

Decision Notice

Decision 052/2018: Mr Brian Gourlay and West Dunbartonshire Council

Advice from Police Scotland

Reference No: 201800271
Decision Date: 9 April 2018



Scottish Information
Commissioner

Summary

The Council was asked for details of behaviour which had led it to seek advice from Police Scotland. The Council initially failed to respond to the request. It then gave notice that it did not hold any information falling within the scope of the request.

During the Commissioner's investigation, the Council notified the Commissioner that it considered the information request to be vexatious, in terms of section 14(1) of FOISA.

Given that the Council's current view of the request differs markedly from its initial position, the Commissioner requires the Council to carry out a new review of its handling of Mr Gourlay's request and provide him with a different decision and with appropriate advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 10(1)(a) (Time for compliance); 14(1) (Vexatious or repeated requests); 21(4)(b) and (c) (Requirement for review)

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 2017, Mr Gourlay made a request for information to West Dunbartonshire Council (the Council). He referred to a letter from the Council which stated that certain behaviour had led to advice being taken from Police Scotland. Mr Gourlay made the following request:
 - (i) Please confirm and detail the behaviour that necessitated advice being sought from Police Scotland.
 - (ii) Please confirm and detail [from] whom and when advice was sought from Police Scotland.
 - (iii) Please confirm and detail any recorded information arising within Corporate Services [since the Council became aware of a specified incident].
 - (iv) Please confirm and detail the advice received and the Police Scotland incident reference.
2. The Council failed to respond.
3. On 21 November 2017, Mr Gourlay wrote to the Council requesting a review of its decision on the basis that it had failed to respond to his request. He sent the Council his original information request again.
4. The Council notified Mr Gourlay of the outcome of its review on 19 December 2017. It gave him notice, in terms of section 17(1) of FOISA, that it did not hold any of the information he had requested.

5. On 8 February 2018, Mr Gourlay applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the Council's review because he considered that the Council did hold the information he had requested but had failed to provide it to him. Mr Gourlay also expressed dissatisfaction regarding the Council's failure to respond to his request for information within 20 working days.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Gourlay made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 14 February 2018, the Council was notified in writing that Mr Gourlay had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr Gourlay and the Council. He is satisfied that no matter of relevance has been overlooked.
10. As noted above, the Council responded to Mr Gourlay's request for review on 19 December 2017 and notified him, in terms of section 17(1) of FOISA, that it did not hold any information falling within the scope of his request.
11. When questioned on this point, the Council notified the Commissioner that it was withdrawing its previous reliance on section 17(1) of FOISA and intended to rely on section 14(1) of FOISA, because it considered Mr Gourlay's request to be vexatious.
12. The Council explained that the letter it sent Mr Gourlay on 19 December 2017 was intended as an initial response to his FOI request, but, due to an error, the response was issued late. By the time the response was issued, Mr Gourlay had already submitted a request for a review. The Council submitted that, having had time to consider the initial request and the request for review, it was of the opinion that the request for information should have been refused on the grounds that it was vexatious, in terms of section 14(1) of FOISA.
13. The Council regretted that it had failed to recognise the request for review as such, and stated that it had taken steps to ensure that this failure will not recur.

Commissioner's views

14. In its submissions, the Council suggested that its response to Mr Gourlay of 19 December 2017 was not a review outcome (i.e. a response to Mr Gourlay's request for review), but was simply a late response to his information request. However, Mr Gourlay had asked for a review on 21 November 2017, being dissatisfied with the Council's failure to respond within 20 working days. The Commissioner would note that if an authority fails to respond to an information request within 20 working days and an applicant submits a request for review,

any subsequent response issued by the authority is deemed to be a review outcome in terms of section 21(4)(c) of FOISA.

15. In this case, Mr Gourlay made a request for review on 21 November 2017. The response issued by the Council on 19 December 2017 must be taken as the Council's review outcome, regardless of whether it had been through the Council's internal review process.
16. As noted above, the Council has now significantly altered its views on Mr Gourlay's information request, from its initial finding that it did not hold any information to its current determination that the request is vexatious. Given that the Council's current view of the request differs markedly from the position upon which its review response was based, the Commissioner requires the Council to carry out a new review of its handling of Mr Gourlay's request and (in terms of section 21(4)(b) of FOISA) provide him with a different decision and with appropriate advice and assistance. Mr Gourlay can then apply to the Commissioner for a decision, if dissatisfied with the decision from the Council.

Timescales

17. 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.
18. It is a matter of fact that the Council did not provide a response to Mr Gourlay's request for information of 23 October 2017 within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

Decision

The Commissioner finds that West Dunbartonshire Council (the Council) failed to comply completely with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Gourlay.

Given that the Council now takes a different view of Mr Gourlay's request, the Commissioner requires the Council to issue a revised review outcome, in terms of section 21(4)(b) of FOISA, by **24 May 2018**.

The Council failed to respond to Mr Gourlay's request within 20 working days. In doing so, it failed to comply with section 10(1) of FOISA.

Appeal

Should either Mr Gourlay or West Dunbartonshire Council (the Council) 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 Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

9 April 2018

Freedom of Information (Scotland) Act 2002

10 Time for compliance

(1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

14 Vexatious or repeated requests

(1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...

21 Review by Scottish public authority

...

(4) The authority may, as respects the request for information to which the requirement relates-

...

- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached

...

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