

Decision Notice

Decision 113/2019: Mr M and Scottish Borders Council

Corporate credit card expenditure

Reference No: 201900146

Decision Date: 5 August 2019



Scottish Information
Commissioner

Summary

The Council was asked for details of corporate credit card spending.

The Council stated that it intended to publish the information within 12 weeks of the request, and that the information was therefore exempt from disclosure.

The Commissioner investigated and found that the Council had properly responded to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 27(1) (Information intended for future publication)

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 3 December 2018, Mr M made a request for information to Scottish Borders Council (the Council). He requested details of corporate credit card spending for 2016, 2017 and 2018.
2. The Council responded on 21 December 2018. The Council stated that the information was exempt from disclosure under section 27(1) (Information intended for future publication), claiming that figures would be published within 12 weeks.
3. On the same day, Mr M wrote to the Council requesting a review of its decision. He argued that the 2016 and 2017 figures should have been published in 2017 and 2018 respectively.
4. The Council notified Mr M of the outcome of its review on 21 January 2019. The Council upheld its reliance on section 27(1) of FOISA and informed Mr M that it was likely that the information relating to 2016 would be ready for publication in advance of the indicated date of 26 February 2019 and would be published as soon as completed.
5. On 24 January 2019, Mr M wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr M stated he was dissatisfied with the outcome of the Council's review, he argued that there was no justification for withholding the information relating to the 2016 and 2017 figures.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr M made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 7 February 2019, the Council was notified in writing that Mr M had made a valid application. The case was allocated to an investigating officer.
8. 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 to answer specific questions. These related to whether the Council was entitled to rely on section 27(1) of FOISA to withhold the information.

Commissioner's analysis and findings

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

Section 27(1) – Information intended for future publication

10. Section 27(1) provides that information is exempt from disclosure where the following tests are met:
- (i) The information is held with a view to its being published by a Scottish public authority or any other person at a date not later than 12 weeks after that on which the request for the information is made;
 - (ii) When the request is made, the information is already being held with that view; and
 - (iii) It is reasonable in all the circumstances that the information be withheld from disclosure until the intended publication date.
11. This exemption recognises that where it is already intended to make the information available, public authorities should, within reason, have space to be able to determine their own publication timetables and deal with the necessary preparation, administration and context of publication.
12. It should be noted that there is no requirement within section 27(1) that publication must actually take place as planned, but the information must already be held with a view to publication at the time the request is received. The exemption is subject to the public interest test laid down by section 2(1)(b) of FOISA.

Was the information held with a view to publication at the time of the request?

13. It is key to the application of this exemption that the Council must be able to establish that it already intended to publish the information when the request was received. The information must have been held with a view to publication (within 12 weeks) at that time.
14. Section 27(1) cannot apply if the Council only decided to publish the information after the request was received
15. In his submissions to the Commissioner, Mr M argued that the Council had incorrectly applied the exemption in section 27(1) to the information for 2016 and 2017. He accepted that the 2018 information was due to be published in February 2019. He considered that the information for 2016 and 2017 would have been available when he submitted his request and that the Council were delaying the disclosure until the 2018 data were ready to publish.
16. The Council was asked to provide evidence of the actual publication date for the information and for documented proof of the intention to publish within 12 weeks, prior to Mr M's request. The Council was also asked to provide justification for the delay in publication to show that it was reasonable in all the circumstances and to provide further explanation why the routinely published information for 2016 and 2017 was delayed.

17. During the Commissioner's investigation, the information was published by the Council on two separate dates. The data relating to 2016 and 2017 was published on 15 February 2019 and the data for 2018 was published on 26 February 2019, as intimated to Mr M in the initial response to his request.
18. The Council explained that the publication of the 2016 and 2017 credit card information was delayed due to changes in the roles and responsibilities of staff following a restructuring exercise within the Council. During this period of transformation, the introduction of new electronic systems and the consequent staff changes to align with that system resulted in work priority being given to other tasks, including statutory duties. As a result, the publishing task was overlooked.
19. The Council provided evidence to the Commissioner that the failure to publish the information from 2016 and 2017 had been recognised and that a workstream had been set in place to resolve the issue in July 2018, months prior to Mr M's request. This was originally allocated for completion in August 2018, but was not completed and passed to another official in November 2018, again prior to Mr M's request.
20. At the time of the request, the Council considered disclosing the information, but stated that a significant amount of work was still required to collate, verify and redact the information, requiring input from several different areas of the Council to ensure the disclosure was accurate and meaningful. As the information was on track to be published by the usual date of publication in February, the Council considered it was reasonable to rely on section 27(1) of FOISA.
21. Having considered the Council's submissions and documentary evidence, the Commissioner accepts that the Council did have a settled intention to publish the 2016 and 2017 corporate credit card spending data within 12 weeks of Mr M's request. Given the explanations provided by the Council, he is also satisfied that it was reasonable in the circumstances that the Council withheld the data from disclosure until compilation work had been completed. The Commissioner is therefore satisfied that section 27(1) of FOISA applied.

Public interest

22. The exemption in section 27(1) is a qualified exemption, which means that its application is subject to the public interest test set out in section 2(1)(b) of FOISA. Having decided that the information was exempt under section 27(1), the Commissioner must go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information was outweighed by the public interest in maintaining the exemption.
23. The Council stated that there was a clear public interest in disclosing the information (at the time it received Mr M's request) for the purposes of openness and transparency. However, the Council considered that public interest also favoured the proper checking of the data to ensure that the disclosure was accurate and meaningful and that this outweighed the public interest in providing the information at the time of the request.
24. In considering the public interest in favour of disclosure, the Commissioner recognises the general public interest in disclosing information held by Scottish public authorities.
25. The Commissioner accepts that, in the circumstances of this case, it was in the public interest for the Council to be allowed the space and time to collate and check the 2016 and 2017 data to ensure the completeness and accuracy of the information before it was published.

26. In conclusion, the Commissioner is satisfied that, on balance, the public interest in this case favoured maintaining the exemption as the public interest in disclosure was outweighed by the public interest in ensuring the data was complete and correct prior to release.
27. The Commissioner, therefore, finds the Council correctly withheld the information requested by Mr M under section 27(1) of FOISA.

Decision

The Commissioner finds that Scottish Borders Council complied with the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr M.

Appeal

Should either Mr M 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
Head of Enforcement

5 August 2019

Appendix 1: 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 –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

27 Information intended for future publication

- (1) Information is exempt information if-

- (a) it is held with a view to its being published by-
- (i) a Scottish public authority; or
 - (ii) any other person,

at a date not later than twelve weeks after that on which the request for the information is made;

- (b) when that request is made the information is already being held with that view; and
- (c) it is reasonable in all the circumstances that the information be withheld from disclosure until such date as is mentioned in paragraph (a).

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