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Commissioner  
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# Decision Notice 155/2024

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## Contract documentation

**Applicant: The Applicant**

**Authority: Renfrewshire Council**

**Case Ref: 202200594**

## Summary

The Applicant asked the Authority for information (in six parts) relating to two job numbers (3163198 and 3416841) for work carried out at a specified address. The Authority provided the Applicant with some information, withholding parts it considered to be commercially sensitive, or to constitute personal data, and explained that no information existed which would fall within parts of the applicant's request.

The Commissioner investigated and found that the Authority had disclosed to the Applicant all information held in relation to parts 1 and 2 of his request. The Commissioner was also satisfied that the Authority was correct to inform the Applicant that no policy exists which would fulfil part 4 of his request.

## Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 15(1) (Duty to provide advice and assistance); 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 5 March 2022, the Applicant made a request for information to the Authority for:

- i. Contract documentation for Job number 3163198 specifically relating to a named address.
  - ii. Contract documentation for job number 3416841 specifically relating to a named address.
  - iii. Does the Authority policy allow for more than one job number to be assigned to a single sundry income invoice?
  - iv. What is the Authority's policy regarding the surplus funds generated by sundry income invoices where the value of the invoice cannot be divided to two decimal places and a round up function is applied?
  - v. What is the total surplus amount generated by sundry invoices for the last financial year?
  - vi. Please identify the individual responsible for generating sundry invoice number 12084936 dated 1 March 2022.
2. The Authority responded on 30 March 2022. It provided information in relation to parts 1 and 2 of the Applicant's request, with some information redacted under section 33(1)(b) of FOISA. It explained that there is no policy stating whether a job number may or may not be assigned to a single sundry income invoice (part 3 of the request), and that there is no policy that refers to the scenario covered by part 4 of the request. In response to part 5 of the request, the Authority notified the Applicant in line with section 12 of FOISA that it estimated the cost of providing the information would exceed the cost limit in FOISA. It withheld the information covered by part 6 of the request under section 38(1)(b) of FOISA.
3. On 6 April 2022, the Applicant wrote to the Authority requesting a review of its decision in respect of parts 1, 2 and 4 of his request. The Applicant stated that he was dissatisfied with the decision for the following reasons:
- He did not believe that the sole information held by the Authority and processed regarding job number 3163198 was an estimate dated 18/09/2019. He commented that the invoice generated from this job number had little detail on what work had been included.
  - He made the same comment with regard to job number 3416841 and the corresponding invoice generated by it.
  - He questioned what happened to surplus funds generated by sundry income invoices by the Authority as a whole.
- The Applicant did not require the Authority to carry out a review of its response to parts 3, 5 and 6 of his request.
4. The Authority notified the Applicant of the outcome of its review on 4 May 2022. It noted that the Applicant had not challenged the application of section 33(1) of FOISA to the information released, but was requesting further detail.
5. In relation to parts 1 and 2 of the Applicant's request, the Authority provided an explanation of the process, along with some further information, some of which it considered fell within the scope of the request, and had been omitted from its response. Other information was provided, in accordance with section 15 of FOISA, by way of advice and assistance. Some of the information disclosed was subject to redaction, for which the Authority relied on the exemption in section 38(1)(b). With regard to part 4 of his request, the Authority provided the

Applicant with an explanation of when invoices were rounded, up or down, and what happened to any surplus funds generated.

6. On 22 May 2022, 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 because he did not consider he had been provided with all of the information the Authority held in relation to parts 1 and 2 of his request. He also did not consider that part 4 of his request had been answered clearly.

## **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 19 July 2022, the Authority was notified in writing that the Applicant had made a valid application.
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.
10. The case was subsequently allocated to an investigating officer.
11. Further comments and submissions were sought and received from the Authority during the course of the investigation.

## **Commissioner's analysis and findings**

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

### ***Whether the Applicant was provided with all information held by the Authority covering parts 1 and 2 of his request***

13. 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 public 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.
14. The information to be given is that held by the Authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information that an applicant believes the public authority should hold.
15. 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 to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) actually held by the public authority.

### ***Parts 1 and 2 of request***

16. The Applicant expressed his belief that further information should be held in relation to parts 1 and 2 of his request.
17. The Authority, in its submissions, explained the process that is followed when works are required on common parts of buildings, such as tenement blocks, with flats owned by several owners, as well as the Authority. It explained that initial estimates were obtained, those estimates were then used to consult with owners, who were provided with a bottom line cost at the consultation stage by letter. It explained that the work only goes ahead if a majority of owners vote in favour of the proposals, and that on completion the owners were then sent an invoice that reflected the cost breakdown that was in the estimate, but not a detailed breakdown of the work carried out.
18. The Authority stated that it had provided the Applicant with all of the information it held falling within the scope of his request, as well as some information by way of advice and assistance. This comprised, for each of the job numbers:
  - the estimate (with some cost information withheld under section 33(1)(b))
  - the works order
  - the voting letter to owners
  - majority consent summary and voting forms
  - positive outcome letter to owner
  - invoice
19. The Authority explained that the information provided to the Applicant is held electronically against a job number for the property, and in its accounting system. It confirmed that information of this type would only be stored in these systems, and that it is not kept anywhere else. The Authority provided the Commissioner with evidence of the results of searches carried out. It also submitted that relevant staff within various teams had been consulted to ensure that all the relevant information had been located and identified.

### ***The Commissioner's view***

20. Having considered all of the relevant submissions, the Commissioner accepts that the Authority took adequate and proportionate steps to establish if any further information was held which would fulfil parts 1 and 2 of the Applicant's request. The Commissioner is satisfied, on balance, that it does not (and did not on receipt of the request) hold any further information falling within the scope of these parts of the Applicant's request.
21. The Commissioner considers the explanations provided by the Authority as to how it has ascertained what information it does hold, and the reasons provided as to why it does not hold anything more are reasonable, and finds that the steps taken would have been capable of locating the information requested.
22. Whilst the Applicant may have considered that more information should have been held in relation to parts 1 and 2 of his request, the Commissioner is satisfied that the only information the Authority has not provided him with is that which was redacted from the estimates. As the Applicant did not challenge the Authority's application of the exemption in section 33(1) of FOISA to this information, this is not being considered as part of the Commissioner's Decision Notice.

23. The Commissioner is therefore satisfied that the Authority provided the Applicant with all relevant information held falling within scope of parts 1 and 2 of his request.

#### ***Section 17 – Notice that information is not held***

24. As mentioned in paragraphs 13 and 14 above, 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 public 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.
25. The information to be given is that held by the Authority at the time the request is received, as defined in section 1(4). If no such information is held by the Authority, section 17(1) of FOISA requires it to give the applicant a notice in writing to that effect.
26. 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.
27. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately 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).

#### ***Part 4 of request***

28. The Applicant did not consider that the Authority had been clear in its response to part 4 of his request as to its policy on surplus income generated from the rounding of invoices.
29. In its response to the Applicant's request, the Authority informed him that there is no policy referring to the scenario covered by part 4 of his request. Within its response to the Applicant's requirement for review, the Authority sought to explain the process followed by colleagues in the Accounts Team where a surplus is generated by sundry income invoices.
30. In submissions to the Commissioner the Authority re-asserted that there was no written policy that dealt specifically with the surplus funds generated when a round up function is applied to sundry invoices to obtain a figure to two decimal places, therefore no information was held by it which would fulfil this part of the request.
31. The Authority submitted that staff in the Accounts team were consulted and confirmed that it was common practice to round all invoices to two decimal places, as it is not possible to invoice to three decimal places. It highlighted that some invoices would be rounded down, whilst some would be rounded up, in line with basic mathematical principles, i.e. anything that is, or is over 0.005 would be rounded up, and anything below 0.005 would be rounded down, with any small surplus generated being offset against housing repairs.

#### ***The Commissioner's view***

32. Having considered the explanation provided by the Authority, the Commissioner accepts that the Authority does not hold a specific policy which would fulfil part 4 of the Applicant's request.

33. The Commissioner is therefore satisfied that the Authority was entitled to notify the Applicant, in line with section 17 of FOISA, that no information was held which would fulfil this part of his request.

***Section 15 – duty to provide advice and assistance***

34. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
35. Whilst the Commissioner has accepted that the Authority does not hold a specific policy which would fulfil part 4 of the Applicant's request, he notes that, in line with the duty in section 15 of FOISA, the Authority has provided the Applicant with a reasonable explanation of when invoices are rounded, along with what happens to any surplus in an effort to enable him to understand the process followed by the Authority.

**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**

**22 July 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.
- ...
- (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.
- ...

#### **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).

...