



Decision Notice 211/2024

Firing ranges within Eskdalemuir Forest area

Applicant: The Applicant

Authority: Police Service of Scotland

Case Ref: 202200274

Summary

The Applicant asked the Authority for information relating to safety assessments, approvals and correspondence between it and the range operator/landowner, as well as any location plans. The Authority provided some information, subject to redaction of information it considered to be personal data, and informed the Applicant that it did not hold the remainder of the information requested. The Commissioner investigated and was satisfied that the Authority did not hold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 23 August 2021, the Applicant made a request for information to the Authority (request 1). He asked for copies of the safety assessments, approvals and relevant correspondence between the Authority and the range operators/landowners for firing ranges within Eskdalemuir Forest area. The Applicant stated his understanding that a safety assessment had been carried out by a private company on behalf of the operators for both this and another range at Clerkhill, and that these had been approved by the Authority. The Applicant asked for copies of correspondence that the Authority had had with the operator and landowner, together with any location plans.

2. The Authority responded on 17 September 2021. It advised the Applicant that it was not involved in the approval process for gun ranges, but that the local authority dealt with this and provided general contact details. It responded in terms of section 17 of FOISA, informing the Applicant that it did not hold copies of approvals for safety assessments. It provided some other information falling within the scope of the Applicant's request, subject to redaction of information it considered to be exempt in line with section 38(1)(b) of FOISA.
3. On 28 September 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated he was dissatisfied with the response because the information and documents provided fell short of what was being sought, particularly in relation to relevant correspondence between the Authority and the range operator/land-owners. The Applicant questioned the application of the exemption in section 38(1)(b) to the withheld information, noting that he saw no reason why personal names and contact details could not be redacted. The Applicant also considered that he had been provided with incomplete information regarding the location plans, and information he considered should have been produced on the back of the safety inspection reports. He also questioned the time taken to provide a response, and an error in the date on the response. The Applicant explained why he considered the public interest to lie in disclosure of the requested information.
4. Within the same correspondence as the request for review, the Applicant made a new request for information (request 2), asking for:
 - (i) correspondence/notes of meetings between the Authority and Dumfries and Galloway Council
 - (ii) Confirmation of whether any further visits were made to Clerkhiil and/or Ladshaw Range (training area 4)
 - (iii) Information as to whether the operator had provided the Authority with an update on their application for College of Policing approval as had been requested during a visit on 22 June 2020.
 - (iv) The frequency of use of the range/training areas, including dates, by the Police Firearms Unit
5. The Authority notified the Applicant of the outcome of its review on 1 October 2021. It confirmed that no full documents had been withheld, and the only information withheld under section 38(1)(b) related to names and personal contact details of individuals. The Authority explained that it had carried out further searches and confirmed that no further correspondence between itself and the range operators/landowners had been found. Nor had the further searches led to any additional maps being found for the requested training areas. The Authority confirmed that the map provided for area 4 was the only one it held. It did, however, note that an additional map had been located. Whilst this did not fall within the scope of the request, it was provided for assistance. The Authority confirmed that it had nothing to do with range management and upheld its initial response.
6. On 1 October 2021, the Authority also provided a response to the new request made on 28 September 2021. The Authority informed the Applicant, in line with section 17 of FOISA, that no information was held falling within scope of his request. It explained that the ranges were not formally used by it, and that there was no legislative requirement for the ranges to inform it of when shoots were taking place.

7. On 4 October 2021, the Applicant wrote to the Authority, requesting a review of its response, as he considered information covering all parts of his information request of 28 September 2021 must be held. He also queried whether the use of the word "formally" in relation to the use of the ranges meant that they were used informally.
8. The Authority notified the Applicant of the outcome of its review on 20 October 2021, upholding its original response that no recorded information was held, and explained that the Firearms Unit did not use the ranges. In order to be helpful to the Applicant, the Authority did provide some contextual information to enable him to understand why it did not hold relevant information.
9. On 4 March 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 responses because:
 - He was not satisfied all of the information falling within the scope of his first request, relating to location plans for Training Areas 2, 3, 5 and 6 had been located.
 - He was not satisfied that the Authority did not hold information relating to meetings, telephone discussions or correspondence between it and Dumfries and Galloway Council relating to the Eskdalemuir firing ranges.
 - He was not satisfied that the Authority did not hold information on visits to the ranges since 22 June 2020.
10. During the investigation, when carrying out further searches, the Authority located relevant information, not held at the time of the Applicant's request. This information has now been provided to him.

Investigation

11. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
12. On 3 May 2022, the Authority was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
13. 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. These related to how it had determined that no further information was held falling within the scope of the Applicant's two requests.

Commissioner's analysis and findings

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

Information held by the Authority

15. 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 to this case.
16. The information that is to be given is that held by the authority at the time the request is received as defined in section 1(4). This is not necessarily to be equated with the information an applicant believes an authority should hold. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
17. The Authority submitted that it had already provided the Applicant with all of the information it held (with some information withheld under section 38(1)(b) of FOISA, as it was considered to be third party personal data) falling within the scope of his two requests.

The Authority's submissions

18. The Authority explained the nature of the searches that it had carried out, and of what systems and records, together with why these searches would have located any information held falling within the scope of the Applicant's requests. It also detailed the staff who had been consulted and why they were considered likely to know whether relevant information was held.
19. The Authority submitted that, with regards to location plans relating to Training Areas 2, 3, 5 and 6, it had no further documentation other than that already provided to the Applicant. It explained that these training areas were alternative firing points that were wholly within Field Firing Areas 1 and 4, covered in the maps provided to the Applicant.
20. The Authority explained that where its employees had attended any meetings arranged by Dumfries and Galloway Council, any records would have been made by the Council, and no notes were kept by the Authority's employees. This was also the case for any public meetings attended in relation to the ranges.
21. The Authority stated that a further document (dated 29 September 2023) that related to a visit to the range was located during the investigation that had not been recorded on the Authority's systems at the time searches were carried out in response to the initial requests and requests for review. This has been provided to the Applicant by way of advice and assistance.
22. The Authority submitted that its employees had engaged in verbal interactions with the range operators but these had not been recorded, nor was there any requirement for them to be recorded.

The Applicant's submissions

23. In his application to the Commissioner, the Applicant stated that he considered the Authority had been disingenuous and evasive in its responses. He expressed surprise at the lack of correspondence, notes of meetings or telephone calls between the Authority and Dumfries and Galloway Council, as he was aware of a joint consultation that took place in November 2020.
24. The Applicant was also concerned that there was no information held on any visits to the ranges as he was aware of at least two having taken place on 18 May 2021 and 25 September 2021. He expressed incredulity that the Authority was refusing to provide

information on an activity he considered had the potential to cause serious harm to members of the public, and considered it was clearly in the public interest to do so.

The Commissioner's view

25. 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 considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
26. The Commissioner 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 any explanations about what information 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 public authority.
27. Having considered the submissions from the Authority, the Commissioner accepts that the searches carried out by the Authority were reasonable in the circumstances and would have been capable of locating relevant recorded information falling within the scope of the Applicant's requests if it were held. The Commissioner also accepts that the personnel involved in carrying out the searches were those who had knowledge of the subject matter covered by the request and would have known where to search for the information.
28. The Commissioner is satisfied that, although further information relevant to the Applicant's request was located after further searches carried out during the investigation, this was not held at the time of the Applicant's request.
29. Having considered in detail the Authority's submissions, and all the circumstances of the case, the Commissioner is satisfied that the Authority took adequate and proportionate steps to establish whether it held any information falling within the scope of the Applicant's request.
30. Given the explanations and submissions provided, the Commissioner is satisfied, on balance, that the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant.
31. While the Applicant believed and expected more information to be held by the Authority, the Commissioner is satisfied that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.
32. The Commissioner therefore concludes 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.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) 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.

Euan McCulloch
Head of Enforcement

1 October 2024