

Decision Notice 130/2020

Council spending

Applicant: The Applicant

Public authority: East Renfrewshire Council

Case Ref: 202000427



Scottish Information
Commissioner

Summary

The Council was asked for information about two different types of spending. The Council stated that it did not hold the requested information.

Following an investigation, the Commissioner accepted that the requested information was not held.

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)

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 28 February 2020, the Applicant made a request for information to East Renfrewshire Council (the Council). The request was:

During a discussion at Neilston Community Council last year regarding the council budget I was advised by Councillor Buchanan the spending within the council falls into two categories. One category is spending the the [sic] council are required to do by law the second category was what Councillor Buchanan call [sic] "Political Spending". Could you advise for the financial year 2018-2019 how much was spent on each category?
2. The Council responded on 11 March 2020. It explained that it does not record spend using the categories described in the request. The Council provided a link to a breakdown of Council spend for 2018/19, available on its website. As an indication, the Council stated that COSLA work on the assumption that 60% of spend relates to statutory requirements and national policies.
3. On the same date, the Applicant wrote to the Council requesting a review of its decision on the basis that he did not accept that this information was not held. He understood that there was a difference between statutory and political spending and this should be held by the Council.
4. The Council notified the Applicant of the outcome of its review on 9 April 2020. The Council confirmed that it did not hold information on Council spend, in the two identified categories. The Council stated that it had provided the Applicant with the information it held regarding overall spend and provided him with a generally recognised formula to split expenditure between the two. The Council confirmed that it does not hold a separate record itemising or categorising items of political spend.
5. On same day, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review. He did not accept that the information was not held.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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 15 July 2020, the Council was notified in writing that the Applicant 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 to answer specific questions.
9. The Council responded to the questions raised regarding the searches it had conducted and provided submissions as to why it was satisfied that the requested information was not held. During the investigation, the Council responded to a further question about its submissions.
10. A summary of the Council's submissions explaining why the requested information was not held was provided to the Applicant during the investigation. The Applicant did not accept the explanation and confirmed he still required a decision from the Commissioner.

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 him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.
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 notice in writing to that effect.

The Council's submissions

14. The Council explained that searches were not required as the request was handled by the Council's Chief Accountant who prepares and collates the Council's annual accounts and who held this position for a period extending prior to 2018/19. The Council stated that this individual has an in-depth knowledge of the Council's accounting practice and was fully aware of the way in which Council spend was and is classified and recorded.
15. The Council explained that the terms used by Councillor Buchanan were intended to provide a general layman's account of the various types of Council spend, rather than any reflection of how the spend was accounted for in a formal sense. The Council submitted that the Councillor was attempting to illustrate that some Council spend was legally necessary, e.g. the provision of education facilities, and stemmed from statutory duties that could not be avoided whilst other expenditure involved a degree of discretion. The Councillor has used the terms "required by law" and "political" to respectively describe these two concepts. These terms were not drawn from any recorded information.

16. The Council submitted that the weblink was provided to the Applicant to accord with the Council's duty to assist the Applicant and was intended to direct him to information relating to Council spend generally which he had noted an interest in. The Council stated that the information on this website was not in any way the specific information sought by the Applicant and was used to evidence the Council's statement that the requested information was not held.

The Commissioner's findings

17. 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 lies, the Commissioner considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
18. Having considered the submissions provided, taking account of the explanation behind why those terms were used and the fact that the Commissioner is not aware of any formal requirement for a Council to document its spend into the two identified categories, he is satisfied that the Council does not hold the requested information.
19. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities that the Council does not (and did not, on receiving the request), hold any information falling within the scope of the Applicant's request in terms of section 17(1) of FOISA.

Decision

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

Appeal

Should either the Applicant 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

13 October 2020

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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