



Decision Notice 134/2024

Number of complaints and actions following complaints

Authority: Queens Cross Housing Association

Case Ref: 202400052

Summary

The Applicant asked the Authority for information on complaints and formal actions taken regarding a named property. The Authority disclosed information relevant to part one of the request and withheld information relevant to part two of the request on the grounds that disclosure would constitute an actionable breach of confidence. During the investigation, the Authority identified further information relevant to part two of the request and disclosed that information and the information it had previously withheld to the Applicant. The Commissioner investigated and found that the Authority's response failed to comply with FOISA. He required the Authority to reconsider part one of the Applicant's request and issue a new review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 15(1) (Duty to provide advice and assistance); 21(1) (Review by a 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 25 July 2023, the Applicant hand-delivered a request for information to the Authority. He asked three questions:
 1. How many complaints in total have [the Authority] received in the past 12 months [regarding a named property managed by the Authority]?
 2. How many times has 'formal action' been taken against any tenant at [this property] in the past 12 months?

3. As I trust [the Authority] would be laser focused on multiple and continuous police attendances, can you tell me how many times the police have attended [this property] in the past 12 months?
2. The Authority responded (by post) on 25 August 2023 (though the Applicant did not receive it). The Authority's responded as follows:
 - for question 1, it provided the Applicant with information on the number of complaints received
 - for question 2, it withheld information on the number of formal actions taken under section 36 of FOISA due to confidentiality to other data subjects
 - for question 3, the Authority stated that it did not hold the information requested and directed the Applicant to contact Police Scotland instead.
3. On 4 September 2023, the Applicant wrote, by email, to the Authority, querying when he could expect a response to his request.
4. On 7 September 2023, the Authority explained, by email, that it had responded to his request by post, apologised that it had not been received and provided a copy of its response.
5. On 8 September 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because:
 - for question 1, he considered that the Authority held further information as he had personally made more complaints than the total number disclosed to him in response to his request. He suggested that the number of complaints logged and complaints received may not be identical and suggested that the total number of complaints received could be calculated by tallying up the complaint emails he had sent and adding this sum to any complaints made by other tenants
 - for question 2, he did not accept that the withheld information was confidential
 - for question 3, he explained that he had been continually told that the Authority was working closely with Police Scotland and asked the Authority to confirm that it had no record of Police Scotland attendance at the named property
 - the Authority had issued its response by post when he had requested contact by email.
6. The Authority notified the Applicant of the outcome of its review on 14 November 2023. The Authority upheld its initial response and confirmed that it considered it had fully responded to question 1 of the request.
7. On 13 January 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review for the same reasons set out in his requirement for review and because it had failed to respond within the timescales permitted by FOISA.
8. The Applicant did not raise dissatisfaction in his application to the Commissioner regarding the Authority's response to question 3 of his request. Consequently, the Commissioner will not consider this matter further in his decision notice.

Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
10. On 12 February 2024, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
11. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided this information.
12. The case was subsequently allocated to an investigating officer.
13. The Authority was invited to comment on this application and answer specific questions. These related to how the Authority identified and defined complaints, its application of section 36(2) of FOISA and its handling of the request.
14. During the investigation, the Authority identified further relevant information for question 2 of the request and withdrew its reliance on section 36(2) of FOISA for the information it had previously withheld. The Authority subsequently disclosed all of the information falling within scope of question 2 to the Applicant.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

16. 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 are not applicable in this case.
17. 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.
18. 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.

Question 1 – Total number of complaints

19. In response to this question, the Authority stated that it had received 54 complaints from customers relating to the named property over the past 12 months. The Authority explained that 46 of those complaints related to antisocial behaviour, with the remaining eight relating to other issues.

The Applicant's submissions

20. The Applicant did not accept that the volume of complaints disclosed by the Authority was accurate as he had personally raised more complaints than the Authority had disclosed in response to his request.
21. The Applicant explained that his request related to the number of complaints received by the Authority, regardless of whether they were logged as such or subjected to any subsequent processing.

22. The Applicant expressed concerns about how the Authority logged complaints and suggested that the Authority review the original complaint emails to identify the number of instances of complaints being brought to the Authority, rather than rely upon those logged on its system.

The Authority's submissions

23. The Authority explained that all reports of issues are logged and aggregated when received and that its response to the Applicant's request was in line with this practice.
24. The Authority submitted that it had received several complaints from the Applicant in relation to this process of aggregation and in each instance had upheld its approach as it considered it more helpful to link information of this nature to allow it to build an overall picture of issues.
25. Consequently, the Authority considered it appropriate to apply this approach when responding to the Applicant's request.
26. The Authority confirmed that the number of complaints logged (i.e. where multiple incidents may be logged as one complaints) and disclosed to the Applicant was correct.
27. The Authority also submitted that its approach to recording complaints was not a matter for the Commissioner and that the Scottish Housing Regulator or the Scottish Public Services Ombudsman would be better suited to handling concerns of that nature.
28. The Authority noted that the Commissioner should rightly make sure that it correctly disclosed what it holds, but that he should not be engaged in telling it how to process its data.

The Commissioner's view

29. The Commissioner has no locus to comment on the Authority's complaint handling process (including how it chooses to define a "complaint" for its own recording purposes). Neither is it within the Commissioner's remit to instruct a public authority to change its data recording systems.
30. What the Commissioner is concerned with is whether the Authority correctly interpreted this part of the Applicant's request and whether it has, in line with section 1(1) of FOISA, disclosed all relevant information.
31. The Commissioner has considered the strict wording of the original request:
"How many complaints in total have [the Authority] received in the past 12 months [regarding a named property managed by the Authority]?"
32. In this case, the Applicant and Authority disagree on how the term "complaint" should be understood. The Authority aggregates incident reports about the same underlying issue into a single complaint, while the Applicant considers each instance of the issue being brought to the Authority's attention to be a complaint.
33. While the Commissioner accepts that the Authority's initial interpretation of the Applicant's request was reasonable, it was clear by review stage that the Applicant was not seeking information based on that interpretation.
34. In [Decision 094/2014](#)¹, the Commissioner found that where a public authority, in line with its own procedures, interprets a request more narrowly than an applicant, it should provide

¹ <https://www.foi.scot/decision-0942014>

advice and assistance under section 15 of FOISA to ensure that it is answering the applicant's request.

35. In this case, the Authority did not provide advice and assistance to the Applicant. However, the Applicant clearly set out in his requirement for review that he was not seeking the number of complaints "logged" by the Authority (i.e. defined as "complaints" for the Authority's purposes), but the number of instances of complaints *received* by the Authority (i.e. regardless of whether they were subsequently defined or logged as "complaints" by the Authority).
36. This was made explicit by the Applicant when he referred to having personally made more "complaints" to the Authority than the number disclosed to him in response to his request.
37. In the circumstances, the Commissioner does not consider that the Authority has interpreted this element of the Applicant's request correctly. The Commissioner cannot, therefore, find that the Authority has discharged its duties under section 1(1) of FOISA in relation to this part of the Applicant's request.
38. The Commissioner requires the Authority to carry out fresh searches for the information and to issue the Applicant with a new review response.
39. In doing so, the Authority should ensure that it identifies the information requested by the Applicant, even if it does not correspond to the definitions the Authority would use for its own purposes or in another context.
40. As part of its duty under section 15 of FOISA to provide advice and assistance, and in line with the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 ([the Section 60 Code](#)²), the Authority may wish to engage with the Applicant to confirm how a "complaint" should be understood in the context of his request.

Question 2 – Number of formal actions

41. The Authority did not disclose any information in response to this part of the Applicant's request, relying on the exemption in section 36 of FOISA to withhold the information.
42. The Authority did not specify what subsection of section 36 of FOISA it was relying on, but explained that it was unable to provide the information requested "due to confidentiality to other data subjects". The Authority considered that disclosing the information would permit identification of individuals subject to formal action.
43. During the investigation, the Authority identified additional information falling within the scope of this part of the request and accepted that it was not entitled to rely on section 36 of FOISA to withhold the information it had previously identified.
44. On the basis of the newly identified information, the Authority reassessed the likelihood of the identification of individuals and disclosed all relevant information to the Applicant.
45. By failing to identify all relevant information and by withholding information under section 36 of FOISA that it accepted it was not entitled to withhold, the Commissioner must find that the Authority failed to comply with section 1(1).

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

46. As the Authority has now disclosed all relevant information to the Applicant, the Commissioner will not consider this information any further in his decision notice.
47. However, the Commissioner would urge the Authority to ensure that it carries out adequate and proportionate searches in response to information requests to establish what information is held and to ensure it can justify the application of any exemptions applied to withhold information.

Handling of the request

Timescales

48. 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.
49. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days.
50. While the Authority submitted that it had responded by post on 25 August 2023, this still exceeded the timescale laid down in section 10(1) of FOISA.
51. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
52. It is also a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

Format of reply

53. The Section 60 Code sets out that "as far as is reasonably practicable, authorities must provide the information requested in the applicant's preferred format (if the applicant has indicated a particular format)."
54. The Applicant submitted that he had asked the Authority not to contact him by post, so it was inappropriate for the Authority to have done so. The Applicant provided evidence in support of this.
55. The Authority submitted that it first became aware of the Applicant's preference not to be contacted by post on 4 September 2023 and there was no indication in his original request that a response should not be posted. The Authority also explained that no email address had been provided so a response by email would not have been possible.
56. However, the Authority noted that it was now aware of the Applicant's preference for contact by email and has confirmed that it had taken steps to ensure future correspondence will be conducted by email.
57. The Commissioner notes that the Applicant had expressed discomfort with being contacted by post on specific issues prior to 4 September 2023. However, his email of 4 September 2023 is the earliest point at which the Applicant's concerns with post clearly apply to correspondence relating to his information request.
58. The Commissioner is satisfied with the steps taken by the Authority and he would urge all public authorities to, in line with the Section 60 Code, ensure that as far as reasonably

practicable they provide the information requested in the applicant's preferred format (where one has been indicated).

Decision

The Commissioner finds that the Authority failed to comply 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 Authority failed to comply with section 1(1) of FOISA by:

- failing to interpret question 1 of the Applicant's request correctly
- failing to identify all relevant information for question 2 of the Applicant's request, and
- by withholding information in response to question 2 of the Applicant's request that it was not entitled to withhold.

The Commissioner also finds that the Authority failed to comply with the timescales set out in section 21(1) of FOISA.

The Commissioner therefore requires the Authority to conduct further searches for the information covered by question 1 of the Applicant's request, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **Friday 9 August 2024**.

Given that the Authority has now disclosed all relevant information in response to question 2 of the Applicant's request, the Commissioner does not require the Authority to take any action in response to failures regarding that part of the Applicant's request.

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

25 June 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.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to 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).