

Decision Notice

Decision 183/2015: Mr Stephen Calder and Aberdeenshire Council

Peterhead Futures and Town Team Groups

Reference No: 201500770

Decision Date: 17 November 2015



Scottish Information
Commissioner

Summary

On 20 February 2015, Mr Calder asked Aberdeenshire Council (the Council) for agendas and minutes of the Peterhead Futures Group and Peterhead Town Team Group, with related correspondence.

The Council responded following a request for review. It issued some information to Mr Calder, but withheld other information from him. Mr Calder remained dissatisfied with aspects of the handling of the request and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had responded to Mr Calder's request for information in accordance with Part 1 of FOISA. However, she also made a recommendation to the Council about its practice of redacting information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 11 (Means of providing information)

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 20 February 2015, Mr Calder made a request for information to the Council. He asked for the agendas and minutes for all meetings of The Peterhead Futures Group and The Peterhead Town Team Group, as well as for any correspondence between these groups and Aberdeenshire Council officers.
2. The Council did not respond. On 24 March 2015, Mr Calder wrote to the Council, requesting a review in respect of its failure to respond to his request.
3. On 22 April 2015, the Council responded to Mr Calder's requirement for review, apologising for its failure to respond to his request on time. This response also confirmed that the relevant service had been instructed to give a substantive response to his request, although this appears to have been issued two days earlier. Some information was disclosed to Mr Calder, with other information being withheld under exemptions in FOISA.
4. On 27 April 2015, Mr Calder wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Calder stated he was dissatisfied with the outcome of the Council's review because it was unclear from the information given to him where information had been withheld. He also believed there was information missing and complained about the failure to respond on time. As Mr Calder did not comment on the exemptions claimed by the Council, the application of exemptions cannot be considered further in this decision.

Investigation

5. The application was accepted as valid. The Commissioner confirmed that Mr Calder made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
6. On 22 May 2015, the Council was notified in writing that Mr Calder had made a valid application. The case was allocated to an investigating officer.
7. 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. In particular, it was asked to explain the searches used to identify and locate the information, and the process of removing the withheld information from the minutes and agendas.
8. Submissions were received from the Council on 28 August 2015.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Calder and the Council. She is satisfied that no matter of relevance has been overlooked.
10. Mr Calder commented on the Council's late response (to his original request) in his application. This was addressed in the outcome to the Council's review, where the Council recognised its failure and provided an apology. In the circumstances, the Commissioner can identify no failure (in this respect) in the outcome of the review and therefore can take no further action in relation to this matter.

Information held by the Council

11. Mr Calder submitted that information provided by the Council was incomplete, citing two examples where he expected further information to be held.
12. The Council was asked to describe the searches it had carried out to identify and locate any relevant information, with reference to the records searches and the search terms and other parameters applied. It was referred to Mr Calder's examples.
13. The Council provided details of which records were searched and of who conducted these searches. It commented that the staff involved were closely involved with the information on an ongoing basis, and so were aware of where it was held. The records were searched using the names of the two groups.
14. Referring to Mr Calder's examples, the Council explained that one of the records he identified had been disclosed in full, while the other meeting he referred to was cancelled (so there was no record).
15. In the circumstances of this particular request, having considered the terms of the request and all relevant submissions, the Commissioner is satisfied that the Council took adequate and proportionate steps to identify and locate the information Mr Calder sought. She is also satisfied that this information has either been given to him or withheld under exemptions in FOISA.

Redaction of information

16. Mr Calder also complained about the method of deletion of withheld information from the minutes and agendas disclosed to him. This, he noted, took the form of edited removal of passages, rather than obscuring the withheld sections (as he believed would be normal). From this, he submitted, he could not see the extent of what had been redacted or its context, thus affecting his understanding of what he had been given.
17. The Council submitted that it carried out the minimum of redaction, in an attempt to be as helpful as possible. It explained that the information was held in the form of Word documents, so it was easier to cut the sensitive information than to obscure it. The Council did not believe the method of redaction influenced understanding of the information in any significant way, as the text disclosed would be the same whichever method was used.
18. Section 11 of FOISA covers the means by which information can be provided in response to a request under section 1(1). The Commissioner has considered this carefully and can find no breach in what the Council has done in response to Mr Calder's request.
19. That said, it is not possible from the information given to Mr Calder to identify where information has been removed. It is not unreasonable for Mr Calder to argue that this affects his ability to understand the context in which the information has been withheld.
20. In the Commissioner's view, it would have been good practice to identify any redactions in some way, although it would be for the Council to identify the precise means of achieving this. She does not accept that this would be an onerous task in an electronic document (all that is required is for a gap to be identified in some way) and she would ask the Council to consider providing Mr Calder with further copies of the information disclosed which do identify where information has been withheld. In future, as a matter of good practice, she would expect this to be done where information is disclosed subject to redaction.

Decision

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

Appeal

Should either Mr Calder or Aberdeenshire 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
Scottish Information Commissioner

17 November 2015

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.

...

11 Means of providing information

(1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.

(2) The means are-

- (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
- (b) such provision to the applicant of a digest or summary of the information; and
- (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.

(3) In determining, for the purposes of subsection (1), what is reasonably practicable, the authority may have regard to all the circumstances, including cost; and where it determines that it is not reasonably practicable to give effect to the preference it must notify the applicant of the reasons for that determination.

(4) Subject to subsection (1), information given in compliance with section 1(1) may be given by any means which are reasonable in the circumstances.

(5) Such tests of reasonable practicability as are imposed by this section are not to be construed as detracting from any duty which a person has under or by virtue of section 29 of the Equality Act 2010 (provision of services etc) (duty to make adjustments to practices, policies, procedures or physical features so that use of services by disabled persons is facilitated or made possible).

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