

Decision Notice



Decision 117/2010 Scott Simpson and Glasgow City Council

Repair of a streetlight

Reference No: 201000315

Decision Date: 6 July 2010

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Scottish Information Commissioner

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Summary

Mr Scott Simpson requested from Glasgow City Council (the Council) information pertaining to a streetlight repair. The Council advised Mr Simpson that the light had been repaired but it could not advise him of the date. Following a review, Mr Simpson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Mr Simpson's request for information in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), by failing to advise Mr Simpson that it did not hold the requested information under section 17(1) of FOISA, and by failing to provide him with a notice compliant with section 19 of FOISA. The Commissioner notes that the Council subsequently provided information to Mr Simpson about the date of the repair, and he did not require the Council to take any action in response to this decision.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (General entitlement); 17(1) and (2) (Notice that information is not held), and 19(a) and (b) (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. Mr Simpson has contacted the Council a number of times in ongoing correspondence about repairs to street lighting. On 4 December 2009, Mr Simpson contacted the Council requesting the date when a specific streetlight would be repaired. Mr Simpson noted that he had reported a fault with this particular light on 13 November 2009, and he complained that it had not yet been repaired.
2. The Council responded on 14 December 2009. It advised Mr Simpson that the specified streetlight had already been repaired when it had been inspected on 12 December 2009 as a result of his complaint. The Council explained that it was unable to advise when the repair was undertaken due to a backlog of lighting faults being processed.



3. On 21 December 2009, Mr Simpson wrote to the Council requesting a review of its decision. In particular, Mr Simpson questioned whether the explanation provided in the Council's response to his request was a valid reason for not complying with a freedom of information request.
4. The Council notified Mr Simpson of the outcome of its review on 26 January 2010. It advised Mr Simpson that, due to the high number of lighting faults reported, the relevant Council records had not been updated to show when the repair had taken place. The Council also advised that, as Mr Simpson's request had been made on a complaint form, it had not been immediately apparent that it had been a request in terms of FOISA. Consequently, it had been treated by the Council as a complaint instead.
5. On 12 February 2010, Mr Simpson wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying for a decision in terms of section 47(1) of FOISA and providing comments on the case.
6. On 18 February 2010, the Council wrote again to Mr Simpson to say that the information relating to the date of the street light repair was now available. It confirmed that this had been carried out on 11 December 2009. Mr Simpson provided this letter to the Commissioner and stated that his contention was that this information should have been provided within 20 working days of his original request.
7. The application was validated by establishing that Mr Simpson had made a request for information to a Scottish public authority and had 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

8. On 8 April 2010, the Council was notified in writing that an application had been received from Mr Simpson. The investigating officer gave the Council an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked it to respond to specific questions.
9. The Council provided its submissions in response on 22 April 2010. In doing so, it drew the investigating officer's attention to the fact that it did not hold the information Mr Simpson requested at the date of his request, and that it had subsequently advised Mr Simpson of the date of the repair, when that information had become available through the passage of time.
10. The Council also pointed out that Mr Simpson's request was worded in such a way that it presumed that a future date would be provided as the response. The Council maintained that it had provided all the information which it held when it responded on 14 December 2009, and noted that section 1(4) of FOISA provides that the information to be given by an authority is that held at the time the request is received.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr Simpson and Glasgow City Council and is satisfied that no matter of relevance has been overlooked.

Scope of request; section 1(4) of FOISA

12. The Commissioner notes that in his application, Mr Simpson stated that the Council had failed to advise him of the date or dates when the repairs were carried out to the specified street light, and that the Council failed to comply with section 16 or 17 of FOISA in respect that it did not give Mr Simpson a refusal notice or a notice that information was not held.
13. As noted above, Mr Simpson's contention is that the information about the date upon which the repair was carried out should have been provided within 20 working days of his request.
14. The Commissioner has noted that Mr Simpson made his request on 4 December 2009 for information on "when this street light will be repaired" [emphasis added], suggesting that the expected response was one which would identify a future date. He also notes that the wording of the request differs from that referred to in Mr Simpson's application to him, which used the past tense.
15. The Commissioner notes that section 1(4) of FOISA provides that the information to be given by the authority is that held by it at the date *when the request is received*, subject to an exception which is not relevant here. In this case, the relevant date for the purposes of section 1(4) of FOSIA is 4 December 2010, some 7 days before the repair was conducted.
16. Applying section 1(4) to this case means that the Commissioner can only consider what information, relating to a future repair of the streetlight, was actually held by the Council as at 4 December 2009. Accordingly, the Commissioner cannot comment on what information was held by the Council after 4 December 2009.
17. That said, the Commissioner welcomes the fact that the Council did confirm the date of the repair once it had been conducted and the information was available. However, he considers that it was not obliged to do so in response to Mr Simpson's information request, unless information was held at 4 December 2009 that indicated that the repair would be done on 11 December or some other date.
18. This decision will therefore focus on whether the response provided to Mr Simpson in response to his request was compliant with FOISA, and whether the information requested was held by the Council at 4 December 2009.

Information not held



19. The Commissioner has noted that section 17(1) of FOISA requires that where a Scottish public authority receives a request for recorded information that it does not hold, then it must give the applicant a notice in writing to that effect.
20. The Commissioner is satisfied that the Council did not hold the information requested, which related to a future repair of the streetlight, at the time when the request was made on 4 December 2009. He has considered the Council's explanation for its handling of Mr Simpson's request and the reasons for information not being available at that time. The Commissioner has concluded that in all the circumstances of the case, that the Council did not hold information on the date of the repair on the specified streetlight at the date of the request.
21. However, since the Council made no reference to section 17(1), nor to FOISA, in its response to Mr Simpson made on 14 December 2009, the Commissioner has concluded that the Council failed to comply with the requirements of section 17(1) of FOISA.
22. The Commissioner notes that Mr Simpson specifically raised the issue of the Council's compliance with section 16 of FOISA. However, the Commissioner observes that section 16 can only apply where a public authority holds information and has withheld it. Since he has found that the information was not held at the relevant date, it is not necessary for the Commissioner to go on to consider section 16.

Section 19 – Content of certain notices

23. Section 19 of FOISA requires that a notice under section 17(1) of FOISA 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).
24. The Commissioner notes that the Council's response letter of 14 December 2009 failed to provide the information required by section 19 of FOISA with respect to Mr Simpson's rights to request a review and to apply to the Commissioner for a decision. The Commissioner has therefore concluded that the Council also failed to comply with the requirements of section 19 (a) and (b) of FOISA in responding to Mr Simpson's request.

DECISION

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 and in particular with the requirements of sections 17(1), 19(a) and 19(b) when responding to the information request made by Mr Simpson.

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As the Council has now provided Mr Simpson with the information, the Commissioner does not require the Council to take any action with regard to these failures in response to this decision notice.

Appeal

Should either Mr Simpson or Glasgow City 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.

Kevin Dunion
Scottish Information Commissioner
6 July 2010



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).