

Decision Notice

Decision 151/2017: Mr Angus Pattison and East Dunbartonshire Council

Funding submissions

Reference No: 201701009

Decision Date: 12 September 2017



Scottish Information
Commissioner

Summary

The Council was asked for information about the funding of the Bears Way project. The Council disclosed some information.

Following an investigation, the Commissioner found that the Council had failed to disclose all of the relevant information it held. Given that all of the information was disclosed during the investigation, the Commissioner did not require the Council to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 27 February 2017, Mr Pattison made a request for information to East Dunbartonshire Council (the Council). In relation to the Bears Way project, Mr Pattison requested:
... copies of Council submissions to Sustrans and Strathclyde Partnership for Transport for funding of the Project phases 1 and 2, with copies of funding offers including conditions attached to the offers, amendments and all related communications.
... copies of reports sent to the funding partners detailing projects' progress and costs incurred.
2. The Council responded on 23 March 2017. It provided Mr Pattison with some information, explaining that other information was not held.
3. On 20 April 2017, Mr Pattison wrote to the Council, querying whether it had provided all the information he sought. He identified ways in which he considered the information provided to be incomplete and highlighted two funding letters referred to in the SPT Phase 1 Closedown form.
4. On 16 May 2017, Mr Pattison wrote to the Council, specifically requesting a review of its decision. He reiterated that the response had not fully addressed his request and again specifically requested the two letters referred to in paragraph 3 above.
5. The Council notified Mr Pattison of the outcome of its review on 18 May 2017. The Council stated that it was responding to his request for clarification and confirmed that it held no further information falling within the scope of his request.
6. On 6 June 2017, Mr Pattison wrote to the Commissioner. Mr Pattison applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Pattison stated he was

dissatisfied with the outcome of the Council's review because the Council had failed to provide him with the two letters referred to in paragraphs 3 and 4 above.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Pattison 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.
8. On 21 June 2017, the Council was notified in writing that Mr Pattison had made a valid application. The case was allocated to an investigating officer.
9. 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 and answer specific questions, with particular reference to the steps taken to identify and locate any relevant information.
10. The Council provided submissions, accepting that its handling of the request had not been satisfactory. It stated that it did not consider its response of 18 May 2017 to have been a response to Mr Pattison's requirement for review of 16 May 2017, which it believed it had still to issue, and apologised for any confusion caused.
11. The Council confirmed that during the investigation it had located the two letters referred to by Mr Pattison, accepting that the search carried out in responding to the request was not sufficient to locate the two letters.
12. The Council provided Mr Pattison with the two letters located, subject to the redaction of personal data.
13. Mr Pattison acknowledged receipt of the information disclosed during the investigation. He accepted the redaction of personal data from the information provided, but remained dissatisfied with the Council's handling of his request (in particular, its failure to identify and locate information earlier).

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Pattison and the Council. She is satisfied that no matter of relevance has been overlooked.
15. The Commissioner is satisfied that there is a clear indication in the emails from Mr Pattison dated 20 April and 16 May 2017 that he is not satisfied that he has been provided with all of the information requested. In particular, both emails refer to the letters which are the subject of his application to the Commissioner.
16. The email of 16 May 2017 specifically asks that the Council reviews its original decision. It is conceivable that Council's response to Mr Pattison of 18 May 2017 was prepared without knowledge of that later communication, but his dissatisfaction is still clear enough from his email of 20 April 2017. The Council's email of 18 May 2017 appears to address that dissatisfaction: in the circumstances, the Commissioner is satisfied that the Council's email of 18 May should be considered a response to Mr Pattison's requirement for review.

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 qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not relevant in this case.
18. 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 does or should hold. 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.
19. The Commissioner has considered the information disclosed during the investigation, in the light of the submissions received from both Mr Pattison and the Council.
20. In its submissions to the Commissioner, the Council explained the searches and enquiries it undertook during the investigation, detailing the resources searched and providing evidence of the outcomes of these searches. The Council confirmed that during the investigation it had located the two letters referred to by Mr Pattison and apologised for the inconvenience caused to Mr Pattison, and subsequently to the Commissioner's office, in not locating these earlier. As mentioned above, the Council provided the letters to Mr Pattison.
21. Having considered all relevant submissions and the terms of Mr Pattison's request, the Commissioner accepts that (by the close of the investigation) the Council had carried out adequate, proportionate searches to establish whether it held any further information falling within the scope of the request. She is satisfied that the additional information located has now been provided to Mr Pattison.
22. However, it is evident that adequate searches were not carried out in dealing with Mr Pattison's information request and requirement for review. If they had been, the Commissioner believes the relevant information would have been located and provided to Mr Pattison at that time. This might have obviated the need for Mr Pattison to make an application to the Commissioner.
23. The Commissioner is concerned that it took an application to her before the Council conducted adequate searches to provide information it held in relation to what she considers a relatively straightforward request for information.
24. Taking account of all of the circumstances, the Commissioner concludes that the Council failed to comply fully with section 1(1) of FOISA, by failing (in dealing with Mr Pattison's request and requirement for review) to identify, locate and provide all of the information it held and which fell within the scope of Mr Pattison's request.

Decision

The Commissioner finds that East Dunbartonshire Council (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 Pattison.

In failing to provide Mr Pattison with all the information it held and which fell within the scope of his request, the Council failed to comply with section 1(1) of FOISA.

Given that all of the information has now been provided to Mr Pattison, insofar as falling within the scope of his application, the Commissioner does not require the Council to take any action regarding this failure, in response to Mr Pattison's application.

Appeal

Should either Mr Pattison or the 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
Acting Scottish Information Commissioner

12 September 2017

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.

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