

Decision Notice

Decision 141/2017: Neilston Community Council and East Renfrewshire Council

Car parking consultation

Reference No: 201700200

Decision Date: 29 August 2017



Scottish Information
Commissioner

Summary

The Council was asked for information on a car parking consultation. The Council provided some information. Following an investigation, the Commissioner found that the Council failed to

- (i) identify, locate and provide all the relevant information it held, or
- (ii) provide adequate advice and assistance in relation to the request.

Given that all of the information was subsequently obtained by the requester, the Commissioner did not require the Council to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 21(1) (Review by a 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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 15 November 2016, Neilston Community Council (NCC) made a request for information to East Renfrewshire Council (the Council). NCC asked for the following information concerning a car parking consultation carried out by the Council:
 - (i) All papers, emails and correspondence in respect to the survey data available and the "selected survey data" outlined in the report to Council (page 91 in the notes).
 - (ii) All papers, emails, spreadsheets and correspondence in respect to the algorithms and calculations in relation to the predicted income under both parking regime options.
 - (iii) All papers, emails and correspondence in respect to the methodology in estimating the displacement percentages.
 - (iv) All papers, emails, correspondence, minutes and notes in regard to the "key stakeholders" outlined in section 7, page 88 of the report to Council.
2. The Council responded on 8 December 2016 and provided some information. In respect of the four parts of the request the Council responded as follows:
 - (i) It provided the results of the survey in bar chart form.
 - (ii) It provided calculations which it stated were "predicted" and "not an exact science".
 - (iii) It stated that "the displacement was an approximation which was passed on from another Council who have recently implemented charging".

- (iv) It stated that discussions took place with Councillors, Senior Management, Network Rail, Strathclyde Partnership for Transport and the Police, but that no minutes of these discussions had been retained.
- 3. On 15 December 2016, NCC wrote to the Council, requesting a review of its decision. NCC believed further information was held for the first three parts of its request. NCC also stated that it considered the graphical data it had received to be of poor quality: it provided suggestions as to how the presentation might be improved.
- 4. The Council notified NCC of the outcome of its review on 20 January 2017 and apologised for this response being late. The Council provided some further information in respect of parts (i) and (ii) of NCC's request and stated that it held no further information for part (iii).
- 5. The Council explained that the graphical data results were provided in the format supplied to it by the private company that carried out the survey. It provided some additional information by way of figures for the time periods of use.
- 6. On 27 January 2017, NCC wrote to the Commissioner. It applied to the Commissioner for a decision in terms of section 47(1) of FOISA. On 2 February 2017, NCC provided an additional submission, augmenting its application.

Initial application to the Commissioner

- 7. In its initial application to the Commissioner, NCC stated that it had made an information request to Strathclyde Partnership for Transport (SPT) and received information which showed there had been correspondence between the Council and SPT that fell within the scope of the request to the Council.
- 8. NCC stated that the receipt of the information from SPT showed that the Council had not disclosed all the information that it should have. NCC believed the further information held by the Council included information on funding awards and terms and conditions of funding.
- 9. NCC also stated that the format of the graphical information provided to it by the Council meant that it was difficult to understand. NCC believed the Council should have provided advice and assistance by providing the data in a format (preferably electronic) that would be easier for NCC to interpret.

Additional submission

- 10. On 2 February 2017, NCC provided an additional submission augmenting its application. NCC stated that it had obtained a copy of the survey tender documentation by other means, along with tabular data produced by the contractor. It submitted that this proved the Council had not disclosed all the information it held and which fell within the scope of its request.
- 11. The Commissioner can only consider the issues raised by NCC to the extent that they are covered by its review requirement (which extends to points (i), (ii) and (iii) of the request only): part (iv) of the request (which would embrace the funding information highlighted by NCC in the light of information obtained from SPT) will not, therefore, be considered in this decision. NCC should also note that questions relating to the accuracy of any information disclosed do not fall within the Commissioner's jurisdiction.

Investigation

12. The application was accepted as valid. The Commissioner confirmed that NCC 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.
13. On 2 March 2017, the Council was notified in writing that NCC had made a valid application and the case was allocated to an investigating officer.
14. 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 in relation to points raised in NCC's application. These included questions on the searches carried out to identify and locate any relevant information.
15. In correspondence during the investigation, NCC confirmed that it was concerned with the principle of disclosure. Given what it had obtained from other sources, the actual information was irrelevant in this case.

Commissioner's analysis and findings

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

Additional Information falling within the scope of part (i) of the request

17. In its supplementary submission of 2 February 2017, NCC identified information it had obtained by alternative means, which it considered fell within the scope of the request. It identified tender documentation for the parking survey and also data in tabular form, produced by the contractor as part of that survey.
18. The Commissioner considers it reasonable to interpret part (i) of the request as embracing any information held by the Council and comprising either data collected as a result of carrying out the survey, or any analysis of or conclusions drawn from those data.
19. The Commissioner therefore considers the tabular data identified by NCC would fall within the scope of this part of the request. This information was not identified by the Council's searches (at any stage) or disclosed by the Council in response to this request or review requirement. The Council simply acknowledged that it had not supplied this information to NCC.
20. With regard to the information contained within the "Specification" section in the Invitation to Tender (relating to "Methodology" and "Presentation of Data"), it is the Commissioner's view that this sets out the parameters for the types of data the Council expected the winning contractor to collate and provide, and how it would carry this out. The Commissioner is of the view that this is not information of the same character as data gathered from, or generated by, the survey and that it does not fall within the scope of part (i) of the request.
21. The Commissioner will now go on to consider the adequacy of the searches the Council did carry out.

Information held by the Council

22. 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. This is subject to exceptions which are not relevant in this case.
23. The Commissioner has considered all the submissions received from both NCC and the Council, along with the information that was obtained by NCC separately and copied to her.

The adequacy of the searches carried out by the Council

24. The Council submitted that the request related to an ongoing consultation on parking charges undertaken by it. As this focused on proposals submitted to the Council on 20 October 2016 in a paper by the Roads Department, the Council stated that searches were limited to that service.
25. All preparatory information was held in a single folder in the Roads Common Area Drive. As storage of the relevant information was consolidated into a single folder, no more extensive searches were considered necessary.
26. Given his knowledge of the project, the Council explained, all relevant paper files were identified and searched by the project co-ordinator, who scrutinised the documentation for anything falling within scope. Under the project co-ordinator's direction, searches were carried out in Roads Common Area drive and email accounts of other roads officers with relevance to the project. The Council provided some evidence of emails requesting searches at the review stage.
27. NCC eventually obtained information held by the Council which fell within the scope of the request by alternative means. It is apparent that the Council did not take adequate steps to identify and locate all the information it held and which fell within the scope of the request. Taking account of all of the circumstances, the Commissioner concludes that the Council failed to comply fully with section 1(1) of FOISA in this respect.

Section 15(1) – Advice and assistance

28. Section 15(1) of FOISA requires a public authority, so far as it is reasonable to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
29. In the request for review dated 15 December 2016, NCC submitted that the graphical data it had received (in bar chart form) were of poor quality, citing difficulties in reading the data in the format provided (as opposed to electronic format). It also submitted that the chosen format made comparison more difficult. In response, the Council submitted that the data had been obtained from the contractor in the format provided.
30. NCC stated that it should be clear to any reasonable person that the graphical data provided by the Council was produced from a computer. It believed the data should be available in digital format and that that the Council had failed to provide any assistance in response to the points raised in this regard.
31. In its submissions to the Commissioner, the Council acknowledged that the relevant digital data were held on its behalf, by the contractor, and should have been provided to NCC.
32. The Commissioner agrees that these data should have been provided. At the very least, the Commissioner considers the Council should have engaged with NCC to address the

concerns it raised about the format of the data which were provided. In failing to do this, the Council failed to meet its duty to provide NCC with reasonable advice and assistance under section 15(1) of FOISA.

33. Given that NCC is satisfied that it now has access to the information it requires, the Commissioner does not require the Council to take any action with respect to the failure identified in this decision, in response to NCC's application.

Decision

The Commissioner finds that East Renfrewshire 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 Neilston Community Council (NCC).

In failing to identify, locate and provide NCC with all the information it held and which fell within the scope of the request, the Council failed to comply with section 1(1) of FOISA.

The Commissioner also finds that the Council had failed to provide adequate advice and assistance to NCC and therefore failed to comply with section 15(1) of FOISA.

As NCC is satisfied that it has now obtained the information it was seeking, the Commissioner does not require the Council to take any action regarding its failures, in response to NCC's application.

Appeal

Should either Neilston Community Council or East Renfrewshire 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
Acting Scottish Information Commissioner

29 August 2017

Appendix 1: 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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

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.

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