

Decision Notice



Decision 174/2010 Mr Joseph Gallacher and Glasgow City Council

Street Trader applications

Reference No: 201001288

Decision Date: 8 October 2010

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
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Summary

Mr Gallacher requested from Glasgow City Council (the Council) information pertaining to applications for Street Trader Licences. The Council responded by stating that as the information was readily accessible, section 25(1) of FOISA applied and it was not required to provide the information. Following a review, Mr Gallacher remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Gallacher's request for information in accordance with Part 1 of FOISA, by correctly applying the exemption in section 25(1) of FOISA.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) and (2)(a) (Effect of exemptions) and 25(1) (Information otherwise accessible)

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 10 March 2010, Mr Gallacher wrote to the Council in relation to 15 numbered Street Trader Licenses requesting the following information:
 - i) on what date was the application for these licenses made?
 - ii) on what date were the applications considered by the licensing court?
2. The Council responded on 26 March 2010. Mr Gallacher was informed that the information he requested was available under the Council's Publication Scheme and as such was exempt from disclosure in terms of section 25(1) of FOISA. The Council stated the information was contained with the public register of street trader applications, which could be examined within the premises occupied by the Council's licensing section.



3. On 20 April 2010, Mr Gallacher wrote to the Council requesting a review of its decision in relation to part i) of his request only. Mr Gallacher did not accept that the dates on which the applications were made were available on the Council's website: he requested details of how they could be found if the Council considered otherwise.
4. The Council notified Mr Gallacher of the outcome of its review on 18 May 2010. The Council upheld the original decision and provided Mr Gallacher with a link to its website with an explanation that the date of the original applications could be viewed in the Licensing and Regulatory Committee's Public Agenda for 4 November 2009.
5. On 1 June 2010 Mr Gallacher again wrote to the Council, outlining his dissatisfaction in that the date(s) on which the applications for the licenses had been made was not reasonably accessible to him.
6. On 10 June 2010 the Council responded to Mr Gallacher, explaining that the reference to "date received" in the relevant Committee Minute was the date on which the application was made, and confirmed that the details were also contained within the public register as mentioned above.
7. On 22 June 2010, Mr Gallacher 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.
8. The application was validated by establishing that Mr Gallacher 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.

Investigation

9. On 10 September 2010, the Council was notified in writing that an application had been received from Mr Gallacher and was asked to provide the Commissioner with information to assist with the investigation. The Council responded with the information requested and the case was then allocated to an investigating officer.
10. 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 justify its reliance on section 25(1) of FOISA.
11. The Council responded on 5 October 2010 and provided a copy of the Committee Agenda of the Licensing and Regulatory Committee of 4 November 2009, which is published on the Council's website. The Council confirmed that the information could be accessed in accordance with the guidance outlined in the review response letter of 18 May 2010, which had been provided to Mr Gallacher.



Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Gallacher and the Council, and is satisfied that no matter of relevance has been overlooked. Mr Gallacher raised a number of points in his application to the Commissioner, but in this decision the Commissioner can only consider whether the Council dealt with his request for information in accordance with Part 1 of FOISA.
13. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25(1) is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.
14. The Commissioner notes that in the response to Mr Gallacher's request, the Council informed him that the information he requested was contained within the public register of street trader applications, which could be examined within the premises occupied by its licensing section. It may have been helpful if this response had also provided Mr Gallacher with an explanation that the information was available via the Council's website, with instructions on how to access the information by this method.
15. The Commissioner notes, however, that in the response to his request for review and again within its letter of 10 June 2010, the Council provided Mr Gallacher with the instructions required to access the information requested. The Commissioner also notes that during the investigation the Council agreed to provide Mr Gallacher with a copy of the Committee Agenda which contained the information requested by Mr Gallacher.
16. Following the instructions which had been provided to Mr Gallacher, the investigating officer was readily able to access the information requested on the Council's website. Consequently, the Commissioner is satisfied that the information to which this decision relates could reasonably be obtained by the applicant other than by requesting it under section 1(1) of FOISA (and therefore that it was properly withheld under section 25(1) of FOISA).

DECISION

The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Gallacher.



Appeal

Should either Mr Gallacher or the 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
8 October 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...