

Decision Notice

Decision 238/2016: Mr Ralph Holland and North Ayrshire Council

List of approved contractors

Reference No: 201601672

Decision Date: 8 November 2016



Scottish Information
Commissioner

Summary

North Ayrshire Council was asked for a list of approved contractors who perform standard width vehicle access crossings.

The Council disclosed a list of six contractors. The applicant thought more information should have been provided.

The Commissioner accepted that the Council had disclosed all of the relevant recorded information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (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. On 6 July 2016, Mr Holland made a request for information to North Ayrshire Council (the Council). The information requested was as follows:
“Please provide me with a list of approved contractors who perform standard width vehicle access crossings, and/or name and contact details of contractors that have submitted successful applications to perform standard width vehicle access crossings.”
2. The Council did not respond to Mr Holland’s request. On 9 August 2016, Mr Holland wrote to the Council, requesting a review in respect of its failure to respond.
3. The Council notified Mr Holland of the outcome of its review on 2 September 2016. The Council acknowledged that it had failed to respond to Mr Holland’s request. It stated that it held the information requested and would forward the information to him.
4. The Council subsequently provided Mr Holland with a list of six contractors, informing him that the list was only an example of some local contractors that the Council employed through its existing tender processes.
5. On 12 September 2016, Mr Holland wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Holland stated he was dissatisfied with the outcome of the Council’s review because he did not consider it gave him an adequate list of contractors who had carried out approved work of this nature.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Holland 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.

7. On 19 September 2016, the Council was notified in writing that Mr Holland had made a valid application. 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, focusing on what specific information the Council held and its reasons for responding to Mr Holland as it had.
9. The investigating officer also contacted Mr Holland, asking him to clarify why he considered the list provided to him by the Council was inadequate.
10. In response, Mr Holland explained that the object of his request had been to assist him with locating an approved contractor based relatively locally to him. Mr Holland believed the Council should have provided him with a comprehensive list, suggesting that the six whose details had been provided could not be all the relevant approved contractors. He also stated that had he been provided with a comprehensive list, he could have filtered out those he did not consider suitable.
11. The investigating officer subsequently contacted the Council asking if it was possible for a more comprehensive list to be sent to Mr Holland. The Council explained that it did not hold any other recorded information on contractors deemed capable of carrying out this type of work. However, the Council agreed to send Mr Holland a list of all contractors included on its framework contract for road works.
12. The investigating officer subsequently contacted Mr Holland asking if, in light of the information the Council intended supplying, he was prepared to withdraw his application without the need for a decision by the Commissioner. Mr Holland declined to do so.
13. On 11 October 2016, the Council provided Mr Holland with a list of all contractors on its framework contract.

Commissioner's analysis and findings

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

Has all relevant information been disclosed to Mr Holland

15. In its submissions to the Commissioner, the Council explained that it operated a framework contract which contained the names of contractors procured to carry out many different types of road works, including specialist activities such as road markings and street lighting. The Council did not consider it was appropriate to send this full list to Mr Holland. The Council explained that the list which was sent to him (in response to his requirement for review) was the list which it sent to anyone applying for permission to construct a new vehicle access crossing. Although there might be other contractors who would carry out such work, the Council submitted that the six names provided to Mr Holland were those contractors the Council knew would do such work satisfactorily.
16. The Council stated that the information given to Mr Holland originally was provided in the belief that it was being helpful: the list of contractors was consistent with information provided to anyone seeking permission to construct a new vehicle access crossing. The Council

confirmed (with evidence) that it had sent a list of all contractors (47 in total) to Mr Holland on 11 October 2016.

17. The Council noted that, when clarifying the reason for his request (in correspondence with the investigating officer), Mr Holland stated that he was trying to obtain information to assist him with locating an approved contractor. In the Council's view, it had complied with this objective by providing the list of six contractors.
18. The Council pointed out that Mr Holland's request did not make it clear how many contractors he wanted to be able to choose from, nor did he specify that he wanted only those based locally to his home.
19. The Council confirmed that it did not hold any other recorded information on contractors deemed to be capable of carrying out this kind of work: the six contractors on the original list were the only ones it was satisfied were capable of doing so. The Council reiterated that it was unaware if any of the other contractors on the full list provided to Mr Holland on 11 October 2016 would be prepared to carry out this kind of work. The Council acknowledged that the use of the word "example" in its review outcome (when providing the list of six names) might have been misleading, but there was no intention on the Council's part to mislead him.
20. The Commissioner notes that Mr Holland's request for information did not specify any geographical locus. It was only when the investigating officer asked him to clarify why he considered the information provided by the Council to be inadequate that this emerged.
21. The Commissioner has considered the Council's explanation of why it considered the information disclosed to Mr Holland (in response to his requirement for review) fulfilled the terms of his request. Notwithstanding Mr Holland's belief that this list was inadequate, the Commissioner is satisfied that this was the information held by the Council which met the terms of his request. Therefore, she is satisfied that the Council disclosed all of the information it held and which fell within the scope of the request. By doing so, the Council complied with section 1(1) of FOISA.

Decision

The Commissioner finds that, in respect of the matters specified in the application, North Ayrshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Holland.

Appeal

Should either Mr Holland or North Ayrshire 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

8 November 2016

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.

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