

Decision Notice

Decision 195/2014: Mr Chris Millar and the City of Edinburgh Council

Tram fares

Reference No: 201302794

Decision Date: 10 September 2014



Scottish Information
Commissioner

Summary

On 21 August 2013, Mr Millar asked the City of Edinburgh Council (the Council) for information on the predicted level of fares for years 1, 6 and 11 of the Council's tram project. The Council provided figures for year 1 of the project, with the assumptions underlying future fare increases. Mr Millar was dissatisfied with the response for years 6 and 11.

By the end of the investigation, the Commissioner accepted that the Council had provided Mr Millar with all the information it held and which fell within the scope of his request. She could not accept, however, that it did this in responding to Mr Millar's information request and his requirement for review.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) Information 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 21 August 2013, Mr Millar wrote to the Council requesting:
... the predicted level of fare on the Edinburgh tram, in years 1,6, and 11, for the following ticket types, identified in the report to the Council "Edinburgh Tram – Preparing for operations" dated 22 August 2013, and used to forecast revenues in the financial forecast:
 - Single Tickets, Adult/Child (year 1,6,11)
 - Daytickets, Adult/Child (year 1,6,11)
 - Inglston Park & Ride Single & Return Tickets, Adult/Child (year 1,6,11)
 - Airport Single & Return Tickets, Adult/Child (year 1,6,11).
2. The Council responded on 17 September 2013, releasing information for year 1 tickets, with explanations of how year 6 and 11 fares could be predicted but no fare prices.
3. On 17 September 2013, Mr Millar wrote to the Council requesting a review of its response. He complained that the response in respect of years 6 and 11 conflicted with the report referred to in his request and sought information for these years in the same form as provided for year 1.
4. The Council notified Mr Millar of the outcome of its review on 15 October 2014, explaining why it did not hold the further information he was seeking.
5. On 15 November 2013, Mr Millar 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.
6. The application was validated by establishing that Mr Millar 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. The Council was asked to clarify what information it identified as being within the scope of Mr Millar's request, and explain the steps taken to locate this information. It was also asked to provide additional background information.
8. The Council provided submissions in support of its position that it did not hold fare prices for years 6 and 11, only the financial model and assumptions used to make such predictions. Following a meeting between representatives of the Council and the Commissioner, the Council emailed Mr Millar on 25 July 2014, with clarifications and corrections in relation to the information it held. These are considered further below.

Commissioner's analysis and findings

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

Information held by the Council

10. 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. This is subject to qualifications which, by virtue of section 1(6) of FOISA, allow authorities to withhold information or charge a fee for it. These qualifications do not apply in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority *should* hold, although the applicant's submissions on this point may be relevant to the investigation. If no information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
12. The Council explained and demonstrated what information it held in relation to the projected fares. Largely, this was done at the meeting between representatives of the Council and the Commissioner on 23 July 2014. As a result, in all the circumstances of this case, the Commissioner accepts that any relevant information is held in the financial model maintained by the Council for its tram project.
13. In responding to Mr Millar's requirement for review, the Council stated that it did not hold any relevant information for years 6 and 11. The Commissioner cannot accept this. While it would no doubt be helpful to explain the position (as indeed the Council did, at least in part), she does not believe it would be reasonable to interpret Mr Millar's request as seeking only precise figures for years 6 and 11.
14. Mr Millar asked for "information on the predicted level of fare" for the years specified. In the Commissioner's view, it would be unreasonably restrictive to interpret this to exclude the assumptions on annual fare increases incorporated in the financial model. This is the information the Commissioner finds the Council held on the matter.

15. While Mr Millar's requirement for review indicated that, for clarity, he would prefer the information for years 6 and 11 in a similar format to that provided for year 1, the Commissioner does not believe it would be reasonable (looking at the requirement for review as a whole) to interpret this as limiting the scope of the request. In all the circumstances, the Council was not entitled to conclude that it did not hold the information.
16. As a result of the meeting on 23 July, the Council acknowledged that the financial modelling information it had provided to Mr Millar earlier was inaccurate. He should have been informed that fares were assumed to rise at "RPI + 1%" (with RPI still estimated at 2.5%, as in the earlier response) and not at RPI. He should also have been informed that the premium fare (for airport trips) was reviewed at five-yearly intervals and not annually. These errors and omissions were rectified in Council's email to Mr Millar of 25 July 2014.
17. Although Mr Millar has now been given the correct financial modelling information held by the Council and falling within the scope of his request, the Commissioner must conclude that this was not done when the Council responded to Mr Millar's information request or his requirement for review. In failing to address this fully, the Council failed to deal with Mr Millar's request in accordance with section 1(1) of FOISA.
18. As the correct information has now been provided, the Commissioner does not require the Council to take any action in respect of the failures she has identified, in response to Mr Millar's application.

Decision

The Commissioner finds that the City of Edinburgh Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Millar, by providing some information which met his request. However, in stating that it did not hold particular information, and in providing information which did not accurately reflect what it held, the Commissioner finds that the Council failed to respond in accordance with section 1(1) of FOISA.

As the Council has now provided Mr Millar with a full response, the Commissioner does not require it to take any action in respect of these failures, in response to Mr Millar's application.

Appeal

Should either Mr Millar or the City of Edinburgh 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
10 September 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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