



Decision Notice 104/2024

Complaint investigation details

Authority: South Lanarkshire Council

Case Ref: 202200538

Summary

The Applicant asked the Authority for information relating to investigations resulting from complaints he made regarding council tax reduction claims submitted in 2017 and 2021. The Authority told the Applicant that it did not hold the information requested. The Commissioner investigated and, while satisfied that the Authority did not hold some of the information requested, he required it to reconsider part of the Applicant's request and issue a fresh review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (2), (4) and (6) (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 October 2021, the Applicant made a request for information to the Authority. The Applicant asked for the documents related to the Authority's investigations resulting from his complaints that its online form did not accurately record what he declared when he first applied for council tax reduction in September 2017 and again in June and July 2021.
2. The Applicant clarified that by "documents related" he meant reports, internal letters, emails and all other documents that were exchanged within the Authority and between whoever checked or tested how its online form works.

3. In short, the Applicant stated that he required all of the relevant documentation that shows how the Authority investigated his complaints that its online form did not record accurately what was declared by applicants for council tax reduction in 2017 and 2021.
4. The Authority responded on 15 December 2021, but it failed to do so in terms of FOISA. The Authority explained that:
 - the issue raised by the Applicant relating to the online review form had already been addressed on various occasions in previous correspondence
 - the online review form had only been in operation since April 2021, and it was not available to complete previously
 - the screenshots submitted by the Applicant had been used to successfully update his claim
 - the concerns raised in relation to the online form were noted and had been investigated, but it was unable to replicate them
 - the “conversations” it had with its software supplier do not form part of the Applicant’s request
5. On 19 December 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the Authority’s decision for the following reasons:
 - its response was late
 - its response was confusing, vague and failed to specify the legal reasons for not providing him with the information requested
 - he had previously completed an online council tax reduction form when he first applied for Council Tax Reduction, which was years before April 2021, so he did not understand the Authority’s position that the online review form had only been in operation since April 2021
 - he had not been provided with documentation relating to the investigation/tests carried out in relation to the concerns raised regarding the online form.
 - he did not understand why “conversations” between the Authority and its software supplier do not fall within the scope of his request, and reiterated that he was seeking information relating to the investigation resulting from his complaint that its online form did not accurately record what he had declared.
6. The Authority notified the Applicant of the outcome of its review on 26 April 2022¹. The Authority acknowledged that it had not responded to the Applicant’s information request in terms of FOISA, and issued him with a notice, under section 17 of FOISA, that it did not hold the requested information. The Authority explained that, as the Applicant had submitted screen shots of the completed pages of the online form (rather than submitting the online form), no investigation of his complaints could be undertaken and it therefore did not hold any of the information he had requested. The Authority also stated that whether any

¹ The lateness of the Authority’s review response is addressed in [Decision 057/2022 | Scottish Information Commissioner \(itspublicknowledge.info\)](#)

investigations could have been carried out was not something it was required to respond to under FOISA.

7. On 10 May 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 for the following reasons:
 - he had made separate requests for information about his claims in 2017 and 2021 and the Authority had not made clear in its response which year it was referring to
 - he disagreed that the Authority did not hold the information requested, particularly since it had previously said it was investigating his concerns (before stating, in its review response, that there was no investigation).

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 10 June 2022, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
10. 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, namely why it was satisfied that it did not hold the information requested.
11. The Applicant also provided a copy of a letter he sent to the Authority on 27 September 2017 which described his complaint about the online form in detail, his personal circumstances, together with screen prints of the form he said he had submitted online (which shows as 95% completed).
12. The Authority was provided with a copy of the Applicant's 2017 letter and asked for comment and further submissions. The Authority provided a detailed response.

Commissioner's analysis and findings

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

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

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 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.
15. In terms of 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. 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.

16. 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 of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
17. The Commissioner also considers, where appropriate, any reason 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 about what the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the authority.

The Applicant's submissions

18. The Applicant explained that he had made separate requests for information about his claims in 2017 and 2021 and the Authority had not made clear which year it was referring to in its response.
19. The Applicant disagreed that the Authority did not hold the information requested, particularly since it had previously said it was investigating his concerns (before stating, in its review response, that there was no investigation).
20. The Applicant noted that the Authority's review response stated that there were no documents to be provided to him because "no investigation has taken place", yet the Authority had stated in earlier correspondence that it was investigating.
21. The Applicant also explained that he did not understand the Authority's position that "conversations" between it and its software supplier do not fall within the scope of his request, as he was seeking information relating to the investigation resulting from his complaint that its online form did not accurately record what he had declared.
22. The Applicant therefore surmised that the Authority must have held some information falling within the scope of his request and, if it no longer did, then it must have been destroyed (in which case, the Authority should have explained this).
23. The Applicant also provided a copy of his completed council tax reduction claim form and his associated complaint from 2017 to the Commissioner, along with proof of postage.

The Authority's submissions

24. The Authority confirmed that it was relying on section 17 of FOISA for both parts of the Applicant's request.
25. The Authority explained that the first part of the Applicant's request relates to his original application for council tax reduction which he submitted online in 2017, while the second part of his request relates to an online review form he submitted in 2021 (which is a standalone form and does not link back to his original application from 2017).
26. However, regarding part two of the request, the Authority clarified that the Applicant had not, in fact, submitted an online review form and had instead emailed its Benefits Section with screenshots of the various fields of the review form. The Authority explained that this was the equivalent of submitting a paper review form.

27. The Authority explained that it understood the Applicant's complaint as being that he thought the review form should link directly back to the information he had submitted in 2017, but this was not possible as the review form is a standalone form.
28. The Authority stated that there was therefore nothing to investigate regarding the online review form not recording correctly what the Applicant had submitted in his 2017 application.
29. The Authority explained that it had not considered searches necessary, as the Applicant's request sought information relating to investigations carried out as a result of complaints he made regarding council tax reduction claims he made in 2017 and 2021 and no investigations had, in fact, taken place.
30. The Authority also noted that the employee dealing with the Applicant's request was familiar with the situation having corresponded with him in relation to previous complaints on the matter.
31. In terms of its reference to "conversations" it had with its software supplier, the Authority explained that this related to the fact that its Benefits Section had raised the issue which the Applicant had identified in relation to the online review form as part of their discussions with its software supplier. However, the Authority confirmed that had not done so in written form, so it did not hold any information relating to those conversations.
32. The Authority noted that its response dated 15 December 2021 advised the Applicant that his concerns in relation to the online review form were "investigated", but that it was unable to replicate during "test cycles" the issues he claimed because he had not submitted his review form online and had instead emailed screenshots of his application.
33. The Authority confirmed that it therefore held no information about the test cycles as the issues claimed by the Applicant were not replicated, so there was nothing to record, nor anything to contact its software supplier about.
34. The Authority also confirmed that it conducted no further investigation of the issues raised by the Applicant as it was satisfied that the online review form was working as it should, meaning that it held no information in relation to any such investigation.

The Commissioner's view

Interpretation of the request

35. Having considered the submissions from the Authority and the Applicant, the Commissioner is concerned about the way the Authority interpreted the Applicant's request.
36. It appears to the Commissioner that, in its interpretation of the request, the Authority has conflated two requests which were not, in fact, directly related.
37. The Authority seems to be under the impression that the Applicant considers that the council tax reduction forms he submitted in 2017 and 2021 are linked, and so he was dissatisfied that the information recorded by the Authority following his provision of the 2021 form was not the same as that recorded following his provision of the 2017 form.
38. The Applicant, however, stated that he had never said this and had "no clue" where this interpretation had come from.
39. In the Commissioner's view, the Applicant clearly states in the second part of his request that he is requesting documents relating to the Authority's investigation resulting from his complaint that its online form does not accurately record what he declared in June and July

2021 – at no point does he relate the information he submitted in 2021 to that submitted in 2017.

40. Furthermore, it is clear from reading his request that the Applicant is referring to two separate instances where he complained about the online form in use for council tax reduction claims, one in 2017 and one in 2021, and it is the documentation relating to the Authority's investigation of both of these complaints that he was requesting. However, in carrying out searches and seeking to respond to the Applicant's request the Authority does not appear to have considered the first part of his request.
41. Consequently, the Commissioner considers that the Authority has failed to accurately interpret and respond to the Applicant's request.
42. The Commissioner therefore finds that the Authority failed to comply with section 1(1) of FOISA, and in doing so provided an incomplete response to the Applicant. The Commissioner therefore requires the Authority to reconsider the first part of the Applicant's request, and to identify and locate any relevant information it actually held at the time of the request in respect of that part of the request, and to provide the Applicant with a fresh review response in relation to it.
43. As the Commissioner is not satisfied that the Authority has correctly interpreted the first part of the Applicant's request he will not go on to consider whether it was entitled to notify the Applicant, in line with section 17, that it did not hold any relevant recorded information.
44. His consideration of the Authority's use of section 17 in what follows will therefore focus solely on part 2 of the Applicant's request (that relating to the 2021 form).

Notice that information is not held

45. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority has taken adequate and proportionate steps in the circumstances to establish whether it held any information that fell within the scope of part two of the Applicant's request.
46. Given the nature of the information requested, and the explanations provided by the Authority, the Commissioner is also satisfied that the submissions provided by the Authority sufficiently explain why it does not hold the information requested in respect of part two of the Applicant's request.
47. The Commissioner therefore finds that the Authority was correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested in respect of part two of the Applicant's request.

Handing of the request

48. In this case, the Authority's interpretation of the Applicant's request is difficult to understand.
49. In cases where the Authority is unsure what is being asked, it can, and should, under section 1(3) of FOISA and, in line with the requirements of the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA² (the Section 60 Code), obtain clarification from the applicant. Had this been done in this case it is likely that the Authority's response would have covered both parts of the Applicant's request.

² [Code of Practice under section 60 of FOISA \(www.gov.scot\)](http://www.gov.scot)

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 finds that, by giving the Applicant notice, under section 17(1) of FOISA, that it did not hold any information falling within the scope of part two of his request, the Authority complied with Part 1.

However, in failing to accurately interpret part one of the Applicant's request and provide a response to this, the Authority failed to comply with Part 1 (and specifically section 1(1)).

The Commissioner therefore requires the Authority, to reconsider part one of the Applicant's request, conduct adequate searches and to issue a fresh review outcome to the Applicant, in accordance with section 21(4) of FOISA, by **12 July 2024**.

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

David Hamilton
Scottish Information Commissioner

28 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 information may be made before the information is given.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

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).