

Decision Notice

Decision 186/2017: Mr X and Fife Council

Minutes of meetings (Fife Council Housing Management)

Reference No: 201700278

Decision Date: 9 November 2017



Scottish Information
Commissioner

Summary

The Council was asked for minutes and agendas for specified housing management meetings. The Council initially failed to respond to the request. It then provided some information, after redacting some personal data. The requester was not satisfied that the Council had provided all information covered by his request.

During the Commissioner's investigation, the Council supplied the requester with a significant amount of additional information which fell within the terms of the request.

The Commissioner found that the Council did not comply with Part 1 of FOISA in the way it responded to the request, and was critical of the piecemeal way in which information was identified and provided. The Commissioner requires the Council to issue a new review response in relation to information which has been identified as falling within the scope of the request, but which has not yet been disclosed.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held)

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 July 2016, Mr X made a request for information to Fife Council (the Council). He requested minutes, agendas and any items submitted to meetings of the following housing management groups from January 2013 to July 2016:
 - Housing Management Executive
 - Housing Consultation Group
 - Fife Housing Register Management Group
 - Fife Housing Register Executive Group
2. The Council acknowledged this request on 25 July 2016, but did not respond.
3. On 23 August 2016, Mr X wrote to the Council asking why he had not received a response from the Council to his request. He also made a new request for the same information (i.e. any minutes, agendas, items) for any meetings that had taken place since his original request of 22 July 2016.
4. Mr X wrote to the Council again on 25 and 26 August 2016 asking why he had not received any information, and on 31 August 2016 he asked the Council for details on how he could complain about the Council's lack of response to his request.
5. On 1 September 2016, the Council told Mr X that it would conduct a review of how it had dealt with his request. Mr X replied on the same day that he had not asked for a review from the Council. The Council explained, by email of 6 September 2016, that it was conducting a

review because Mr X had expressed dissatisfaction that it had not responded to his request, and the Council was required by FOISA to conduct a review.

6. On 15 September 2016, the Council notified Mr X of the outcome of its review. The Council apologised for the delay in responding and supplied information to Mr X. It stated that, for meetings of the Housing Management Executive, the Council only held information from after January 2015. The Council withheld some personal data in terms of section 38(1)(b) (Personal information) of FOISA.
7. On 28 September 2016, Mr X complained to the Council about the delay and pointed out that he had not received any information about meetings during August 2016. Mr X also commented that the information given to him on 15 September 2016 was “a shambles” and not in date order. He believed numerous documents were missing. He was unhappy with the way in which the Council had withheld personal data: it appeared to have withheld whole documents instead of redacting the personal data from the documents. He also questioned why the information he had requested was not routinely published by the Council.
8. The Council told Mr X on 26 October 2016 that it was awaiting further information from the service involved. On 1 November 2016, the Council sent Mr X a letter entitled “request for review” which quoted the reference to Mr X’s first request (that of 22 July 2016). The Council said that the information it had provided was that which was “readily available”. To provide all the information covered by Mr X’s request would exceed £600 and section 12 (Excessive cost of compliance) of FOISA therefore applied.
9. The Council also provided more information at that date, stating that it did so on “a voluntarily basis”, rather than in terms of FOISA, although acknowledging that this information had been omitted from its previous response. Personal data were redacted from this information. The Council apologised for the delay and acknowledged that the information did not have an index.
10. On 7 November 2016, Mr X wrote to the Council and asked for the minutes of the Housing Management Executive meeting of 16 August 2016. He expressed his dissatisfaction at not receiving a response within the statutory timescale. He believed that, because the Council had selected and provided him with some information, this meant that he had been denied the opportunity to narrow his request.
11. On 11 November 2016, the Council wrote to Mr X and confirmed that the Council should have refused his request on the grounds of excessive costs (section 12 of FOISA). It stated that it had been incorrect to provide him with any information.
12. The Council wrote to Mr X on 14 November 2016 to say that his email of 7 November 2016 request had been logged as a new request (minutes of the Housing Executive meeting of 16 August 2016).
13. On 12 December 2016, Mr X applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr X was dissatisfied that the Council referred to excessive costs only after responding to his request for a review, and he did not accept the cost estimate. He was dissatisfied that the Council had given notice that it did not hold information in relation to Housing Management Executive meetings before January 2015. He also believed that the Council had not provided him with information that fell within his request.

Investigation

14. The application was accepted as valid. The Commissioner confirmed that Mr X made requests for information to a Scottish public authority and asked the authority to review its responses to those requests before applying to him for a decision.
15. 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 including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
16. In its initial submissions to the Commissioner, the Council acknowledged that it had wrongly relied on section 12 of FOISA. It stated that Mr X had been given all the information it held, in relation to his requests.
17. On 7 July 2017, Mr X supplied the Commissioner with a list of information that he believed was missing from the information that the Council had supplied. The Council was asked on 20 July 2017 to search for this information.
18. The Council then identified some information that had not been supplied to Mr X or the Commissioner, although it had been identified as falling within the request at the time of Mr X's application. On 29 August 2017, the Council apologised to the Commissioner for this oversight and said it would disclose the documents to Mr X, after redacting personal data. This information was sent to Mr X on 6 September 2017.
19. In its email of 29 August 2017, the Council also told the Commissioner it was considering whether it could supply some "third party information...which has taken time to receive due to staff being unavailable".
20. Mr X confirmed receipt of the information sent to him on 6 September 2017, but expressed much dissatisfaction that it had taken so long for the Council to supply it (given that his initial information request had been made more than a year earlier). He was particularly unhappy that the minute of the Housing Executive Board meeting of 6 July 2016 was not available. He expressed his concern that this information might have been deliberately withheld by the Council, given the agenda for this meeting.
21. The Council was asked again if it held this information and in particular whether there had been any meeting on 6 July 2016. The Council checked diaries of those who would have attended this meeting, conducted a further search and supplied copies of the minutes of the meeting that would have followed the July meeting (to assess if this would show whether or the July 2016 meeting had taken place). The Council did not find any recorded information showing that a meeting had taken place on 6 July 2016, and confirmed that it held no recorded minute of this meeting. It submitted that there had been a change in the staff responsible for taking minutes at around this time (the implication being that the meeting was not minuted).
22. Finally, the Council was asked whether it could provide any evidence to confirm whether the meeting had or had not taken place, regardless of whether any minute of the meeting was held. The Council could not provide any evidence, but stated that the meeting of 6 July 2016 was likely to have taken place as an informal meeting with no minute taken.

Commissioner's analysis and findings

23. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both Mr X and the Council. He is satisfied that no matter of relevance has been overlooked.
24. Mr X's dissatisfaction with the Council's response to his request was initially summarised as follows:
 - He did not agree with the reasons for withholding information and that the Council had advised on costs only after the review. He thought that the Council did not give advice on costing until it was too late and he did not agree with the cited cost
 - The Council relied on section 17 (Notice that information is not held) of FOISA for Housing Management Executive meetings pre-2015, but Mr X suspected that such information should be retained longer
 - That the information supplied was not ordered and was filed in incorrect folders.
 - That the meeting information was not routinely published online
 - The Council's delay in responding to his requests
 - That all the information was not supplied to him and, in particular, certain minutes and attachments were missing

Section 1(1) of FOISA – General entitlement

25. 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.
26. The Council initially submitted to the Commissioner that its searches covered all the information it held and included discussions with all staff involved in providing the data within the relevant Council service, and the relevant electronic filing system. The Council confirmed that the electronic filing system was the only place where information would be held, in relation to the housing management groups.
27. Despite this statement, the Council located more information that fell within the terms of Mr X's requests during the Commissioner's investigation. The Council apologised for this, but did not explain why its previous searches had not retrieved all relevant information.
28. The Council failed to comply with Part 1 of FOISA inasmuch as it did not supply Mr X with information covered by his request (or apply another provision of FOISA) when responding to his request.
29. The Commissioner must decide whether all the information held by the Council and falling within Mr X's requests has now been identified and supplied to Mr X, including a record of the meeting of 6 July 2016.
30. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information (or, in some cases, more information) is not held.

31. The Council explained that the Housing Executive Team had only been meeting since January 2015 and therefore the Council did not hold information for this group prior to this date. It is unfortunate that the Council did not explain this to Mr X. In the circumstances, the Commissioner accepts that the Council does not hold information pre-dating January 2015.
32. Mr X had expressed concern that attachments to some documents were missing. The Council replied that if the documents had attachments then these would have been provided, but attachments were not necessarily held. However, some attachments were identified and provided to Mr X during the investigation: the Commissioner understands that this information was originally attached to documents which were not included among the information already provided to Mr X.
33. The Council explained that there had not been a consistent approach to filing attachments for all meetings. Practice would be improved: in future, the Council would include hyperlinks in meeting agendas, to attach all relevant documents from all those attending and not only documents received from the Council.
34. Mr X expressed concern that the Council had only supplied information that (it said) was "readily available". The Council said that this expression was used to refer to all information held by the Council, in contrast to information falling within the request, but held by a third party. The Council would not have access to such information.
35. The Commissioner accepts this explanation of the expression "readily available". However, in the context in which it appeared, the Council's use of this term was potentially confusing as it suggested that other information relevant to Mr X's request was held by the Council. Further confusion may have been caused by the Council's reference in the same paragraph to section 12 of FOISA.
36. Mr X expressed particular concern that he had not been supplied with the minute of a Housing Services Management Executive Board meeting of 6 July 2016. He told the Commissioner he had received the agenda and its attachments, but no minutes.
37. The Housing Services Management group scrutinises and approves matters relating to housing strategic, operational and financial business, as delegated by the administration of the Council through standing orders and the scheme of delegation. The Housing Management Executive comprises the Head of Housing Services and Housing Service Managers, with support provided from other policy, financial and administrative staff.
38. The Council was asked if meetings had occurred that were not minuted or for which it did not hold minutes. The Council replied that it did not believe so. The Council was asked if there was an index of the meetings held. The Council replied that there was not.
39. The Council confirmed that it had checked the diaries of those who would have attended these meetings, but no meeting was recorded on 6 July 2016 in any of the diaries of those concerned. The Council stated:

"...there are no minutes held, or any record that a meeting was held during July 2016 by the Housing Management Executive Team. It has been explained that this was due to a transition time where the staff responsible for organising and taking notes at these meetings changed."
40. The Council also supplied a copy of a minute of a meeting of a different group (Housing Services Consultation Group) from 25 August 2016, which made an indirect reference to meeting cancellations. However, it is not clear which meeting was being referred to.

41. This was conveyed to Mr X. He commented that none of the agenda items for the July 2016 meeting were added to the agenda for either of the August meetings. In his opinion, this did not make sense: if an agenda item is added to a management meeting and that meeting is cancelled or postponed - for whatever reason – the agenda items would be carried forward. In respect of one item on the agenda, Mr X was of the view that it must have been discussed at some meeting given that actions had been effected. He was highly concerned that this item had “just disappeared from record”. He also thought that there would be meeting protocols, especially for a senior level meeting, where agenda items are not ignored and withdrawn.
42. The Council was asked whether it could confirm that no meeting had taken place on 6 July 2016, or whether its position was that the meeting had taken place but no minutes existed. The Council was unable to provide evidence to show whether the meeting had taken place. The Council’s Head of Service recalled that a member of staff was on leave and that “the meeting would have probably gone ahead as an informal meeting with no note taken.”
43. It is not within the Commissioner’s remit to make comment on the way in which the Council conducts or minutes its meetings. Nor is it within the Commissioner’s remit to decide whether a meeting was held on 6 July 2016 and was not minuted, or whether there was simply no meeting and therefore no minutes. The Commissioner can only investigate whether any recorded information exists in relation to this meeting. It is unfortunate that the Council has not been able to provide any evidence to show whether or not the meeting took place, but the Commissioner accepts that such evidence is unavailable. On the basis of submissions received, he accepts, on the balance of probabilities, that the Council does not hold a minute of the meeting which was due to take place on 6 July 2016.
44. In relation to the other information covered by Mr X’s request, the Commissioner accepts that the Council has now taken adequate and proportionate steps to establish what information it holds. Much of the information that Mr X identified as missing from its response has now been supplied to him. The Council has also provided a credible explanation as to why some attachments to documents such as agendas may not have been held, given that they came from third party organisations. The Commissioner accepts the Council’s assurance that it has now checked the locations where relevant information would most likely be stored. The Commissioner accepts that the Council has also made enquiries of relevant staff.
45. The Commissioner accepts that the Council has now provided Mr X with all information covered by his request apart from one document which it has not disclosed or withheld in terms of FOISA. The Council has indicated that the information includes commercially confidential information of a third party and wishes to consult the third party before providing the information. The Commissioner requires the Council to provide Mr X with the information in the document or provide him with a refusal notice indicating which provision of FOISA (or, if relevant, the Environmental Information (Scotland) Regulations 2004 (the EIRs)) applies to that information, so that he can, if he remains dissatisfied, seek a decision from the Commissioner on that point.

Timescales

46. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
47. Mr X was dissatisfied that he did not receive a response to his initial request of 22 July 2016. It is a matter of fact that the Council did not provide a response to Mr X's request for information of 22 July 2016 within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
48. Mr X made his second information request on 23 August 2016. The Council's response to this seems to be contained within a review of its response to his first request (1 November 2016). The Council did not provide a response to Mr X's request for information of 23 August 2016 within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

Commissioner's conclusion

49. The Commissioner is highly critical of the time to took to provide Mr X with information from minutes and agendas. Such information should be readily available and easily provided.
50. The Commissioner is also critical of the Council for the way in which information was provided to his office during the investigation. The answers to questions on matters of fact were often delayed, and some answers were later shown to be inaccurate. This led to a lengthy investigation of what should have been a straightforward case.
51. Mr X found aspects the Council's responses difficult to understand and confusing. The Commissioner agrees. The way in which the Council addressed Mr X's dissatisfaction – by providing information which was “readily available”, by erroneously citing of section 12, with the lack of clarity on what information had been redacted, and with references to information being provided “outwith FOISA” – made it difficult to understand the Council's response and understandably led Mr X to believe that the Council was withholding information covered by his request.

Decision

The Commissioner finds that Fife Council (the Council) failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr X.

By providing some information to Mr X, the Council partially complied with Part 1 of FOISA. However, the Council did not provide all the information that fell within Mr X's request.

The Council did not provide a response to Mr X's requests for information within 20 working days and failed to comply with section 10(1) of FOISA.

The Commissioner requires the Council to respond to Mr X's requirement for review in respect of information which falls within his request but which has not been provided or withheld under FOISA (see paragraph 45) by **5 January 2018**.

Appeal

Should either Mr X 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.

Enforcement

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

Margaret Keyse
Head of Enforcement

9 November 2017

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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

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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