

Decision Notice

Decision 062/2015: Mr Jon Darch and Glasgow City Council

Safe standing at Celtic Park

Reference No: 201500279
Decision Date: 7 May 2015



Scottish Information
Commissioner

Summary

On 3 December 2014, Mr Darch asked Glasgow City Council (the Council) for information from correspondence about “safe standing” at Celtic Park. The Council initially refused to provide the information on the grounds that it was exempt from disclosure. Following a review, it stated that it did not hold the requested information.

During the Commissioner’s investigation, the Council found information falling within scope of the request and provided this to Mr Darch.

The Commissioner found that the Council failed to respond to Mr Darch’s request in accordance with Part 1 of FOISA in that: it incorrectly informed Mr Darch that it did not hold any information; and failed to identify and retrieve all of the information it held which was covered by his request. The Commissioner was satisfied that the Council had retrieved and provided all relevant information by the end of her investigation, and that it did not hold any further information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held); 21(1) and (4)(b) (Review by Scottish public authority)

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 3 December 2014, Mr Darch asked the Council for the following information:
“... copies of all correspondence, including but not limited to letters, e-mails and faxes, relating to any proposed reconfiguration of spectator accommodation at Celtic Park and/or to the provision of accommodation for standing spectators in the stadium received by any officer, employee or representative of Glasgow City Council or of the Safety Advisory Group [SAG] for Celtic Park during calendar year 2014 from any statutory, law enforcement or safety-related body maintaining its primary base and/or registered office outside of Scotland, including but not limited to officers and employees of UK government departments, Members of Parliament and/or their staff, the police or the Sports Ground Safety Authority [SGSA].”
2. The Council responded on 19 December 2014. It stated that the requested information was exempt from disclosure under sections 30(b)(ii) (Prejudice to effective conduct of public affairs) and 39(1) (Health, safety and the environment) of FOISA.
3. On 20 December 2014, Mr Darch emailed the Council requesting a review of its decision on the basis that he considered that the exemptions did not apply.
4. The Council notified Mr Darch of the outcome of its review on 15 January 2015. Having reconsidered its previous response, it now gave notice in line with section 17(1) of FOISA that it did not hold any information.
5. On 11 February 2015, Mr Darch emailed the Commissioner stating that he was dissatisfied with the outcome of the Council’s review as he considered that it was not credible for the Council to deny that it held any information covered by his request. He applied to the

Commissioner for a decision in terms of section 47(1) of FOISA. Mr Darch provided a copy of an email which he considered fell within scope of the request and which he considered the Council should have disclosed to him.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Darch 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 23 February 2015, the Council was notified in writing that Mr Darch had made a valid application.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 3 March 2015, the Council was invited to comment on this application and answer specific questions including providing details of the searches it had conducted in searching for the requested information. The Council was provided with a copy of the email from Mr Darch. In response, the Council confirmed that it held the email, but contended that only part of the email fell within scope of the request.
9. During the investigation, the Council carried out additional searches for information covered by the request. These searches are described in the *Commissioner's analysis and findings*.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Darch and the Council. She is satisfied that no matter of relevance has been overlooked.
11. 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 certain qualifications which are not applicable in this case.
12. The information to be given is that held by the authority at the time the request is received, subject to any amendment or deletion which would have been made, regardless of the receipt of the request, between the date of receipt and the time the information is given (section 1(4)). This is not necessarily to be equated with information an applicant believes the authority *should* hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
13. In this case, the Council initially indicated that it held information covered by the request but that it was exempt from disclosure under FOISA. However, after review, it gave notice that it did not hold any information covered by the request. As noted, the Council has now acknowledged that it held information in an email, but only after being shown a copy of the email during the investigation.
14. The Commissioner must decide whether the Council has now identified and retrieved all information covered by Mr Darch's request. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where

appropriate, any reason offered by the public authority to explain why it does not hold the information.

Scope of the request

15. In making his application, Mr Darch provided a copy of an email that he considered fell within scope of the request. Mr Darch confirmed that this email could be forwarded onto the Council. The investigating officer asked the Council whether it held the email. The Council was also asked for detailed submissions about the searches it had conducted.
16. The Council confirmed that it did hold the email provided by Mr Darch, but noted that the email consisted of a two-part email chain. It took the view that only one of the emails in the chain fell within scope of the request. The Council commented that Mr Darch's request was limited to information *received* by the Council (i.e. not sent by Council staff). It acknowledged that the email in question should have been provided to Mr Darch when responding to his request, after redacting certain personal details.

Response to the request

17. The Council was asked why it had changed its position from holding information which was exempt from disclosure under FOISA to holding no information covered by Mr Darch's request. The Council explained that it initially applied the exemptions in sections 30(b)(ii) and 39(1) of FOISA on the basis that it wished to withhold information relating to safe standing under these exemptions. The Council considered that Mr Darch's request for review further contextualised the information he was seeking, specifically in the context of correspondence between various national agencies concerning safe standing. Taking this into account, the Council reassessed the terms of the initial request and determined that 17(1)(b) was in fact the appropriate provision of FOISA (as the Council did not hold any relevant information).
18. The Council was asked to clarify which part of Mr Darch's request for review provided this contextualisation that led them to change its approach. The Council pointed to the part of Mr Darch's email in which he commented that his request related only to communications with bodies outside Scotland, and explained that he saw a strong public interest in knowing the extent to which SAG was influenced or advised by English bodies (if at all) on a matter which is a devolved responsibility.
19. Section 21(4)(b) of FOISA allows a Scottish public authority carrying out a review of its response to a request to substitute a different decision for the one complained of. The Council was entitled to change its position on whether it held any relevant information. However, the Commissioner does not accept that Mr Darch's request for review provides any "contextualisation" which was not included in his initial request, which clearly referred to communications received from organisations "outside Scotland". The Commissioner is critical of the Council for its narrow approach. Had it felt that the review request changed the request in any significant way, it had the opportunity to provide advice and assistance under section 15 of FOISA to clarify doubts or uncertainty. On the information provided by the Council, there is no evidence that such an opportunity was taken.
20. As the Council failed to provide Mr Darch with information which was covered by his request and which it later found and provided, the Commissioner finds that it failed to comply with section 1(1) of FOISA in responding to his request.

21. The Commissioner also investigated whether the Council holds any other information which is covered by Mr Darch's request, and whether its searches have been sufficiently thorough to establish this.

Adequacy of the Council's searches

22. As noted, during the investigation, the Council discovered an email which it held and which was covered by Mr Darch's request. The Council explained that it had found this email following a search of the email inbox of the Chair of the SAG ("the Chairperson"). The Council explained that, at the date of the request, the Chairperson was not working for the Council, but was due to return in 2015. The Chairperson had set up an "out of office" message which made it clear that emails would not be forwarded and directed individuals to contact other Council employees while the Chairperson was absent.
23. The Council stated that, during this period, the Chairperson's emails were not monitored or forwarded as a matter of course. It confirmed that the Licensing staff (who are responsible for the coordination of the SAG) were unaware that the email from the Chairperson had been sent, or that a reply had been received.
24. It is clear that the Council's search failed to identify, locate or retrieve information it held. This was the emails sent and received by the Chairperson, who was the member of staff with key responsibility for the issue in question. In this respect, the searches were inadequate.
25. In relation to other searches carried out for information covered by Mr Darch's request, the Council explained that the Licensing Team hold the relevant information. Hard copy files are stored securely within the Licensing Offices and electronic copies of the information are maintained by two key employees (the Chairperson and their secretary). The Council confirmed that these hard copy and electronic files had been searched and no information had been identified.
26. The Council identified other employees who had attended SAG meetings or had been a party to the SAG and confirmed that these employees had not had any discussion with agencies outside Scotland in relation to Mr Darch's request.
27. The Council explained that its Information Security policy forbids the storing of information locally, and so searches were not conducted of the C: drive of a PC for information. Accordingly the only searches carried out were in relation to emails on the main frame and hard copy files.
28. The Council provided a screen shot of the information it held about Celtic Park and confirmed that it did not hold any information about discussions with UK agencies on the Celtic "Safe Standing" proposal.
29. The Council was asked to provide the Commissioner with copies of the documents listed in the screen shot which included the words "safe standing". Two of the documents made reference to liaison with agencies outside Scotland. The Council was asked to provide details of the sources of information upon which these reports were based. The Council provided submissions which showed that the reports were compiled from information in existing reports prepared by other agencies, and were not based on investigations carried out by Council staff involving UK agencies. The Commissioner is satisfied that the reports' inclusion of references to liaison with agencies outside Scotland does not imply that the Council itself was involved in that liaison.

30. Having considered the terms of Mr Darch's request, the Commissioner is satisfied that the only information falling within scope is the single email received by the Chairperson, described above.
31. The Commissioner would observe that the Council's failure in this case stemmed from what appear to be inadequate arrangements for searching for information. She would remind the Council that, in searching for requested information, the Council should ensure that all relevant locations are searched, including the records of individuals who may not be currently working for the Council. The Commissioner also directs the Council to guidance on her website¹, which states that if an employee is out of the office, their mail (email and post) should be checked regularly to ensure any information requests received are dealt with promptly.

Decision

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Jon Darch.

The Council failed to comply with section 1(1) of FOISA, as it did not disclose the information it held falling within scope of the request. The Council incorrectly gave notice under section 17(1) of FOISA that it did not hold any information falling within scope of the request.

As the Commissioner is satisfied that Mr Darch has now received all the information which the Council holds, in relation to his request, she does not require the Council to take any further action in relation to these failures.

Appeal

Should either Mr Darch 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.

Rosemary Agnew
Scottish Information Commissioner

7 May 2015

¹ <http://www.itspublicknowledge.info/FAQ/PublicAuthorityFAQ/RequestsFAQ.aspx#holiday>

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.

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-

...

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

...

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