

Decision Notice



Decision 196/2012 Mr Derek Arthur and Fife Council

Complaints information

Reference No: 201201476

Decision Date: 29 November 2012

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Arthur requested from Fife Council (the Council) certain information relating to the recording of complaints. The Council responded by providing some related information, while stating that the information requested was not recorded. Following a further similar request, certain information was provided by the Council. Mr Arthur was dissatisfied with responses which appeared to be contradictory. Following an investigation, the Commissioner found that the Council had failed to provide all of the relevant information it held in response to Mr Arthur's initial request. She was satisfied, however, that it had provided the information it held subsequently.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) and (2) (Notice that information is not held); 19 (Content of certain notices)

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 11 December 2011, Mr Arthur, who had been in correspondence with the Council regarding the recording of certain correspondence as a complaint, sent an email to the Council. Within this email, Mr Arthur requested the following information:

In terms of the Freedom of Information Act ... can you please tell me how many complaints Fife Council have recorded in the past 5 years (January 2006 to December 2011 inclusive) where the complaint was registered for the first time, at the last stage in the procedure, when there had been no previous reference to recording a complaint by the individual or organisation corresponding with Fife Council? Can you provide the information for the last 5 years? Can you also tell me how many of these complaints have been the subject of a referral to the Scottish Public Services Ombudsman?



2. The Council responded on 19 December 2011. While this response related to Mr Arthur's ongoing correspondence with the Council, it was also in response to Mr Arthur's request for information. The Council provided Mr Arthur with the number of complaints it had received over the past five years, concluding that it kept no record of complaints not registered at stage 1 of its complaints process. In effect, therefore, it was stating that it did not hold the information requested by Mr Arthur.
3. On 27 December 2011, Mr Arthur wrote to the Council requesting a review of its decision. He did not believe his request to have been answered fully, and also complained that the response to his information request should have been separate from correspondence regarding his complaint.
4. The Council wrote to Mr Arthur on 16 January 2012. It considered it reasonable to have responded to his information request along with other issues, but confirmed that his request for review would be dealt with separately.
5. The Council again wrote to Mr Arthur on 25 January 2012. The Council explained that where a request for information was contained in wider correspondence (in this case within a letter regarding an ongoing complaint) it considered it appropriate to respond as it had. However, the Council also acknowledged that it had failed to advise him of his rights to complain in terms of FOISA and apologised for this error.
6. On 11 February 2012, Mr Arthur emailed the Council again and requested the following information:

Please let me know if Fife Council has previously recorded correspondence at a stage two complaint level when there has been no stage one complaint, which matter has then been the subject of a complaint to the SPSO. When a complaint is investigated by the SPSO the authority complained about is involved in the process and receives notification of the outcome. I would therefore expect you to be able to answer this question based on your records.
7. The Council responded on 27 February 2012, providing Mr Arthur with information in response to his request.
8. On 3 March 2012, Mr Arthur wrote to the Council requesting a review of its decision. He believed there had been a lack of transparency and openness on the part of the Council and that the responses of 19 December 2011 and 27 February 2012 were contradictory.
9. The Council notified Mr Arthur of the outcome of its review on 30 March 2012. It informed Mr Arthur that the response of 19 December 2012 had been correct, in that the Council had no business need to collate the information and therefore it did not hold the information at that time. The Council further explained that, upon receipt of the request of 11 February 2012, a staff member had interrogated a (closed) computer system and carried out lengthy manual checks to produce the statistics provided to Mr Arthur.
10. The Council therefore concluded that it did not hold the information on 19 December 2012: however, following collation, it did hold the information on 27 February 2012.



11. On 31 July 2012, Mr Arthur wrote to the Commissioner, stating that he 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.
12. The application was validated by establishing that Mr Arthur had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.

Investigation

13. On 11 September 2012, the investigating officer notified the Council in writing that an application had been received from Mr Arthur, 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 comment on the steps taken to establish what relevant information it held, and on Mr Arthur's submission that the two responses provided were contradictory.
14. The Council responded on 4 October 2012. In its submissions, the Council accepted that the information held should have been provided to Mr Arthur in the initial response of 19 December 2012. The Council also accepted that it had failed to comply with the technical aspects of FOISA in the notices given to Mr Arthur.
15. The relevant submissions received from both the Council and Mr Arthur will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

16. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Arthur and the Council and is satisfied that no matter of relevance has been overlooked.

Information held by the Council

17. 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 certain restrictions which, by virtue of section 1(6), allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). 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.



18. In his application to the Commissioner, Mr Arthur commented that the fact the Council was able to provide the information in response to his request of 11 February 2012 demonstrated that the original request was not handled properly. He explained that his two requests were essentially for the same information and he therefore believed that the Council must have held the information at the time of his original request.
19. The Council explained that, having received Mr Arthur's request of 11 December 2011, it was unable to retrieve all of the information he had requested using the computer system on which it was stored and therefore could not (at that stage) identify how many complaints fell within the parameters set by Mr Arthur. The Council confirmed, however, that the information was later identified and accepted that this information should have been provided to Mr Arthur in its initial response.
20. Having considered all of the relevant submissions in this case, the Commissioner finds that the Council failed to comply with Part 1 (and in particular section 1(1)) of FOISA, by failing to provide all of the relevant information it held and which fell within the scope of Mr Arthur's request of 11 December 2011. However, given that the information was subsequently provided in response to his request of 11 February 2012 (and noting that Mr Arthur has not, in his application to the Commissioner, taken issue with the information provided at that point), she does not require the Council to take any action.

Refusal notice

21. Mr Arthur also complained to the Commissioner that the refusal notice provided on 19 December 2011 did not meet the requirements of section 17(1) of FOISA. Notwithstanding the fact that, as outlined above, the Council wrongly stated that the information was not held, section 17(2) of FOISA states that a refusal notice under section 17(1) is subject to section 19 of FOISA which states that such a notice must contain particulars:
 - a. of the procedure provided by the authority for dealing with complaints about its handling of requests for information; and
 - b. about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).
22. Given that the particulars as outlined in the above paragraph were not contained in the Council's response of 19 December 2011, the Council failed to comply with these requirements in the response it provided. In particular, Mr Arthur was not advised of his right to seek a review and, if he remained dissatisfied thereafter, to apply to the Commissioner for a decision. Given the outcome of this case, the Commissioner does not require the Council to take any action in response to these failures, although she would encourage it to ensure that all staff are aware of the content to be contained in such notices, to ensure future compliance with the relevant requirements of FOISA.



DECISION

The Commissioner finds that the Council failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Arthur on 11 December 2011, by failing to identify, locate and provide all the information it held which was covered by the terms of Mr Arthur's request. She also finds that, in failing to comply with the requirements for the content of refusal notices set out in sections 17(2) and 19 of FOISA, the Council further failed to comply with Part 1 of FOISA. Given the subsequent provision of information to Mr Arthur, the Commissioner does not require the Council to take any action in respect of these failures in response to Mr Arthur's application.

Appeal

Should either Mr Arthur or Fife Council wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
29 November 2012



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



19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).