



Scottish Information
Commissioner
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Decision Notice 095/2024

Meetings with Liberty Steel Dalzell Ltd

Authority: Scottish Ministers

Case Ref: 202200954

Summary

The Applicant asked the Authority for information relating to documents originating, or following on from, meetings on 20 and 24 May 2021 between the Authority and Liberty Steel Dalzell Ltd. The Authority informed the Applicant it did not hold the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 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 23 June 2022, the Applicant made the following request for information to the Authority:
“Any minutes, memos, notes, emails, agendas, or attachments and correspondence on the topic of, or originating following the meetings between officials, advisers/advisors, and Liberty Steel Dalzell Ltd on both Thursday May 20, 2021, and Monday May 24, 2021.”
2. The Authority responded on 20 July 2022 with a notice, under section 17(1) of FOISA, that it did not hold the information requested. The Authority explained that it did not hold any additional information to that disclosed to the Applicant [in response to a previous information](#)

[request](#)¹ because no meetings had taken place involving officials from Liberty Steel Dalzell Ltd on either 20 or 24 May 2021.

3. On the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not believe that no meetings had taken place involving the Authority and Liberty Steel Dalzell Ltd as the response he received to a previous information request indicated that they had taken place.
4. The Authority notified the Applicant of the outcome of its review on 12 August 2022. The Authority concluded that the original decision should be confirmed, but with clarification:
 - The Authority acknowledged that a meeting had taken place on 20 May 2021 between Authority officials, Scottish Enterprise, Teneo (the Authority's commercial advisors) and senior management of Liberty Steel Dalzell Ltd. The Authority stated that its officials attended the meeting in a listening capacity and, as such, did not hold any information within the scope of the request.
 - The Authority confirmed that a meeting had taken place on 24 May 2021, but that it was between Scottish Enterprise's advisors and Liberty Steel Dalzell Ltd's site management. The Authority stated that it was not involved in the meeting and, as such, did not hold any information within the scope of the request.
5. On 29 August 2022, 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 he believed that the Authority did hold information relevant to his request and he considered the Authority's response was "wholly inadequate".

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 3 November 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice of the application in writing and invited its comments.
8. The case was subsequently 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. The Authority provided submissions to the Commissioner and these are considered below.

Commissioner's analysis and findings

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

¹ [Correspondence and meetings with the Scottish Government and other organisations and companies: FOI release - gov.scot \(www.gov.scot\)](#)

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

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) of FOISA. This is not necessarily to be equated with information an applicant believes the 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 that 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 must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority.
14. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant recorded information is actually held by the public authority (or was, at the time it received the request).

The Authority's submissions

Handling of the request

15. The Authority acknowledged that there had been errors within its response to the Applicant's information request and in its response to his requirement for review.
16. The Authority's initial response stated that no meetings had taken place involving officials from Liberty Steel Dalzell Ltd on either 20 or 24 May 2021. However, the Authority's review outcome acknowledged that such meetings had taken place on both dates.
17. The Authority's review response stated that the meeting on 24 May 2021 was between Scottish Enterprise advisors and Liberty Steel Dalzell Ltd and that the Authority was not involved in the meeting. However, the Authority acknowledged in its submissions to the Commissioner that the advisors were, in fact, acting for the Authority.
18. The Authority explained that it had been working together with Scottish Enterprise on developing contingency options, but the advice was instructed and paid for by the Authority. The Authority stated that this did not change the position that it held no recorded information relating to the 24 May 2021 meeting, but it confirmed that the meeting had involved its advisors.
19. The Authority wrote to the Applicant to explain and apologise for its error.

Whether any relevant information was held

20. The Authority submitted that the meetings on 20 and 24 May 2021 were introductory meetings, which were informal in nature. The Authority explained that it therefore did not expect that any important information that should have been recorded was discussed.

21. To establish whether it held any relevant information, the Authority explained that it had tasked a policy official who worked for the Strategic Commercial Assets Division within the Directorate for Economic Development to carry out searches.
22. The Authority stated that this business area was directly responsible for information about Liberty Steel Dalzell Ltd and was therefore aware of all meetings that would have occurred in the relevant period and where any relevant information would be held.
23. The Authority provided evidence that it had searched within eRDM (its electronic records system where information requiring retention is stored) for all information created between May and June 2021 for documents including any of the following terms: "Liberty Steel" or "Liberty Steel Dalzell" or "LSDL" or "Clydebridge" or "GFG".
24. The Authority submitted that those search terms were appropriate because they captured key words related to the meetings in May 2021 and the various names utilised to describe the Liberty Steel Dalzell Ltd business owned by GFG Alliance. The Authority explained that any meeting with this business would include its name in the title of any information regarding it.
25. The Authority provided evidence showing that the above searches returned 263 documents. The Authority explained that it had sifted those documents, but none were found to fall within the scope of the request.
26. The Authority stated that it expected any relevant information would have been saved to eRDM by the end of June 2021, so it did not deem it necessary to carry out searches of email inboxes in response to the request (which was received on 23 June 2022).
27. The Authority also explained that the team lead did not recall there being any formal records of the meetings because they were informal in nature.

The Applicant's submissions

28. The Applicant submitted that the Authority's response was wholly inadequate and that he believed it did hold information relevant to his request.
29. The Applicant also raised concern that the Authority had initially claimed the meetings did not take place, which was contradicted by information it had previously disclosed to him.

The Commissioner's view

30. Given the explanations and submissions provided, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held and he is satisfied that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.
31. The Commissioner considers that the Authority's searches were reasonable in the sense of the person tasked to carry them out, the search terms used and the location searched.
32. In the circumstances of this case, the Commissioner accepts as reasonable the Authority's decision not to carry out inbox searches. By the time the request was received (26 June 2022), it was reasonable to expect that any information requiring retention (relating to meetings over a year earlier) would have been saved to eRDM and that information not requiring retention would have been deleted.
33. While the Applicant believed and expected the specified information should be held by the Authority, the Commissioner is satisfied that this was not the case. The Commissioner notes

the Authority's position that the meetings were informal in nature and that it did not expect there to be information that required to be recorded. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.

34. The Commissioner therefore concludes, on balance, that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Handling matters

35. In the circumstances, the Commissioner must comment on the factual errors in the Authority's initial response and in its review outcome.
36. While the purpose of the review stage is to allow a public authority the opportunity to reconsider the substance and content of the initial response, it is plainly unsatisfactory for factual errors to be present in the review outcome.
37. In this case, the factual errors were not material to whether the Authority held the information requested. However, the Commissioner understands why the Applicant considered the Authority's handling of his request was "wholly inadequate".
38. The Commissioner would urge the Authority to respond to information requests carefully, using precise and accurate language and ensuring factual accuracy, in order to maintain the confidence of requesters (and the Commissioner) in its responses.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

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.

David Hamilton

Scottish Information Commissioner

21 May 2024

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.”
- ...
- (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.
- ...

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).