

Decision Notice



Decision 198/2012 Mr Hugh Hickman and Scottish Borders Council

Financing of Council services

Reference No: 201201013

Decision Date: 30 November 2012

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Rosemary Agnew

Scottish Information Commissioner

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Summary

Mr Hickman asked Scottish Borders Council (the Council) for information relating to the financing of Council services. The Council disclosed some information and advised that it did not hold the remainder.

The Commissioner found that the Council had partially failed to comply with Part 1 of FOISA by failing to notify Mr Hickman that it did not hold information relating to one request, and by initially failing to identify and provide information covered by another request. The Commissioner was satisfied that all relevant information had been identified and disclosed during the investigation, and did not require the Council to take further action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 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 11 March 2012, Mr Hickman asked the Council for the following:
 - a) “Information to prove that paying more Council tax is in accordance with you[r] commitment and that of a core policy of the Scottish government.”
 - b) “A risk analysis defining the areas in provision of services which in accordance with your statement fall short of quality services. My rough calculation would seem to suggest we are talking about £30million a very significant issue.”
 - c) “Salary / wages as to the differential between high paid staff and the people delivering the service. A variance analysis with other Councils to position the [Scottish Borders Council] benchmark would be helpful in understanding this issue.”
 - d) “A[n] understanding of the policy to increase salaries of your department while agreeing restraint on hard working council employees at the coal face in areas such as social services



needs definition. M[y] comments on having the greatest percentage of elderly people I think that applies to the UK would seem to be relevant.”

- e) “Redundancy we need to understand the sums paid to employees outside of [their] statutory entitlement and further understand if that decision and the rational[e] for that decision was democratically agreed by Councillors.”
2. The Council responded on 13 April 2012. It provided an answer or information in response to requests (a), (d) and (e) and advised, in line with section 17(1) of FOISA, that it did not hold information with respect to requests (b) and (c).
3. On 15 April 2012, Mr Hickman asked the Council to review its decision. Mr Hickman provided additional explanation as to the information he sought in relation to each request and what kinds of information he expected the Council to hold.
4. The Council notified Mr Hickman of the outcome of its review on 11 May 2012. It provided additional answers and information with respect to each request.
5. On 19 May 2012, Mr Hickman 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 Hickman had made a request for information to a Scottish public authority and had 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. The investigating officer contacted the Council on 18 June 2012, 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. The Council was asked to consider the way in which the Commissioner had interpreted Mr Hickman’s requests, and was provided with examples of the types of information that might fall within the scope of each request. It was asked to advise whether it held such information.
8. The Council provided additional explanation and/or information about the way it had responded to each part of Mr Hickman’s request. The investigating officer provided Mr Hickman with a summary of the findings of the investigation, and explained the extent to which his complaints fell within the Commissioner’s remit. After further discussion, Mr Hickman agreed that the Council had provided all the information falling within scope of requests (d) and (e), and indicated that he no longer required a decision from the Commissioner in relation to these requests.



9. The investigating officer entered into dialogue with the Council about requests (a), (b) and (c), and asked for more information to explain and support its view that it did not hold any further information covered by these requests. The Council provided additional explanation and information, which was passed on to Mr Hickman. However, Mr Hickman thought it possible that the Council would hold more information, and required the Commissioner to reach a decision on whether the Council had complied with Part 1 of FOISA in dealing with his requests.
10. The relevant submissions received from both the Council and Mr Hickman will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered the submissions made to her by both Mr Hickman and the Council and is satisfied that no matter of relevance has been overlooked.

Scope of investigation

12. The Commissioner is aware that Mr Hickman has been in correspondence with the Council for some time on a variety of matters including the Council's finances. Mr Hickman's initial requests did not seek specific information; instead, he was seeking information which would show that the Council had carried out a certain action or had the legal right to conduct such an action. His requests for review expanded upon his initial requests and commented in further detail about his concerns over the Council's actions. This dialogue has continued throughout the current investigation, resulting in Mr Hickman raising issues and concerns of a different nature or subject than those raised in his initial requests. Some do not fall within the Commissioner's remit, such as the accuracy of the information held by the Council, or the legality of its actions.
13. The focus of the Commissioner's investigation and decision must be whether or not the Council complied with the requirements of Part 1 of FOISA in responding to the requests for recorded information which Mr Hickman made on 11 March 2012. The Commissioner cannot consider the Council's response to other questions raised by Mr Hickman in his correspondence with the Council.
14. FOISA does not prescribe what information should be held in recorded form by a Scottish public authority, and the access rights provided by FOISA apply only to information which it actually holds. The Commissioner will therefore examine whether the Council has identified and provided all information which it held and which fell within the scope of Mr Hickman's requests, as required by section 1(1) of FOISA, which states that a person who requests information from an authority which holds it is entitled to be given it by the authority.



15. Mr Hickman's requests have been considered carefully by the Commissioner to determine what information he was seeking. As it is not always apparent to a requester what information is held by a public authority, the Commissioner has considered it reasonable to interpret Mr Hickman's requests broadly (as described below), and has investigated the matter on this basis.
16. Mr Hickman has been made aware of the way in which the Commissioner has interpreted his requests, and that the Commissioner's decision will be based on this interpretation.

Request (a) – legal right to remove the discount for paying council tax annually

17. The Council withdrew the option to pay council tax in one lump sum and receive a discount for doing so. As individuals previously taking up this option had paid via a direct debit mandate, Mr Hickman considered that the Council should have provided prior notification of this change (as it was a change to the direct debit mandate) and the removal of the discount. More importantly, Mr Hickman wanted to know the authority by which the Council was entitled to make this change and remove the opportunity to claim the discount.
18. In its initial response, the Council provided Mr Hickman with a link to the Concordat¹ between the Scottish Government and local government in which it was agreed to "freeze council tax rates in each local authority at 2007-08 levels". The Council considered that it had complied with this agreement and had not changed the council tax rates; however, it had chosen to change its collection and recovery policy, which it had discretion to do. In its review response, the Council provided Mr Hickman with a link to a webpage² in which the policy change on council tax collection and recovery was approved by the Council's Executive on 16 February 2010.
19. In its first submission to the Commissioner, the Council explained that it had not increased council tax since 2007 and provided both Mr Hickman and the Commissioner with copies of a Council Tax Freeze Minute (9 February 2012) and a Council Tax Freeze Report, which documented that there had been no increase in council tax, but there had been a change made to the way council tax can be paid.
20. The Council commented that Mr Hickman believed that there had been an increase in council tax because the amount of revenue collected has increased, but stated that this was due to an increase in the number of properties in the Council area, not an increase in council tax rates. The Council stated that, as there has been no increase in council tax, it held no information covered by request (a).

¹ <http://scotland.gov.uk/Publications/2007/11/13092240/concordat>

² <http://councilpapers.scotborders.gov.uk/submissiondocuments.asp?submissionid=12902>



21. The Council was also asked to provide details of the searches it had conducted for information covered by request (a), but it advised that, as there had been no increase in council tax, there was no need to carry out such searches. The fact that the council tax had not been increased had been confirmed by employees in the Finance Department and was verified by the council tax freeze minute and report of 16 February 2010. The Council was satisfied that it had provided all relevant information when responding to the request.
22. As noted previously, the only matter for the Commissioner to consider in this decision is whether the Council complied with FOISA in responding to Mr Hickman's requests of 11 March 2012. In this instance, the Council provided background information to support its comment that it had not increased council tax. Mr Hickman disputed the Council's response, and during the investigation, provided a broader interpretation of his request. To help Mr Hickman understand that the council tax had not been increased, the Council provided additional explanatory information to him.
23. Having considered the way in which Mr Hickman's request was phrased, the Commissioner cannot accept that it was capable of being interpreted in the way suggested by Mr Hickman. Nonetheless, the Commissioner is pleased to note that the Council provided help and assistance in the form of information not covered by Mr Hickman's request, but which was intended to help him understand the context in which the Council had taken certain decisions.
24. After a full investigation of Mr Hickman's application, the Commissioner is satisfied that the Council does not hold the information sought by Mr Hickman as it has not increased council tax. It may be that the Council intended Mr Hickman to infer, from the terms of its response to request (a), that the Council did not hold information about any increase in council tax because there had been no such increase; however, section 17(1) of FOISA requires the Council to provide written notice where information is requested but not held, and the Council should have formally advised Mr Hickman of this fact. Therefore, the Commissioner has concluded that Council failed to comply with section 17(1) of FOISA.

Request (b) - Provision of quality services

25. In this request, Mr Hickman sought any risk analysis which would confirm that quality services would not be affected as a result of the reduction in council tax payments due to the freezing of council tax. In its council tax leaflet for 2012/13³, the Council noted that it required more monies than the income from an average Band D dwelling in order to continue to provide quality services.

³ Page 10 of:

http://www.scotborders.gov.uk/downloads/file/1832/guide_to_council_tax_and_non_domestic_rates_201213



26. In its initial response, the Council advised that there was no risk analysis of this type to provide, and gave notice that it did not hold the requested information, as required by section 17 of FOISA. In its review response, it explained that risk identification and mitigation actions are an integral part of the Council's business and financial planning and review cycle. As part of the planning cycle, the priorities are linked to available resources, and are reflected in service business plans and financial plans approved by elected members, which in turn are reflected in individual's personal development plans.
27. The Council advised the Commissioner that a general statement on its business and financial planning processes and associated risk management had been provided to Mr Hickman in its review response.
28. The above explanation was provided to Mr Hickman, but was not entirely acceptable to him: he considered that the Council had not responded to his request, as he specifically sought information which considered the effect of the Council receiving less monies but still providing quality services, and how such services would be reduced.
29. The Council responded by advising that the effects of the council tax freeze have been mitigated since 2007/08 by additional financial support provided by the Scottish Government and by delivering the vast majority of savings required to balance service costs to available resources either through efficiencies, which by definition will not impact upon service quality, or through additional income. It went on to explain that the level of efficiencies generated are published annually through the Council's financial plans and budget proposals are reviewed using a documented Equalities Impact Assessment (EIA) process to ensure any adverse impact on equalities groups or individuals with specific requirements are minimised.
30. The investigating officer noted that, within the Council's meeting minute of 9 February 2012 (point 4), reference was made EIAs and the identification of risks. The Council was asked to provide this information to the investigating officer.
31. The Council provided links to the published financial strategy on its website⁴⁵ which included a list of risks that had been considered. Following further discussion, the Council provided copies of the twenty-five EIAs that had been conducted into the reduction of costs in various services. All this information was disclosed to Mr Hickman.
32. Mr Hickman did not accept that this was the information he sought, and considered that the Council should hold a definitive risk assessment supporting the Council's statement that quality services would be provided with the income received from the council tax.

4 http://www.scotborders.gov.uk/downloads/file/657/financial_strategy_201112_to_201314

5 http://www.scotborders.gov.uk/downloads/file/3301/financial_plans_201213_to_201415



33. Having examined Mr Hickman's request in detail and having considered the information disclosed and the submissions from both parties, the Commissioner is satisfied that, even applying a broad interpretation to request (b), the Council has now disclosed all the relevant information it holds. The Commissioner is satisfied that the Council did not conduct a risk analysis which specifically examined the issue of continuing to provide quality services with the current council tax income, but had conducted impact assessments on the effect on services as it looked at ways of cutting costs; this information has been disclosed to Mr Hickman. The Council had also prepared a financial risk assessment which documented the potential monetary impact of certain events occurring. The Commissioner considers that if a very wide interpretation of request (b) is accepted, the information in this financial risk assessment falls within its scope. (This information has also been provided to Mr Hickman.)
34. The Commissioner has concluded that the Council was incorrect to advise Mr Hickman that it did not hold any information in relation to request (b), as the information described in the previous paragraph would fall within the scope of request (b), given a reasonably broad interpretation. The Council worked positively with the investigating officer and disclosed all the information it held that could possibly fall within scope of the request during the investigation. However, the Commissioner must find that the Council failed to comply with section 1(1) of FOISA, in not providing this information at the time of Mr Hickman's request for review. As all the information has now been disclosed, the Commissioner does not require the Council to take any action with respect to this failure.

Request (c) - Benchmarking

35. Mr Hickman asked for information about "salary / wages as to the differential between high paid staff and the people delivering the service. A variance analysis with other Councils to position the [Scottish Borders Council] benchmark would be helpful in understanding this issue". In his request for review Mr Hickman referred solely to "benchmarking or competitive comparison" which he saw as an essential element in the compliance with the Local Government (Scotland) Act 2003.
36. During the investigation, it was established that Mr Hickman was seeking information on the comparison or benchmarking of the Council's salaries with the salaries of other councils' employees.
37. In its initial response, the Council advised (in line with section 17(1) of FOISA) that it does not undertake salary / wage benchmarking with other councils, so was unable to provide such information, and gave notice that it did not hold the information. In its review, the Council upheld its original response, but considered that it held some information on salaries which could be disclosed. The Council provided Mr Hickman with a table produced by the Scottish Government which shows the salaries of Chief Executives in every local authority in Scotland.
38. After investigating Mr Hickman's application, the Commissioner is satisfied that the Council does not hold any information on the benchmarking or comparison of Council employee salaries with those of other councils. Therefore, the Commissioner is satisfied that Council correctly advised Mr Hickman that it held no information covered by request (c), in line with section 17(1) of FOISA.



DECISION

The Commissioner finds that Scottish Borders Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hugh Hickman.

The Commissioner finds that by advising Mr Hickman that it did not hold information with respect to request (c) in line with section 17(1) of FOISA, the Council complied with Part 1 of FOISA.

However, the Council did not provide written notice that it did not hold any information covered by request (a), and in this respect failed comply with section 17(1). In relation to request (b), the Council incorrectly advised Mr Hickman that that it did not hold any relevant information, and so failed to comply with section 1(1) of FOISA.

As the Council disclosed information during the investigation, the Commissioner does not require it to take any action with respect to these breaches.

Appeal

Should either Mr Hickman or Scottish Borders Council wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Information
30 November 2012



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.

...

- (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.

...