed to Mr Files. In all the circumstances, she is satisfied that this is the only footage held by the Council and capable of addressing Mr Files' request.
18. Incidentally, consideration of the footage for the period described in the previous paragraph has identified no instance of the boards/banners being (on any reasonable interpretation) kicked, booted or thrown.

Decision

The Commissioner finds that Argyll and Bute Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Files

Appeal

Should either Mr Files or the 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

7 July 2016

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.

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