

Decision Notice

Decision 057/2017: Mr David Bryce and Glasgow City Council

De-brief report for “Better Together” procession

Reference No: 201700110

Decision Date: 24 April 2017



Scottish Information
Commissioner

Summary

The Council was asked for a copy of Police Scotland's de-brief report on the "Better Together" procession held on 30 July 2016.

The Council told Mr Bryce that it did not hold the report and later gave some advice on information which it did hold about two "notified" processions held on 30 July 2016. The Commissioner investigated and found the Council's response to have been appropriate in the circumstances.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (4) (General entitlement); 8(1)(c) (Requesting information); 17(1) (Notice that information is not held)

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 1 November 2016, Mr Bryce made a request for information to Glasgow City Council (the Council). The subject line of the email was "Re: RQST00005848835 Better Together Procession 30th July 2016". In the body of the email, Mr Bryce asked:

"I would be pleased to receive full details of Police Scotland's full de-brief of the above procession"
2. The Council responded on 3 November 2016, informing Mr Bryce that the de-brief report was not held.
3. On 10 November 2017, Mr Bryce wrote to the Council requesting a review of its decision as it was his understanding the information was held. He said Police Scotland had told him they had provided the Council with the de-brief.
4. The Council notified Mr Bryce of the outcome of its review on 6 December 2016. It confirmed that it did not hold the requested information, explaining there was no record of a "Better Together" procession held on 30 July 2016. It went on to explain that two processions had gone ahead as notified on that date, naming each of these.
5. On 17 January 2017, Mr Bryce wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Bryce stated he was dissatisfied with the outcome of the Council's review because he believed information was held. He believed one of the processions named by the Council was more likely to be relevant than the other, and queried why the Council had not sought to clarify his request.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Bryce made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.

7. On 9 February 2017, the Council was notified in writing that Mr Bryce had made a valid application. The case was then 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 details of any searches carried out for the information Mr Bryce requested and as to whether it had considered it necessary to seek clarification of the request.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Bryce and the Council. She is satisfied that no matter of relevance has been overlooked.

Whether the Council held any information

10. 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, subject to qualifications which are not applicable in this case.
11. Under section 17(1), where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
12. The standard 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. She 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 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.
13. In this case, the Council gave notice to Mr Bryce that it did not hold the information he described in his request.
14. In his application to the Commissioner, Mr Bryce queried the Council's response that the information was not held. He submitted that the Council should have sought clarification if it was in any doubt as to which procession he had in mind.
15. The Council detailed the searches undertaken by its Processions Officer. The Public Processions database was searched, along with administrative files, for any information held on a "Better Together" procession on 30 July 2016. No relevant information was located during these searches.
16. The Council indicated it was unable to comment on which of the processions named in the review outcome might be relevant to Mr Bryce's request. It noted that it had identified these two processions with a view to providing advice and assistance, suggesting to Mr Bryce that he should make a further request for information if he considered either of these processions to be the one he was interested in. The Council commented that Mr Bryce had not submitted a further request.

17. The Commissioner has considered the Council's submissions and is satisfied that it undertook reasonable and proportionate searches and enquiries for information about a "Better Together" procession on 30 July 2016. She is satisfied that any information about such a procession, if held, would have been identified using the searches and enquiries described by the Council. The only other question which appears relevant in the circumstances is whether these search parameters were too narrow to be capable of addressing Mr Bryce's request adequately.
18. Mr Bryce appeared to express himself clearly, specifying a recognised organisation and a particular date. There would appear to have been no reason for the Council to seek clarification of a request framed in these terms, simply because no procession took place under that name on that date.
19. While section 1(3) of FOISA allows public authorities to seek clarification of requests where they need it, the onus is on the applicant to describe the information they are seeking (section 8(1)(c) of FOISA). Some requesters, by the nature of their expertise, might be expected to express themselves more clearly than others in this regard, but it is not unreasonable to expect the average applicant to describe the information they are seeking with a reasonable degree of clarity. If they are in any doubt as to the name of a particular organisation involved in the subject matter of the request, for example, it is surely more appropriate to describe that subject matter in some other way, rather than inserting the name of an organisation that might "fit".
20. In the circumstances of this case, therefore, the Commissioner is satisfied that the Council scoped its searches and enquiries reasonably and was entitled to respond as it did, in terms of section 17(1) of FOISA.

Section 15 of FOISA: duty to advise and assist

21. Section 15(1) of FOISA requires a Scottish public authority, so far as it 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.
22. To a large extent, the question of whether the Council required to seek clarification from Mr Bryce by way of advice and assistance is intertwined with whether it interpreted the scope of Mr Bryce's request appropriately and thus conducted appropriate searches. This is considered above.
23. The reviewer, as Mr Bryce acknowledges, confirmed the names of the two notified processions which went ahead on that day. The Council has submitted that this provided adequate advice and assistance to allow Mr Bryce to identify the procession he was interested in accurately and make a new request about that procession. The Commissioner agrees: at that point Mr Bryce had the opportunity to make request in the appropriate terms, and it is unfortunate that he has not yet done so. She does not consider the Council was required, in the circumstances, to do more by way of advice and assistance.
24. The Commissioner notes that in providing this advice and assistance, the reviewer rectified any omission of relevant advice and assistance from its earlier response. This is the purpose of having a review. Under the terms of section 21(4) of FOISA, an authority has the opportunity to modify a previous response or substitute a new response. However, the Commissioner welcomes the Council's recognition, in its submissions to the investigating officer, that this advice and assistance should have been provided in its initial response.

Decision

The Commissioner finds that the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Bryce.

Appeal

Should either Mr Bryce or 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.

Margaret Keyse
Head of Enforcement

24 April 2017

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.

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (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.

...

8 Requesting information

- (1) Any reference in this Act to “requesting” information is a reference to making a request which—

...

- (c) describes the information requested.

...

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.

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