

Decision Notice

Decision 093/2016: Mrs Margaret Nugent and Glasgow City Council

Contract information

Reference No: 201600440
Decision Date: 3 May 2016



Scottish Information
Commissioner

Summary

On 17 November 2015, Mrs Nugent asked Glasgow City Council (the Council) for a copy of a consultancy contract relating to the review of the taxi tariff for the City. The Council informed Mrs Nugent that it did not hold the information. Following an investigation the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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 17 November 2015, Mrs Nugent made a request for information to the Council. The information requested was a copy of a contract between the Council and Taxi Research Partners (TRP) to calculate the 2015/16 taxi tariff.
2. The Council responded on 21 December 2015. The Council stated that TRP had been appointed following a procurement process but that a bespoke contract was not prepared (and therefore was not held). It explained that the work carried out by TRP was subject to the Council's standard terms and conditions, a copy of which would be provided, if required.
3. On 21 December 2015, Mrs Nugent wrote to the Council requiring a review of its decision. She asked the Council for a copy of its standard terms and conditions and repeated that she required the dated contract between the Council and TRP, specific to the 2015/16 tariff.
4. The Council notified Mrs Nugent of the outcome of its review on 21 January 2016. It provided a copy of the standard terms and conditions. It explained that in accordance with the Council's Standing Orders, on 28 October 2015, the Head of the Corporate Procurement Unit had authorised the appointment of TRP to carry out a review of the tariff for 2015/16, 2016/17 and 2017/18.
5. The Council further explained that TRP had been informed of this by email on 23 November 2015. It confirmed that the appointment had not been formalised by a signed contract (so no such contract was held).
6. On 9 March 2016, Mrs Nugent wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mrs Nugent refused to accept that the Council did not hold the contract.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mrs Nugent 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.

8. On 18 March 2016, the Council was notified in writing that Mrs Nugent had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 30 March 2016, the Council was invited to comment on this application and to answer specific questions, in particular to explain the steps it had taken to identify and locate the information requested.
10. The Council responded, providing submissions in support of its position that it did not hold a copy of the requested contract.

Commissioner's analysis and findings

11. 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 Mrs Nugent and the Council. She is satisfied that no matter of relevance has been overlooked.

Information held by the Council

12. 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, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
13. The information 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 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.
14. The Commissioner notes the submissions provided by Mrs Nugent, in which she provides reasons why she considers the Council should hold the contract requested.
15. In its submissions to the Commissioner, the Council confirmed the position regarding TRP's appointment, as explained to Mrs Nugent earlier, providing evidence of this. It acknowledged that this was not the Council's standard position and that it would have been usual to issue a contract.
16. The Council confirmed the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of Mrs Nugent's request, detailing the places searched and the search terms used. These included searches of relevant electronic and paper records, and consultation with relevant staff in the departments concerned. The Council provided supporting evidence confirming the outcomes of its searches. The conclusion of the searches and enquiries was that no contract was held, in addition to the correspondence described in the Council's responses to Mrs Nugent.
17. The Commissioner notes that the correspondence between the Council and TRP relating to TRP's appointment could be considered contractual in nature, although it does not appear to refer to terms and conditions. However, this correspondence would not have been held by the Council at the time it received Mrs Nugent's request: it was not created until later. Consequently, it could not fall within the scope of the request. The Commissioner notes, however, that the content of this correspondence was explained to Mrs Nugent within the Council's response to her requirement for review.

18. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted Mrs Nugent's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held. Given the explanations provided, she is satisfied that the Council did not, on receipt of the information request, hold the information requested by Mrs Nugent.
19. The Commissioner is therefore satisfied that the Council was correct to give Mrs Nugent notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope her request. By doing so the Council dealt with the request in accordance with section 1(1) of FOISA.

Decision

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

Appeal

Should either Mrs Nugent 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

3 May 2016

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.

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