



Decision Notice 115/2022

On-street parking arrangements

Applicant: The Applicant

Authority: Clackmannanshire Council

Case Ref: 202100903

Summary

The Applicant asked the Authority about arrangements concerning overnight parking in the context of the Authority's agenda for "Decriminalised Parking Enforcement Powers", referring in particular to Hillfoots Town Centres and Tillicoultry town square. The Commissioner found that, although the Authority held no information, it could have explained this to the Applicant more clearly. The Authority also failed to provide a response and review within the statutory timescale.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner)

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 24 January 2021, the Applicant made a request for information to the Authority. He asked whether the proposed arrangements would make it possible to restrict overnight parking in the town square in Tillicoultry, in the context of the Authority's agenda for "Decriminalised Parking Enforcement Powers", referring in particular to a parking situation involving a specific vehicle that had occurred during the lockdown of the Covid-19 pandemic.
2. The Authority acknowledged the Applicant's letter on 27 January 2021, and responded on 3 February 2021. The Authority responded, but not in line with FOISA.

3. On 8 February 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the failure of the Authority to address his “substantive question” about whether the proposed arrangements would make it possible to restrict overnight parking in the context of “Decriminalised Parking Enforcement Powers”. The Applicant asked when the proposals would be made public, and what the consultation timetable was. The Applicant also asked if the Authority had had direct discussions with the vehicle’s owner (in the context of the particular parking situation he had referred to), and for a copy of the Council’s policy on-street parking in unrestricted areas.
4. The Applicant wrote to the Authority on 2 April 2021, asking why it had not responded to his request for review or to his new request.
5. The Authority notified the Applicant of the outcome of its review on 28 April 2021. The Authority apologised for not responding to the Applicant’s first request timeously. It told the Applicant that no proposals had been brought forward in relation “Decriminalised Parking Enforcement Powers”. It confirmed that parking enforcement still resided with Police Scotland, and that any infringements should be reported to them. The Authority confirmed that, with regard to unrestricted parking, the information provided in response to his initial request (that any vehicle that is appropriately taxed may be parked on-street as long as it is not causing a safety hazard or blocking the road or access) was accurate. The Authority advised the Applicant of his right to appeal to the Commissioner.
6. On 27 July 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority’s review because it failed to provide the information requested. He clarified his reasons for dissatisfaction on 7 September 2021 to be that:
 - (i) the Authority did not provide a compliant response to his first request
 - (ii) the response was late
 - (iii) he believed the Authority held the information he had requested. In relation to his second request (in his letter dated 8 February 2021) and
 - (iv) the Authority did not provide a copy of its on-street parking policy.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 8 September 2021, the Authority was notified in writing that the Applicant had made a valid application and 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 Authority was invited to comment on this application and to answer specific questions. These related to how it had determined that no further information was held, and how it had managed the Applicant’s request and request for review.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Information held – section 17(1)

11. 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 applicable in this case.
12. 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 such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to this effect.
13. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reasons offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations as to what information the authority should hold, ultimately the Commissioner's role is to determine what information is actually held by the public authority (or was, at the time the request was received).

Submissions from the Authority

14. The Authority submitted that it had answered the questions asked by the Applicant.
15. The Authority explained that the Covid-19 pandemic had significantly delayed initial plans for decriminalised parking, and confirmed that no work had been done on the matter before the pandemic restrictions were put in place in March 2020.
16. As this was the case, its position was that it held no recorded information falling within the scope of the Applicant's first request.
17. The Authority also considered that it had addressed the Applicant's second request, as again it held no recorded information relating to parking restrictions as this fell to Police Scotland to enforce in the absence of Decriminalised Parking legislation being enacted.
18. In relation to the vehicle owner referred to by the Applicant, the Authority considered its explanation that it did not enforce parking restrictions at the time, led to there being no requirement for it to speak directly with the vehicle owner, and no need for it to say so explicitly to the Applicant.
19. The Authority explained that it and Police Scotland have powers under the Roads (Scotland) Act 1984 to remove vehicles if they present an immediate road safety hazard, for example, following a road traffic accident. It also clarified that, as the Authority – as a Roads Authority - can put in place a Temporary Restriction Order (TRO), but that these are commonly used for events, road closures etc. to control parking, or alter parking arrangements but that it would not be used to restrict the parking of a vehicle in a public place, as in this instance.

20. It stated that further correspondence on this matter between it and the Applicant had continued after this application was made to the Commissioner, and that it had attempted to make the situation with regards to decriminalised parking plans clearer to the Applicant in this later correspondence.
21. The Authority confirmed that no searches had been carried out to assess what relevant recorded information it held, explaining that these were not required as its response had been based upon its policies, the law and a Report to Council dated 24 October 2019 in relation to Parking Strategy and decriminalised parking enforcement powers (available on the Authority's website [here](#)¹).

The Applicant's submissions

22. In his application, and clarification of his reasons for dissatisfaction, the Applicant described his confusion at the responses he had received from the Authority. He did not consider that his request has been answered, nor that he has been provided with the information he requested either in his first, or subsequent request.
23. The Applicant explained that correspondence with the Authority on the matter had continued beyond the date of his application to the Commissioner, but that it had not reached a satisfactory conclusion.

The Commissioner's view

24. As stated above, the standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the authority. He will also consider, where appropriate, any reason offered by the public authority why the information is not held.
25. The Applicant believed that the Authority should hold further information falling within the scope of his requests. As stated in previous decisions, the Commissioner's remit here extends only to the consideration of whether the Authority actually held the relevant information requested and whether it complied with Part 1 of FOISA in responding to the request. The Commissioner cannot comment on whether a public authority should have recorded any, or more, information about a particular event or process.
26. The Authority has explained its answers to the Applicant, and why it holds no further information falling within the scope of his request. The Commissioner is satisfied with the explanations provided by the Authority about why no recorded information was held by it that fell within the scope of the requests.
27. However, the Authority could have been clearer in its responses to the Applicant: it could have been clearer that it was responding under section 17(1) of FOISA and that it did not hold any recorded information. Additionally, it may have assisted the Applicant if the Authority had given the reasons for this, for example, by clearly stating that there was no policy on on-street parking. Although it is clear that the Authority answered some of the questions posed by the Applicant, the Applicant did make requests for recorded information and as such fell within FOISA.
28. In the circumstances, the Commissioner is satisfied, on the balance of probabilities, that the Authority did not hold the information falling within the scope of the Applicant's request.

¹ [Search Results | ClacksWeb](#)

Handling of the request – statutory timescales for responding to request and request for review

29. In its submissions, the Authority confirmed that it had processed the Applicant's initial letter of 24 January 2021 as an enquiry, rather than as a freedom of information request.
30. The Applicant had not mentioned freedom of information in his initial letter and the legislation does not require him to do so. The onus is on the public authority to recognise a request for recorded information, and even if it does not hold the information requested, a response should be provided within 20 working days as required by section 10(1) of FOISA.
31. The response provided to the Applicant on 3 February 2021 did not respond to the specific request posed by him, relating to "proposed arrangements" that could legitimately have been held as recorded information by the Authority.
32. It is a matter of fact that the Authority did not respond to the Applicant's new request or request for review of 8 February within 20 working days, but only on 28 April 2021 after the Applicant wrote again requesting a review on 2 April 2021.
33. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
34. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, again subject to qualifications which are not relevant in this case.
35. In the circumstances, the Commissioner must find that the Authority failed to comply with sections 10(1) and 21(1) of FOISA in this case.
36. Given that the Authority has subsequently provided a review response to the Applicant, the Commissioner does not require the Authority to take any further action.

Decision

The Commissioner finds that the Authority 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 Authority does not hold the information requested by the Applicant.

However, by failing to provide a response to the Applicant's requests and requirement for review within the timescales laid down in section 10(1) and 21(1) of FOISA, the Authority failed to comply with Part 1.

Given that the Authority has provided a review response to the Applicant, the Commissioner does not require the Authority to take any action in respect of these failures in response to the Applicant's application.

Appeal

Should either the Applicant or the Authority 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

2 November 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.
- ...

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.
- ...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
- (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...