

Decision Notice 021/2022

Claim for damage to car – whether information held

Applicant: the Applicant

Public authority: North Ayrshire Council

Case Ref: 202100775



Scottish Information
Commissioner

Summary

The Council was asked for the name, address and occupation of the employee who had made a particular decision in relation to a claim made by the Applicant. The Council initially refused to disclose the information, but later said it did not hold a record of who had made the decision.

Following an investigation, the Commissioner was satisfied that the Council did not hold the information. However, he found that the Council had breached FOISA by failing to notify the Applicant that it did not hold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 13 April 2021, the Applicant made an information request to North Ayrshire Council (the Council). He referred to a claim for damage to his car he had made against the Council and asked for:
the name, address and occupation of [the Council] employee who investigated and calculated the precise offer of £30 instead of [the Applicant's] claim of £45.
2. The Council responded on 12 May 2021. It told the Applicant that the information was exempt from disclosure under section 38 of FOISA (Personal information).
3. On 28 May 2021, the Applicant wrote to the Council requesting a review of its decision. He considered he had been provided with contradictory reasons for the reduction in the claim by Council employees and that it might simplify proceedings in the Small Claims Court if the individual could be named.
4. The Council notified the Applicant of the outcome of its review on 22 June 2021. It upheld its previous response.
5. On 25 June 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of the Council's review as he had not been provided with the information he had requested.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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 16 July 2021, the Council was notified in writing that the Applicant had made a valid application and was asked to provide a copy of the information the Applicant had asked for. The case was allocated to an investigating officer.

8. On 22 July 2021, the Council provided the Commissioner with a screenshot from its systems (considered in more detail below). The Council told the Commissioner that no single employee calculated the offer: the decision had been made during an informal discussion amongst the team who were in the office that particular day. The Council could not determine who was involved in the discussion as it had happened almost three years previously and some members of the team had since moved on. The Council provided the Commissioner with the names of the five team members who had been working in the Insurance Team at that time.
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 to answer specific questions. These included questions on whether the Council held further information as to who made the final decision on the reduction of the claim.
10. The Council confirmed to the Commissioner that it did not hold any recorded information in relation to the request.
11. The Applicant was advised of the change in the Council's position by the Council and his views were sought.
12. The submissions and comments from both parties will be considered below.

Commissioner's analysis and findings

13. 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 the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

Does the Council hold the information?

14. 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 authorities to withhold information or charge a fee for it. The provisions in section 1(6) are not relevant here.
15. 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 the information an applicant believes an authority should hold. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.

The Council's submissions

16. The Council commented that the Applicant had asked for the name, address and occupation of the employee who investigated and calculated the offer made to him. The Council noted that the information it held (the screenshot) of the records stated that the decision was made by "the team." This suggested that there was no single employee who had calculated the offer, but that the decision to reduce the claim was made during an informal discussion among the team in the office on that particular day.
17. The Council advised the Commissioner that there was no formal record of the discussion. It concluded that the conversation must have involved at least three employees: had there

been fewer than three employees in the conversation, a file note would normally be recorded as “I spoke with x and we agreed to pay”.

18. In any event, the Council stated that it could not be determined which of the team members were involved in the discussion as it happened almost three years ago, and some members of the team have since moved on.

The Applicant's submissions

19. The Applicant considered it normal practice at such meetings to note who attended and that it should be possible to supply their names and occupations. In his view, an officer would usually give a report with calculations and recommendation and a vote would be taken and recorded.

The Commissioner's conclusions

20. The Commissioner must determine, on the balance of probabilities, whether the information is held by the Council.
21. The Commissioner has viewed the Council's records of the discussion surrounding the Applicant's claim (i.e. the screenshot). This certainly suggests that no one individual made the decision and, in any event, does not record who was present when the decision was made. He also considers the value of the claim to be relevant. While the Applicant expected that a report would have been prepared and a note of the meeting taken, the relatively low level of the claim makes it less likely that such a report would have been recorded.
22. In this case, he is satisfied that the Council does not hold information which would answer the information requested by the Applicant. However, he finds that the Council failed to comply with section 17(1) of FOISA by failing to notify the Applicant that it did not hold the information.

Decision

The Commissioner finds that North Ayrshire 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 the Applicant.

The Commissioner is satisfied that the Council does not hold the information. However, he finds that, by failing to notify the Applicant that it did not hold the information, the Council breached section 17(1) of FOISA.

The Commissioner does not require the Council to take any action in respect of this failure.

Appeal

Should either the Applicant 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.

Daren Fitzhenry
Scottish Information Commissioner

18 February 2022

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.

...

- (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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