

Decision Notice

Decision 164/2014 Mr David Bruce and Highland Council

Location of Bus Shelter

Reference No: 201401038

Decision Date: 24 July 2014



Scottish Information
Commissioner

Summary

On 25 November 2014, Mr Bruce asked Highland Council (the Council) for information about the location of a bus shelter. The Council told Mr Bruce it did not hold any information about the location of the shelter, and explained why. Following an investigation, the Commissioner accepted that the Council did not hold any relevant information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 17(1) (Notice that information is not held)

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. On 25 November 2013, Mr Bruce wrote to the Council. His request was in six parts but his application did not cover the sixth part, which as a result is not considered in this decision. The request related to the placement of a bus shelter outside the family house. Mr Bruce asked the Council for:
 - a) all correspondence (emails, letters, notes of phone calls etc.) relating to this placement, including the consultation process, risk assessment and committee meeting minutes;
 - b) the policy with which this placement has been enforced;
 - c) details of the officer in charge with whom the decision was made, and records relating to it;
 - d) any records relating to sites that were considered for the placement of bus stops in Munloch prior to the placement of the one at 28/30 Millbank Road; and
 - e) any objection made in relation to other sites that were considered in Munloch.
2. The Council responded on 13 January 2014, explaining why it had concluded it did not hold any of the information requested.
3. On 29 January 2014, Mr Bruce wrote to the Council requesting a review of its decision. He could not understand why no information was provided to him.
4. The Council notified Mr Bruce of the outcome of its review on 18 February 2014, upholding its original decision and citing section 17 of FOISA for all parts of the request.

5. On 29 April 2014, Mr Bruce wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Bruce made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 30 May 2014, the investigating officer contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain the searches it undertook to determine that it held no relevant information.
8. The Council responded with full submissions.

Commissioner's analysis and findings

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

Section 17 (Notice that information is not held)

10. The information to be provided in response to a request under section 1(1) of FOISA is that held by the Scottish public authority at the time it receives the request (section 1(4)), subject to qualifications which are not relevant in this case. Where the authority receives a request for information 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.
11. The Council could not confirm how long a bus stop had been at that location, or how long a shelter had been associated with it. The present shelter was understood to have been in place for approximately eight years. There was no relevant policy at the time. The Local Government (Omnibus Shelters and Barriers) (Scotland) Act 1958 governed the situation, but it did not understand that any consultation would have been required in the circumstances.
12. The Council described the searches which it had undertaken, including the resources searched. The predecessor of the Transport Officer who carried out the searches was also consulted in connection with the request, the Council explained.
13. The Council also explained, with reference to its records management policies, that any relevant information it held should have been destroyed in accordance with the applicable retention schedules. Although Committee minutes would be retained, the Council confirmed that a decision of this kind would not be recorded there.

14. The Commissioner has considered the submissions received from both parties carefully. She notes that Mr Bruce is firm in his belief that there would have been relevant consultation and that records of the decision to place the shelter (and its execution) should still be held. In reaching her conclusions, however, she must confine herself to her remit under the legislation she enforces. In considering a Scottish public authority's handling of a request for information, her concern is with what information the authority actually held when the request was received, not with what it should have held or how long it ought to retain information it once held.
15. The Commissioner acknowledges Mr Bruce's expectation that the Council should have created (and still retained) relevant records. The Council has given several reasons why it did not, and has explained the searches and other enquiries carried out to establish this. The Commissioner notes the passage of time and the impact of the relevant retention schedules.
16. Having considered all relevant submissions, the Commissioner is satisfied that the Council took proportionate and otherwise adequate steps to determine what information, if any, it held. In all the circumstances, she accepts the Council's conclusion that it did not hold the requested information.

Decision

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

Appeal

Should either Mr Bruce or Highland 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
24 July 2014

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

...

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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