

Decision Notice



Decision 059/2011 Ms Agnes McWhinnie and City of Edinburgh Council

Taxi-cab identification information

Reference No: 201001995
Decision Date: 21 March 2011

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Scottish Information Commissioner

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Summary

Ms Agnes McWhinnie (Ms McWhinnie) made three requests to the City of Edinburgh Council (the Council) for information relating to a taxi-cab driver involved in an accident. The Council stated that it did not hold the information in respect of one of the requests and did not provide any substantive response in respect of the other two requests. After seeking reviews in relation to each request, Ms McWhinnie remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner found that the Council partially failed to deal with Ms McWhinnie's requests for information in accordance with Part 1 of FOISA. He found that the Council incorrectly notified Ms McWhinnie that it did not hold part of the information sought in two of her requests, and it failed to identify and provide the part of the information it held to Ms McWhinnie.

The Commissioner also concluded that the Council had failed to comply with the technical requirements of sections 10 and 21 of FOISA.

As the Council supplied the information it held to Ms McWhinnie in the course of the investigation, the Commissioner did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held); 21(1), (4), (5) and (10) (Review by Scottish public authority) and 47(4) and (5) (Application for decision by Commissioner).

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. Ms McWhinnie's solicitor wrote to the Council on her behalf requesting certain information. Subsequent references to correspondence from and to Ms McWhinnie should be read as including correspondence from and to her solicitor on her behalf.



2. This decision deals with three separate information requests made by Ms McWhinnie to the Council in respect of information about a particular taxi-cab driver. Ms McWhinnie had been pursuing the matter with the Council since June 2009, following an accident which occurred in May 2009.

Request 1

3. On 15 January 2010, Ms McWhinnie emailed the Council requesting the details of the taxi-cab driver involved in the accident, including his name, address and registration number.
4. As the Council did not respond to her within 20 working days, Ms McWhinnie emailed the Council again on 17 February 2010 requesting a review of the Council's failure to respond to her request of 15 January 2010.
5. On 25 February 2010, Ms McWhinnie wrote again to another Council officer requesting a review of the Council's failure to respond to her request of 15 January 2010.
6. On 3 March 2010, in response to her letter of 25 February 2010, the Council wrote to Ms McWhinnie stating that without the taxi-cab plate number (which Ms McWhinnie had been unable to provide) it was unable to obtain the required information from the Council's Register of Applications.

Request 2

7. On 9 March 2010, Ms McWhinnie wrote to the Council asking for the name and address of the driver involved in the accident or the vehicle registration number. Ms McWhinnie stated that she knew the incident had been investigated and that the information was available to the Council.
8. As the Council did not respond to her request within 20 working days, Ms McWhinnie wrote again to the Council on 20 April 2010 requesting a review of the Council's failure to respond to her request of 9 March 2010.
9. The Council wrote to Ms McWhinnie in response to this request for review on 18 May 2010, stating that the investigation in question had been carried out under the supervision of the Cab Inspector of Lothian and Borders Police. The Council stated that it was not in a position to provide the information requested and suggested Ms McWhinnie contact Lothian and Borders Police.

Request 3

10. On 16 August 2010, Ms McWhinnie emailed the Council requesting the name and address of the driver, and the registration number, of the taxi-cab involved in the accident. She advised the Council that she had spoken to Lothian and Borders Police, but had been told that they had no details of the incident.



11. As the Council did not respond to her request within 20 working days, Ms McWhinnie wrote again to the Council on 14 September 2010 requesting a review of the Council's failure to respond to the request made on 16 August 2010.
12. This letter noted that Ms McWhinnie had been requesting the specified information since June 2009 and felt that she was being ignored. She also highlighted a range of concerns with the Council's communications in response to her information requests, including the failure to provide information which she believed was held, the provision of what she considered to be inaccurate or misleading information, and the failure to advise her of her rights if she was unhappy with the responses provided.
13. On 16 September 2010, Ms McWhinnie received from the Council an acknowledgement of her request for review but no substantive response followed.

Application to the Commissioner

14. On 14 October 2010, Ms McWhinnie wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's reviews of 3 March 2010 and 18 May 2010 and the Council's failure to provide a response to her request for review of 14 September 2010 and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
15. In terms of section 47(4)(a) of FOISA, an application to the Commissioner made under section 47(1)(a) must be made within six months of the applicant receiving the response to their request for review. In the case of Request 1, the application was submitted to the Commissioner outwith the six month period.
16. The Commissioner may, however, (by virtue of section 47(5) of FOISA) consider an application after the expiry of the six month period if he considers it appropriate to do so. In the case of Request 1, the Commissioner applied the discretion granted to him under section 47(5) of FOISA and has considered the application in respect of all three information requests (this is discussed in more detail in the Commissioner's analysis and findings section below).
17. The application was validated by establishing that Ms McWhinnie had made three requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its failure to respond to each of these requests. The Council was notified on 9 November 2010 that an application had been received from Ms McWhinnie and the case was then allocated to an investigating officer.

Investigation

18. On 10 December 2010 and the investigating officer wrote to the Council inviting it to comment on the application (as required by section 49(3)(a) of FOISA).



19. During the course of the investigation, Ms McWhinnie wrote to the Council again and after further correspondence between her and the Council, the Council provided the name and address of the tax-cab driver concerned to Ms McWhinnie.
20. On 7 January 2011, Ms McWhinnie wrote to the Commissioner to inform him that she had now received the information she had been seeking from the Council but that she still required a decision from the Commissioner on the Council's handling of the case.
21. The Council wrote to the Commissioner on 13 January 2011 apologising for its handling of the requests under consideration and providing comments which will be discussed further in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

22. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Ms McWhinnie and the Council and is satisfied that no matter of relevance has been overlooked.

Section 47 of FOISA

23. As noted in paragraph 16 above, in respect of Request 1, Ms McWhinnie's application for decision was lodged with the Commissioner outwith the six month timescale specified in 47(4)(a) of FOISA.
24. Having considered the Council's handling of this request, and noting in particular that it had failed to advise Ms McWhinnie of her right to apply to the Commissioner and the timescale for doing so, the Commissioner decided that it was appropriate for him to exercise his discretion in terms of section 47(5) of FOISA and consider this application in relation to Request 1, as well as Requests 2 and 3.

Section 17 of FOISA (Notice that information is not held)

25. Where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information.
26. In response to Ms McWhinnie's request for review (regarding its failure to provide any response) in respect of Request 1, the Council stated that it did not hold the information requested by Ms McWhinnie.
27. The Council's response to Request 2 (again in response to the request for review, following an initial failure to provide any response), indicated that it was not in a position to provide the requested information. Although this did not explicitly state that the information was not held, the Commissioner understands that this response was issued with the understanding that it was not.



Submissions from the Council

28. The Council's submissions explained the procedures followed when a complaint is made about a taxi-cab driver. It indicated that, in line with its standard procedure, no Council employee had been in touch with the driver whose details were sought by Ms McWhinnie's request as her complaint had been passed by the Council to the Lothian and Borders Police Cab Inspector for investigation. The Council noted that it was surprised that Lothian and Borders Police had informed Ms McWhinnie that they had no details of the incident in question, but this was a matter that could only be addressed by Lothian and Borders Police.
29. The Council explained that its responses to Ms McWhinnie's requests had been made in the belief (held in good faith) that the requested information was not held. However, it informed the Commissioner that, after investigating matters further, it had discovered that it did in fact hold an email from the Police Cab Inspector, dated 17 June 2009, which confirmed the name of the driver involved.
30. The Council went on to explain that its investigations had then revealed that there were in fact two taxi-cab drivers with that same name and that it had only managed to clarify on 20 October 2010 which one was in fact the driver of the cab in question.
31. The Council confirmed that it had written to Ms McWhinnie on 10 November 2010, advising her that it did in fact hold the name of the driver in question and providing that name to her. The Council advised Ms McWhinnie to make a new information request for the address of the driver, on the basis that it had not held that specific information at the time of her request and had only been furnished with it on 20 October 2010 (by Lothian and Borders Police, who had provided further information to the Council, which allowed it to ascertain which of the two drivers of the same name was the one involved in the relevant accident).
32. The Commissioner was provided with documents which showed that Ms McWhinnie made a new request on 10 November 2010 asking for the driver's address, his registration plate number and the name of his insurers and that on 8 December 2010 the Council had provided Ms McWhinnie with the address of the driver but stated that it did not hold the registration plate number or the name of the insurers.
33. The Council apologised for its handling of Ms McWhinnie's information requests, and acknowledged that it had been remiss in not having checked its emails for relevant prior correspondence. The Council accepted that it had indeed held part of the information sought in Ms McWhinnie's requests. Although it acknowledged that it did hold the name of the driver, it stated that it did not hold the other information sought for by Ms McWhinnie at the time of her requests.

The Commissioner's findings

34. As the Council has admitted that the name of the taxi-cab driver was held at the time of the request, the Commissioner must find that the Council was not entitled to give Ms McWhinnie notice in terms of section 17(1) of FOISA in respect of that part of her request, as it did in response to Requests 1 and 2.



35. The relevant information has now been supplied to Ms McWhinnie. However, the Commissioner finds that by failing to provide this information at the relevant time, the Council breached Part 1, and in particular section 1(1), of FOISA.
36. The Commissioner is however satisfied that the information pertaining to the address of the taxi-cab driver and his registration plate number was not held by the Council at the time it received the request. While the Council's register would hold the addresses of all registered taxi-cab drivers, the Council did not have sufficient information in its possession to determine which of the two drivers sharing the same name was the one involved in the relevant accident. In these circumstances, the Commissioner accepts that the Council did not hold information that would confirm which driver's address was the one sought by Ms McWhinnie.
37. He notes that Ms McWhinnie has indicated that the information subsequently provided was sufficient for her purposes. He is satisfied that the Council was correct to give Ms McWhinnie notice in terms of section 17(1) of FOISA in respect of the address of the driver and the registration plate number and as such complied with Part 1 of FOISA in this respect.
38. The Commissioner will now go on to consider various other technical issues arising in this case.

Section 10 of FOISA - (Time for compliance)

39. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from receipt of the request, or subsequent clarification of that request, to comply with a request for information, subject to certain exceptions which are not relevant in this case.
40. In all three of Ms McWhinnie's requests the Council failed to respond within this timescale.
41. In respect of Request 3, the Council stated, in its submissions to the Commissioner on 13 January 2011, that it could find no record of receipt of the emailed request sent by Ms McWhinnie on 16 August 2010.
42. However, the Commissioner notes that in its acknowledgement email of 16 September 2010 to Ms McWhinnie in response to her requirement for review, the Council made no mention of any non-receipt of the original request.
43. Ms McWhinnie also provided the Commissioner with a computer screen-print indicating that the email in question was sent at 14:36:00 on 16 August 2010, although the actual email itself could not be retrieved.
44. Taking account of the above factors, the Commissioner accepts on balance of probabilities that the email was in fact sent to the Council and that it may have been overlooked or deleted after its receipt.
45. The Commissioner therefore finds that the Council failed to respond to all three of Ms McWhinnie's requests for information within the 20 working days allowed under section 10(1) of FOISA and thereby failed to comply with Part 1 of FOISA.



Section 21 of FOISA - Review by Scottish public authority

46. Section 21(1) of FOISA gives a Scottish public authority a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
47. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. reach a decision, where the complaint is that no decision had been reached.
48. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection 21(4) and a statement of its reasons for so doing.
49. In respect of Request 3, the Council accepts that it did not provide any response to Ms McWhinnie's requirement for review of 14 September 2010 within the timescale required by section 21(1).
50. The Commissioner therefore finds that the Council failed to respond to Ms McWhinnie's requirement for review of 14 September 2010 in accordance with section 21 of FOISA, and, in particular, sections 21(4) and (5) of FOISA, within the 20 working days allowed by section 21(1) of FOISA.
51. Section 21(10) of FOISA requires that where a Scottish public authority is responding to a requirement for review by providing a notice under section 21(5) of FOISA, this notice must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.
52. In respect of Requests 1 and 2, the Council's responses to Ms McWhinnie's requirements for review did not contain details of these rights. The Commissioner therefore finds that the Council failed to respond to Ms McWhinnie's requirements for review of 17 February 2010 and 20 April 2010 in accordance with section 21 of FOISA, and, in particular, section 21(10) of FOISA, within the 20 working days allowed by section 21(1) of FOISA.

Conclusion

53. As it subsequently provided Ms McWhinnie with the information she required, the Commissioner does not require the Council to take any further action in relation to the breaches of Part 1 of FOISA which are identified above.
54. However, the Commissioner is of the view that the Council's overall handling of Ms McWhinnie's requests has demonstrated poor customer service, and request handling far below the standard he would expect from a public authority.



55. In her letter of 14 September 2010 (summarised in paragraph 12 above), Ms McWhinnie expressed frustration at having her simple and clear requests for information ignored, or responded to apparently without regard to her rights under FOISA. The Commissioner considers that the Council's handling of the requests under consideration in this case has included repeated failures over a prolonged period.
56. The length of time taken by the Council to provide Ms McWhinnie with the one relevant piece of information it did hold, the lack of appropriate email searches carried out, along with the lack of responses to her requests and her requests for review are, in the Commissioner's view, unacceptable.
57. The Commissioner notes the Council's apology to Ms McWhinnie for its handling of these requests, and its explanation that the requests came during a period of transition in its handling of FOISA requests. He also notes (in the wake of the Commissioner's Practice Assessment carried out in September 2010) the Council's assurance that a more robust structure has since been put in place for progressing all FOISA requests.

DECISION

The Commissioner finds that the City of Edinburgh Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Ms McWhinnie.

He finds that the Council was wrong to give notice in terms of section 17(1) of FOISA in relation to the name of the relevant taxi-cab driver as sought by Request 1 and Request 2. By failing to identify and provide the name of the relevant taxi-cab driver, the Council failed to comply with section 1(1) of FOISA. However he finds that the Council complied with Part 1 of FOISA in responding in terms of section 17 in relation to the remaining parts of Request 1 and 2.

In addition, he finds that the Council failed to respond to all three of Ms McWhinnie's requests for information, and her request for review in relation to Request 3, within 20 working days, as required by, respectively, sections 10(1) and 21(1) of FOISA.

He also finds that the Council failed to comply with section 21(10) of FOISA, in relation to Requests 1 and 2, by failing to inform Ms McWhinnie of her rights of application to the Commissioner and of appeal.

As the information that was held by the Council was provided to Ms McWhinnie during the course of the investigation, the Commissioner does not require the Council to take any further action to rectify the breaches identified above in response to this decision.



Appeal

Should either Ms McWhinnie or the Council wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
21 March 2011



Appendix

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.
- ...
- (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.

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

...

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.

...

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.

...

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

(a) confirm a decision complained of, with or without such modifications as it considers appropriate;

(b) substitute for any such decision a different decision; or

(c) reach a decision, where the complaint is that no decision had been reached.

(5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

....

(10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.

47 Application for decision by Commissioner

...

(4) Subject to subsection (5), an application to the Commissioner under subsection (1) must be made-

(a) where the application concerns a matter mentioned in paragraph (a) of subsection (1), before the expiry of six months after the date of receipt by the applicant of the notice complained of; or



(b) where the application concerns a matter mentioned in paragraph (b) of that subsection, before the expiry of six months after the period allowed in section 21(1) for complying with a requirement for review has elapsed.

- (5) The Commissioner may consider an application under subsection (1) made after the expiry of the time allowed by subsection (4) for the making of that application if, in the opinion of the Commissioner, it is appropriate to do so.

...