

Decision Notice 047/2021

Monitoring Officer's Report

Applicant: the Applicant

Public authority: City of Edinburgh Council

Case Ref: 202100699



Scottish Information
Commissioner

Summary

The Council was asked if it held information confirming that the Council made a submission to the Commissioner indicating that a specified investigation was initiated by its Monitoring Officer.

The Council stated that it did not hold the information. The Commissioner investigated and was satisfied that the information was not held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 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 1 May 2021, the Applicant made a request for information to the City of Edinburgh Council (the Council). The request referred to the Commissioner's *Decision 048/2021*¹, quoting paragraph 6, and asking for the following:
Please could you let me know if the council holds any information which indicates that the Council provided a submission to the office of the Scottish Information Commissioner indicating that this investigation was initiated by the Monitoring Officer?
2. On 2 June 2021, the Applicant wrote to the Council, requesting a review on the basis that it had failed to respond to this request within 20 working days.
3. The Council notified the Applicant of the outcome of its review on 2 June 2021. It notified the Applicant, in terms of section 17 of FOISA, that it did not hold the requested information. It also included comments to the effect that it had not, on its own calculations, breached the timescale for responding.
4. On 4 June 2021, the Applicant wrote to the Commissioner. The Applicant applied for a decision in terms of section 47(1) of FOISA, stating that he was dissatisfied with the outcome of the Council's review, specifically with the time taken by the Council to respond and the adequacy of the steps taken by the Council to identify and locate any relevant information.

Investigation

5. 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.
6. On 21 June 2021, the Council was notified in writing that the Applicant had made a valid application. The case was then 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

¹ [Decision 048/2021 | Scottish Information Commissioner \(itspublicknowledge.info\)](https://itspublicknowledge.info/Decision-048/2021)

this application and to answer specific questions. These related to how the Council established whether information was held which met the terms of the request, and the time taken to respond to the request.

Commissioner's analysis and findings

8. 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.

Section 17(1) - Notice that information is not held

9. Under section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
10. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must (unless it believes it has grounds neither to confirm nor deny whether the information is held, under section 18 of FOISA), give the applicant notice in writing to that effect.
11. In his Application, the Applicant contended that the Council's searches were too narrow, submitting that the Council's review response "limited the scope of the search to a single submission to the Commissioner." The Applicant stated:

The Council should have searched all of the submissions to the Commissioner for appeals brought by me, and the documentation of the recently concluded Chief Internal Auditor Investigation which includes this matter.
12. The Council submitted that the Applicant's approach (above) went beyond the scope of the original request.
13. The Council also noted that it had received another, separate request from this Applicant on 20 August 2021, which was broader than the request under consideration here in terms of what was sought, making it clear in particular that its scope was not restricted to submissions made in respect of the case which led to *Decision 048/2021*. The Council had since responded to that broader request (on 17 September 2021).
14. The Council also provided submissions on the searches carried out to establish that it did not hold any information falling within the scope of the request. Given what it described as the "targeted nature" of the request, it only considered it necessary to search the records held in its case management system connected with its handling of the one request (that which resulted in *Decision 048/2021*). It provided further details of the searches and evidence of the outcomes.

The Commissioner's findings

15. The Commissioner is satisfied that the Council's interpretation of the scope of the Applicant's request was reasonable here, given the wording used by the Applicant and its focus. The Applicant may have had a range of possibilities in mind when contemplating the request, but the Commissioner accepts that the wording here focuses on a very specific submission, from the Council to the Commissioner in a specific case. Indeed, the focus in the wording is restricted to a particular element of any such submission, if held: whether it indicated that a particular investigation was initiated by the Monitoring Officer. If none of the Council's

submissions in that case included such an indication, the Council would have no option but to respond in terms of section 17(1) of FOISA.

16. In all the circumstances of this case, having considered the submissions provided on the searches carried out, the Commissioner is satisfied, on the balance of probabilities, that the Council was correct to notify the Applicant that it did not hold the information requested.

Timescales

17. The Applicant complained that the Council wrongly informed him in its review response that it had not failed to respond within statutory timescales.
18. The Council was asked to comment on its breach of timescales and it accepted that it miscalculated the 20 working days for responding to this request. It has since looked into the matter and was taking action to resolve the underlying technical issue.
19. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to qualifications which are not relevant in this case.
20. It is a matter of fact that the Council did not provide a substantive response to the Applicant's request within 20 working days – the response was given on 2 June 2021 and was therefore a day late.
21. Taking account of the Council's comments in this connection, the Commissioner does not require further action by the Council in response to this aspect of the Applicant's dissatisfaction.

Decision

The Commissioner finds that the City of Edinburgh 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 finds that the Council was entitled to give the Applicant notice under section 17(1) of FOISA, to the effect that the information requested was not held, the Council complied with Part 1.

However, by failing to respond to the Applicant's request within 20 working days, the Council failed to comply with Part 1 (and in particular section 10(1)) of FOISA. The Commissioner does not require the Council to take any action in respect of this failure, in response to the Applicant's application.

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
14 April 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.

...

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.

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