

Decision Notice 172/2019

Contractual changes under Worksmart Policy

Applicant: The Applicant

Public authority: Aberdeenshire Council

Case Ref: 201901313



Scottish Information
Commissioner

Summary

The Council was asked for information relating to the number of requests for contract changes under the Worksmart process.

The Council responded, providing information that it believed fell within the scope of the request. The Applicant was dissatisfied as he believed the information he had been given by the Council was incorrect and other information was held.

The Commissioner investigated and found that the Council had complied with FOISA in responding to the request. The Council interpreted the request reasonably and took adequate, proportionate steps to establish what information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) (General entitlement)

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. Aberdeenshire Council's (the Council's) Worksmart Policy gives employees the ability to review where they work and when they work to meet both the demands of the job and an employee's lifestyle.
2. On 11 June 2019, the Applicant made a request for information to the Council. The information requested was:
In the last 12 months, or the nearest period for which there is data (of at least 12 months) could you please advise on the following:
 - (a) *How many requests for contractual changes under your Worksmart process have been made?*
 - (b) *How many of these requests were approved?*
 - (c) *How many of these requests resulted in a contract change being applied?*
 - (d) *How many requests were not approved?*
 - (e) *How many of the not approved requests went to appeal?*
 - (f) *How many of these appeals were upheld and how many were not?*
 - (g) *How many of the appeals not upheld went to tribunal?*
 - (h) *How many of the requests for each of the above questions related to switching to a home working profile?*
3. The Council responded on 8 July 2019 and provided answers to all the questions. For question (a), the Council gave a number and explained the kinds of contract requests included in its response. In response to question (g), the Council explained that it did not hold this information. For question (c), the Council said that all of those approved and accepted resulted in a contract change.

4. On 9 July 2019, the Applicant wrote to the Council, requesting a review of its decision on the basis that the information provided to him was not complete. The Applicant explained that he had applied to change his working pattern to compressed hours under the Worksmart process and that change was not made via a contractual change. He believed that fact contradicted the Council's response to him, which had been that all Worksmart applications for the period had resulted in a contract change.
5. The Council notified the Applicant of the outcome of its review on 1 August 2019. It upheld its original decision, without modification. The Council stated that the Applicant's request had been answered, and that the assertion on which the Applicant's request for review was based (the Applicant's own change to his working practices) did not feature in his original request.
6. On 5 August 2019, the Applicant wrote to the Commissioner. He 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 because he did not believe it correctly answered his request.

Investigation

7. 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.
8. On 5 September 2019, the Council was notified in writing that the Applicant 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. The Council was invited to comment on this application and to answer specific questions. These related to the Council's interpretation of the request and the information held by the Council.
10. The Council submitted that it had correctly responded to the Applicant's request and had provided all of the information falling within the scope of the request.
11. The Applicant provided submissions to the Commissioner with his application.

Commissioner's analysis and findings

12. 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.

Section 1(1) - General entitlement

13. 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. These qualifications are not relevant in this case.
14. The question for the Commissioner is whether the Council complied with section 1(1) of FOISA in responding to the Applicant's request.

15. The Applicant believed he had not been provided with all the information covered by his request. He said that all applications for a change to working patterns made under the Worksmart policy should result in a change to the employee's contract. His own application (to the Council) for a change to his working pattern to compressed hours had not resulted in a change. On that basis, he believed that the information supplied by the Council was incomplete or incorrect (i.e. for question (c) of the request, the Council had stated that all Worksmart applications for the period had resulted in a contract change). The Applicant also highlighted that the Council's website showed changes to working patterns under Worksmart would need a contract change.
16. The Council submitted that it had provided all the information it held in response to the Applicant's request. The Council explained why it disagreed with the Applicant's position. The Council explained that its employee contracts state the number of hours per week staff are contracted to work, but not the actual days they will work. In the Council's view, if there is no change to this number of hours, for example, by working compressed hours, no new contract needs to be issued. This is the way all applications for changes to working patterns are treated, it explained. Only those Worksmart applications that needed a change to an employee's contract would fall within the scope of the Applicant's request and this was why his own Worksmart application, involving compressed hours, was not included in its response.
17. The Commissioner appreciates that the interpretation of this request is where the Applicant and the Council differ in view. This difference in view has resulted in the Applicant's belief that the Council's response was incorrect in terms of FOISA.
18. The Commissioner's remit extends only to deciding whether the Council complied with Part 1 of FOISA in responding to the Applicant's request. The Commissioner cannot decide on the Council's employment practices and whether it is following the relevant law and its own policies correctly. The Commissioner has looked at the Council's interpretation of the request and he cannot say that this interpretation was unreasonable in the circumstances. The Council interpreted the request in accordance with its understanding of its Worksmart requirements. To require otherwise would be to expect a public authority to approach a request on the basis of an interpretation of law or practice (unrelated to FOISA) that it did not subscribe to, and the Commissioner would not regard that as within his remit.
19. It follows from this that the Commissioner accepts that the Council has complied with Part 1 of FOISA in interpreting the request.
20. 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. He will also consider, where appropriate, any reason offered by the public authority to explain why the information (or more information) is not held.
21. Having considered all relevant submissions and the terms of the Applicant's request, the Commissioner is satisfied that the Council interpreted the Applicant's request reasonably and took adequate, proportionate steps to establish what information it held in this case. In this instance, there is only one source of the information and the Council appears to have taken reasonable steps in the circumstances to extract it. In this regard, it has complied with section 1(1) of FOISA. In any event, the real issue appears to be one of interpretation.
22. Given the explanations provided, the Commissioner is satisfied that the Council correctly responded to the Applicant's request. Consequently, in respect of the parts of the application

under investigation, the Commissioner is satisfied that the Council responded to the request in accordance with Part 1 of FOISA.

Decision

The Commissioner finds that Aberdeenshire 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

29 November 2019

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.

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