

Decision Notice

Decision 163/2014 Ms Valerie Robson and Scottish Borders Council

Cost of re-tendering

Reference No: 201400793

Decision Date: 22 July 2014



Summary

On 3 October 2013, Ms Robson asked Scottish Borders Council (the Council) about the costs of a retendering exercise for its Homecare contract. The Council told Ms Robson that it did not hold any information about this. Following a review, Ms Robson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the Council did not hold any information covered by Ms Robson's request.

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 3 October 2013, Ms Robson wrote to the Council requesting the following information about the retendering of its Homecare contract. Only one part of her request is the subject of this decision:
"CEO Report: Monitoring of the General Fund Revenue Budget, Item 3.2 Social Work:
 - *What were the costs of this Retendering Exercise (Tender ref: SBC/CPS/616 (a) prior to its discontinuation in July at Award Stage (b) subsequent to its discontinuation."*
2. The Council responded on 4 November 2013. It told Ms Robson, in line with section 17 of FOISA, that it did not hold this information. The Council explained that:
"The tender process was led and facilitated by various staff all with a specific contribution to make. Therefore, this process was delivered within existing resources as part of core duties."
3. On 17 November 2013, Ms Robson wrote to the Council requesting a review of its decision.
4. The Council notified Ms Robson of the outcome of its review on 18 December 2013. The Council upheld its initial response that it did not hold the requested information. The Council explained that its Social Work Department does not keep records of individual projects as this is part of the officers' core duties within the Council.
5. On 7 April 2014, Ms Robson wrote to the Commissioner, stating that she 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 Ms Robson 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. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain how it had established that it did not hold any information covered by Ms Robson's request.

Commissioner's analysis and findings

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

Section 17 - Notice that information is not held

9. 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 qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
10. Ms Robson's request was for information about two costs relating to the retendering exercise. In her application for a decision, Ms Robson set out why she expected such information to be held.
11. The Council was asked by the investigating officer to explain the steps it took to establish what information it held, and to describe the searches it had carried out. The Council reiterated that the tender process was delivered by its staff as part of their core duties. It stated that no searches were made as they were not necessary other than to confirm again with its Social Work project team and eProcurement team that there had been no time recording of individual projects or tendering exercises that could be used to arrive at the costs sought.
12. The Council was asked if there was any requirement on the Council in terms of statute, guidance or good practice to keep records of time spent by staff in such a retendering exercise. The Council replied that there was no such requirement.
13. Finally, the Council was asked if it held information about any other identifiable costs incurred (e.g. advertising) in relation to the retendering exercise. The Council replied that "it was mandated to use the Public Contracts Scotland website for its tenders", and explained that this is a free or no cost service offered by the Scottish Government. The Council consulted its central procurement team, and commented that there were no identifiable costs other than staffing and printing out of tenders, but neither were specifically recorded on a per tender basis.
14. In all cases, the Commissioner would expect a Scottish public authority to take reasonable, proportionate steps to identify and locate any information it holds and which falls within the scope of a request under section 1(1) of FOISA. In this case, the Commissioner accepts the Council's submission that it did not record the staff time taken up by the retendering exercise because this was considered to be part of the core activities of the staff involved. In the circumstances, the Commissioner is satisfied that the Council took reasonable and proportionate steps to identify and locate any information it held and which was covered by

the request. She accepts that these steps were based on a reasonable interpretation of the request and a knowledge of its internal processes in tendering exercises.

15. The Commissioner therefore accepts, on the balance of probabilities, that the Council does not hold any information falling within the scope of Ms Robson's request. The Commissioner accepts that the Council was correct to give notice of this in accordance with section 17(1) of FOISA.
16. In her correspondence with the Commissioner, Ms Robson made several points about budget control systems in respect of procurement, and about ways in which the Council could monitor costs. However, as noted in previous decisions, the Commissioner's remit in carrying out this investigation extends only to the consideration of whether the Council actually held the relevant information requested. She cannot comment on whether a public authority should have recorded any, or more, information about a particular event or process. Consequently, in this instance, she cannot comment on whether the Council should hold recorded information that falls within the request.

Decision

The Commissioner finds that Scottish Borders Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms Robson.

Appeal

Should either Ms Robson or Scottish Borders 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
22 July 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.

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