



Decision Notice 007/2024

Records relating to a café

Authority: Glasgow City Council
Case Ref: 202200100

Summary

The Applicant asked the Authority for information relating to a specific café. The Authority considered the first part of the request to be a repeated request. For the second part of the request, it informed the Applicant that it did not hold the information requested.

Following an investigation, the Commissioner found that, for the first part of the request, the Authority was entitled to refuse to comply on the basis that it was a repeated request. For the second part of the request, he found that the Authority had breached FOISA by informing the Applicant that it did not hold any relevant information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 14(2) (Vexatious or repeated requests); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

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 20 April 2021, the Applicant made the following two-part request for information to the Authority, relating to a named café:
 - (i) *On 24 March 2015 [the café] was visited by a DRS [Development and Regeneration Services] Enforcement Officer. Please send me the full records and report of this visit and the subsequent internal [Authority] correspondence with regard to this visit.*

- (ii) *In January/February 2007, an Environmental Health Officer visited my residence to investigate my complaints of cooking odours from [the café]. Please send me the full records of this investigation including the report produced by the actual Environmental Officer who visited me in 2007 and the records of the subsequent correspondence and visits to the cafe in 2007 by Environmental Health in relation to my complaint of cooking odours.*

2. The Authority responded on 18 May 2021.

- (i) For part (i) of the request, the Authority referred to correspondence it had disclosed to the Applicant on 30 September 2016 in response to a previous request he had made on 4 August 2016 seeking “*all [Authority] records since January 2015 related to the café...*”. The Authority noted that, in that response (of 30 September 2016), it had informed the Applicant that, since he had already been provided with all information held prior to 24 November 2015 as part of a previous request, section 25(1) of FOISA applied to that information. On that basis, the Authority considered the information now requested was covered by the exemption in section 25(1) of FOISA and refused this part of the request since the information had already been provided to, and was otherwise available to, the Applicant.
- (ii) For part (ii) of the request, the Authority informed the Applicant, in terms of section 17(1) of FOISA, that it did not hold the information requested. It explained that a search of Environmental Health records identified no information falling within scope.

3. On 27 June 2021, the Applicant wrote to the Authority requesting a review of its decision: The Applicant stated that he was dissatisfied with the decision because:

- (i) For part (i) of the request, he believed that the Authority held further information relating to the visit to the café which had not previously been disclosed to him in response to his information request of 4 August 2016 or to any other request. He provided explanation in support of his position and argued that that such information (which, he believed, comprised reports and internal paperwork, documents and correspondence) would not be covered by section 25(1) of FOISA.
- (ii) For part (ii) of the request, he believed the Authority held information falling within the scope of this part of his request, again providing explanation and evidence in support of his position.

4. The Authority notified the Applicant of the outcome of its review on 26 July 2021:

- (i) For part (i) of the request, the Authority modified its decision. The Authority informed the Applicant that, as this part of his request was substantially similar to his previous information requests, it was unable to comply in terms of section 14(2) of FOISA. It noted that the Applicant had made a number of requests for information relating to the café, in particular repeated requests for all Authority records, each time covering different time frames from January 2015 onwards. In response to the Applicant’s claim that he had not received copies of reports by officers following visits to the café, the Authority explained, under the duty to provide advice and assistance, why such information did not exist. For completeness, the Authority provided a summary of inspections and actions relating to the inspection in March 2015, with some personal data redacted under section 38(1)(b) of FOISA, disclosure of which, the Authority stated, would breach data protection principles.

- (ii) For part (ii) of the request, the Authority fully upheld its original decision to rely on section 17(1) of FOISA. It explained that, due to the failure of an air conditioning unit in December 2015, its IT systems were significantly disrupted, resulting in the loss of data on its server, including archived emails. In addition, several members of staff within its Environmental Health and Planning departments, who may have been involved with the Applicant's complaints, had left the Authority's employment and their email accounts had been closed. This, the Authority stated, might explain why it no longer held the information requested from 2007.
- 5. In its review outcome, the Authority also noted that the Applicant had made numerous requests for information relating to the café, in response to which it had provided substantial information. It explained that requests of this nature involved substantial effort to trace information falling within scope, involving many officers across different service areas and resulting in significant costs and staff time. For any future requests the Applicant might wish to submit on this subject, the Authority suggested exploring with him ways in which it could provide the information requested, without impacting significantly on its resources, for example through meeting with Authority staff.
- 6. On 22 January 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA as he was dissatisfied with the outcome of the Authority's review:
 - (i) For part (i) of the request, he believed that the Authority had wrongly applied section 14(2) of FOISA. He argued that a reasonable interval had elapsed since his requests of 2015 and, during that time, further records would have been created. As such, he believed the in-scope information for this request would differ significantly from that provided by the Authority in response to his previous requests, given the issue of odours and planning regarding the café was still ongoing.
 - (ii) For part (ii) of the request, he believed the Authority held information falling within the scope of his request. He argued that the information provided with the Authority's review response showed that, in July 2018, it held records of the visit in 2007 by the Environmental Health Officer to his home. He believed the Environmental Health Officer would have filed reports of the visit to his home and to the café.

Investigation

- 7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
- 8. On 23 March 2022 the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently 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 Authority was invited to comment on this application and to answer specific questions. These focused on the Authority's justification for relying on sections 14(2) and 17(1) of FOISA for the respective parts of the request, and the searches carried out to identify whether any relevant information was held. The Authority was also asked to explain why, at the same time as refusing part (i) of the request in terms of section 14(2) of FOISA, it had provided the Applicant with (or withheld under an exemption in FOISA) information in response to that part of his request.

10. The Applicant has raised no dissatisfaction with the Authority's decision to withhold some personal data under section 38(1)(b) of FOISA. Consequently, this matter does not fall within the scope of the Commissioner's investigation.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Background information provided by the Authority

12. In its submissions to the Commissioner, the Authority explained that the Applicant had made a number of requests for information since 2015, all of which were very similar, in that they related to his complaints about cooking odours and ventilation at the café. In addition, he had made subsequent applications to the Scottish Public Services Ombudsman (SPSO) about the Authority's handling of his complaints, and also applications for decisions by the Commissioner in relation to his information requests.
13. The Authority submitted that, as a result of this, a number of staff were familiar with the case and had been gathering information over a period of time in order to respond to the Applicant's requests. This involved a significant amount of resources and, over the years, the Authority had provided the Applicant with a significant amount of information in response to his requests. In addition, the Authority stated that it had repeatedly offered to meet with the Applicant to better understand his concerns and to explain what information it did (or did not) hold; however, the Applicant had failed to engage in this regard.

Section 14(2) – Repeated requests (part (i) of request)

14. Section 14(2) of FOISA provides that, where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar, unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
15. For section 14(2) to apply therefore, the following need to be considered:
 - (i) whether the Applicant's previous request was identical or substantially similar to the request under consideration here;
 - (ii) whether the Authority complied with the previous request and, if so
 - (iii) whether there was a reasonable period of time between the submission of the previous request and the submission of the subsequent request.

The Authority's position

16. In its submissions to the Commissioner, the Authority explained that this request followed a number of substantially similar requests from the Applicant. It provided the Commissioner with a list of those requests, including those which related to part (i) of the request under consideration here. As such, the Authority took the view that this part of the request was a repeated request in terms of section 14(2) of FOISA, as the information now requested was covered by the scope of those previous requests.

17. The Authority explained that, by way of its duty under section 15(1) (Duty to provide advice and assistance) of FOISA it had, with its review outcome, provided the Applicant with an “Inspections and Actions” log of the visit on 24 March 2015 (with some personal data redacted). This showed that the information in that document had previously been provided to the Applicant (in a letter dated 30 March 2015) and that the case had been closed. The Authority explained that this was provided, at review stage, to support its explanation that no formal Planning Impact Report was held in relation to that visit, as that process had not been implemented until 2018.

The Applicant’s position

18. In his application to the Commissioner, the Applicant disagreed that this part of his request was a repeated request, believing that the Authority had wrongly applied section 14(2) of FOISA.

Was the request identical or substantially similar to the previous request?

19. The Authority submitted that it had received numerous requests for information from the Applicant, all in substantially similar terms, and seeking records relating to the café. It provided the Commissioner with the content of two previous requests made by the Applicant on 4 August 2016 and on 12 October 2016, to support its position that the information falling within the scope of part (i) of the request under consideration here also fell within the scope of these requests in particular, and therefore part (i) was a repeated request.
20. The Authority considered that part (i) of the request was caught within the scope of the requests for “all [Authority] records” relating to the café, and for “records and information that were sent by [a named] Enforcement Officer at DRS to Environmental Health in April 2015 regarding the café”. Therefore, the Authority was of the view that part (i) of the request was substantially similar to those previous requests.
21. The Commissioner has considered the content and context of the previous requests. He notes that these capture a wider scope of information, and cover different timeframes, than in part (i) of the request under consideration here:
- The request of 4 August 2016 covers all Authority records and correspondence relating to the café from 1 January 2015; information regarding a visit to the café in February 2015; communications regarding the café between Planning and Environmental Health since 2010; information on contact between Environmental Health and the café since 2010, and information on contact between a named Enforcement Officer and the café since 2010.
 - The request of 12 October 2016 covers all Authority correspondence and telephone calls relating to ventilation and extraction at the café; any application by the café to install ventilation and extraction (and any Authority records relating to this); records held by DRS and Environmental Health (including any consultation between these two departments) regarding ventilation and extraction at the café, and information sent by a named Enforcement Officer to Environmental Health in April 2015 regarding the café.
22. Having considered the information captured by the current request, covering the visit by Environmental Health on 24 March 2015, in the Commissioner’s view, it would appear reasonable to accept that the specific information now requested would have been caught by these previous requests, particularly (as submitted by the Authority and evidenced in the

“Inspections and Actions” log) as the Environmental Health investigation had been closed down shortly thereafter.

23. In light of the above, the Commissioner is satisfied that part (i) of the request under consideration here is essentially seeking information concerning the café that would have been captured by the scope of the previous requests referred to above.
24. The Commissioner is therefore satisfied that part (i) of the request of 20 April 2021 (to the extent that it is covered by the scope of the previous requests) is substantially similar to the previous requests made by the Applicant.

Was the previous request complied with?

25. The Authority submitted that it had complied with the previous requests and provided the Commissioner with copies of its responses in support of this:
 - For the request dated 4 August 2016, the Authority issued its review outcome (in response to the Applicant’s request for review, given its failure to respond to the initial request) on 30 September 2016.
 - For the request dated 12 October 2016, the Authority issued its initial response on 20 October 2016, and subsequently its review outcome (in response to the Applicant’s request for review) on 5 December 2016.
26. Having considered the copies of the review outcomes provided to him, the Commissioner notes that both of these included information on the right to make an application to him if dissatisfied with the Authority’s decision. However, the Commissioner has no record of the Applicant having challenged either of the Authority’s decisions in its responses of 30 September 2016 and 5 December 2016 respectively.
27. In the absence of any applications having been made to him at the material times for these two previous requests, the Commissioner is unable to conclude, in terms of section 14(2) of FOISA, that the Authority’s review outcomes of 30 September 2016 and 5 December 2016 failed to comply with the corresponding information requests made by the Applicant. The Commissioner has no option other than to accept that the Authority complied with the Applicant’s previous requests for information at the relevant times.

Has a reasonable period of time passed?

28. In his application to the Commissioner, the Applicant believed that the Authority held internal correspondence which had not been provided to him (regarding the Planning Enforcement Officer’s visit to the café in 2015) in response to any of his previous information requests, regarding what he described as anomalies in a letter to him dated 30 March 2015. He believed his complaints to the Authority that he had been lied to, would have generated internal Authority correspondence.
29. The Applicant also submitted that the scope covered by part (i) of his request included the period since his previous requests. Since then, he argued, there had been an SPSO investigation which covered his complaints about the visit to the café on 24 March 2015. He believed that, for the Authority to have been able to answer the SPSO’s questions on this matter, internal Authority records would have been generated.
30. The Applicant argued that he had not been provided with any internal communications generated by his complaints or the SPSO’s investigation in 2016.

31. Furthermore, as the issue of odours and planning regarding the café was still ongoing, coupled with his many complaints to the Authority since 2015 (many referring to the visit on 24 March 2015), he believed it was possible that the Authority would hold recent records regarding the visit.
32. On the basis set out above, the Applicant believed the Authority held further relevant information and that this information would differ significantly to that provided in response to his earlier requests.
33. In response, the Authority stated that the case relating to the visit on 24 March 2015 was closed shortly following inspection. The Authority submitted that it had carried out further searches to confirm whether any further information was held, in particular that which the Applicant believed it had generated, and confirmed that no such further information was held. The Authority acknowledged it had received a decision from the SPSO dated 21 December 2016 which covered a range of issues, and which made reference to the inspection on 24 March 2015. While the Authority accepted it would likely have generated additional information in connection with this, it did not believe that any of this satisfied the terms of the request as it did not constitute a record or report of the Environmental Health visit or internal correspondence and, in any event, it had previously been provided to the Applicant. The Authority further explained that the information required by the SPSO for its investigation was discussed at meetings, of which no records were held, and then provided to the SPSO as requested.
34. In its submissions to the Commissioner, the Authority argued that the passage of time was not relevant. Given that the issues reported by the Applicant had occurred some six years prior to this request and, according to its records, the case was closed shortly following the visit in question, the Authority's position was that no further information was being generated on an ongoing basis in relation to that matter.
35. In conclusion, the Authority was satisfied that it did not hold any further information, falling within the scope of part (i) of the request, that had not previously been provided to the Applicant.
36. There is no definition of a "reasonable period of time" in FOISA; what is reasonable will depend on the circumstances of the case. However, consideration can be given to questions such as:
 - (i) Has the information changed?
 - (ii) Have the circumstances changed?
37. The Commissioner notes that the period between the Authority's review responses to the previous requests, and the making of the request under consideration here, covered a period of some four and a half years.
38. The Commissioner considers that the simple passage of time between requests may eventually be sufficient to allow the conclusion that a reasonable period of time has passed between two identical or substantially similar requests, irrespective of whether there has been any other change in the circumstances surrounding the requests.
39. As rehearsed above, the Commissioner has already determined that the information captured by this part of the request would fall within the scope of the Applicant's previous requests of 4 August 2016 and 12 October 2016. Given that the Environmental Health investigation was closed down shortly after the visit of 24 March 2015, the Commissioner

considers it is reasonable to accept that neither the information, nor the circumstances, other than the passage of time, had altered in this case.

40. The Commissioner notes that the information requested by the Applicant here focuses on information relating to a specific visit on 24 March 2015, namely the records/report of the visit and subsequent internal correspondence with regard to that visit. He has taken into consideration the Applicant's arguments that this would also capture information relating to a subsequent investigation by the SPSO following a complaint he had made. The Commissioner notes that the searches carried out by the Authority for any internal correspondence on this point did not identify any such information. Having considered this matter in full, the Commissioner is of the view that this part of the request would not stretch to capture the information held by the Authority relating to the SPSO's decision. In his view, that information is outwith the scope of this part of the Applicant's request, in that it does not satisfy the terms of the request, and its existence does not change the circumstances, or the information held, about the visit at the material times.
41. Having reached this conclusion, the Commissioner accepts that the information captured by part (i) of the Applicant's request had not changed and neither had the circumstances surrounding the request.
42. In all the circumstances, therefore, the Commissioner finds that the Authority was not obliged to comply with the part (i) of Applicant's request on the grounds that section 14(2) of FOISA applied.

Whether the Authority held any relevant information (part (ii) of request)

43. 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. The qualifications contained in section 1(6) are not applicable in this case.
44. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
45. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

The Applicant's submissions

46. In his application to the Commissioner, the Applicant referred to an email chain (dated 23-26 July 2018) which the Authority had provided in August 2018 in response to a previous information request. Referring to the Authority's claim that records of the Environmental Health visit to his home in 2007 had been lost, the Applicant argued that this clearly showed that, in July 2018, the Authority held records of that visit. In his view, that information could

only have been obtained from records in the Authority's possession. He believed the Environmental Health Officer in 2007 would have filed reports of the visits to his home and to the café.

The Authority's submissions

47. In its submissions to the Commissioner, the Authority explained that this request followed a number of substantially similar requests.
48. In its review outcome, the Authority had confirmed to the Applicant that it did not hold any information going back to the period of the 2007 visit (some 14 years prior to the Applicant's request) and had explained the reasons for this. It stated that staff who had been involved with the Applicant's complaints and information requests were satisfied that he had previously received all information relating to the café, and it had advised the Applicant, in terms of section 17(1) of FOISA, that no information was held for part (ii) of his request.
49. The Authority submitted that it had lost information from its servers in December 2015 due to the failure of an air conditioning unit. In addition, a number of staff who had been involved with the Applicant's requests had since left the Authority's employment. As their email accounts were not accessible, any relevant emails could not be provided, unless existing staff had been copied in.
50. Addressing the Applicant's point about the Authority having been able to provide information to him in an email chain dated July 2018 regarding the visits in 2007, the Authority confirmed that this correspondence, which set out a "timeline" referencing the Applicant's complaints in early 2007, was prepared by the Team Leader in Environmental Health, who had since retired. The Authority explained that it had reviewed this information and searches had been carried out for records of the visits. It believed that the Team Leader may have prepared the email with information from previous written notes or personal recollection, but confirmed that no hard copy handwritten notes were held. The Authority submitted that any relevant information would have been destroyed when its IT systems were disrupted in December 2015 and, as such, it was satisfied that no information was held.
51. The Authority confirmed that it still held the email of July 2018 as it had been copied to officers who were still employed. However, it did not consider the information in the email (which set out a "timeline" of events and provided a summary in relation to the visits in early 2007) fell within the scope of the request, as it did not constitute full records of the visits and, in any event, the Applicant had already been provided with the email. In the Authority's view, the Applicant was seeking further detailed information about the visits which he believed would be set out in a report and internal correspondence, and this was clear from the wording of the request. The Authority explained it did not provide the Applicant with a further copy of the July 2018 email chain at review stage as, in its view, it was clear that this was not what he was looking for.
52. During the investigation, however, the Authority submitted that it had identified records held on its Uniform database, which were possibly captured by the scope of part (ii) of the request. This is further explained in what follows.

Searches

53. In relation to the searches undertaken to identify whether it held any relevant information, the Authority stated it was satisfied that these could be restricted to within Environmental Health, which sits within the Neighbourhoods and Regeneration Services (NRS) department. The Authority explained that the Applicant had made a number of previous complaints to

Environmental Health relating to cooking odours from the café, and these had been handled by a limited number of Authority staff within that department. In light of this, the Authority considered it appropriate to ask these officers to carry out searches for information in relation to the visit in 2007.

54. The Authority explained that the Team Leader in Environmental Health, who had been involved in dealing with the Applicant's complaints, had now retired. However, other staff, namely a Technical Officer in Environmental Health and an Assistant Manager (North), had detailed knowledge of the Applicant's complaints about the café and had previously carried out searches for information on several occasions to assist with earlier information requests from the Applicant on this matter.
55. The Authority explained that the type of information falling within this part of the request would be stored in email accounts, EDRMS (its information management system) and Uniform (the database used to concisely log inspections and actions, and record brief comments). It confirmed that records of this type were not held elsewhere.
56. In this instance, these officers carried out searches of Outlook, ERDMS and Uniform using the Applicant's surname and the address of the café as keywords. These searches returned a number of emails; however, other than the July 2018 email chain referred to above, none of these contained any information falling within the scope of the request.
57. Noting that this part of the request sought information going back to 2007, the Authority explained that its IT systems (EDRMS and Outlook) had been significantly disrupted in December 2015 due to the failure of an air conditioning unit, and information held on servers prior to that time, including archived emails, had been destroyed. However, Uniform did not appear to have been impacted in the same way.
58. The searches now carried on Uniform had identified a small number of records referencing the visit in 2007. The final one (dated February 2007) made reference to a letter being sent to the Applicant detailing the "actions", but the Authority had been unable to identify the letter itself. It believed this had likely been destroyed, either due to the Authority's records retention policy or the IT disruption in December 2015.
59. The Authority believed that, in all likelihood, the Applicant would have been provided with that information, now identified on Uniform, in response to his earlier requests.
60. In conclusion, other than the email chain of July 2018 and the information now identified on Uniform, the Authority was satisfied that, given the circumstances described and the extent and results of the searches carried out, these were sufficient to allow it to conclude that no further information was held.

The Commissioner's views

61. The Commissioner has considered the Authority's position that it did not consider the information in the July 2018 email chain, regarding the visit in 2007, to fall within scope. Having considered this information, it clearly records information about that visit. In the Commissioner's view it falls within the scope of the request, notwithstanding the fact that the Applicant is already in possession of that information.
62. The Commissioner also notes that, during the investigation, information falling within the scope of part (ii) of the Applicant's request was identified on the Authority's Uniform database.

63. The Commissioner can only conclude that the Authority was not entitled to inform the Applicant, either in its initial response or its review outcome, that it did not hold any information relevant to this part of the request, in terms of section 17(1) of FOISA, and therefore breached section 1(1) of FOISA in doing so.
64. The Commissioner has also considered the Applicant's reasons for believing further information should be held relating to the SPSO investigation. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority holds no relevant information falling within the scope of the request, and that the SPSO decision itself would not be captured by the Applicant's request.
65. The Commissioner is further satisfied that, by the end of the investigation, the Authority had taken adequate, proportionate steps in the circumstances to establish whether it held any further information that fell within the scope of this part of the request. He is satisfied that the searches described by the Authority would have been capable of identifying any further information relevant to this part of the request, including any of the other information which the Applicant believed the Authority should hold. The Commissioner is therefore satisfied, on the balance of probabilities, the Authority does not (and did not, on receipt of the request) hold any further information falling within the scope of part (ii) of the request (other than that referred to in paragraphs 61 and 62 above).
66. The Commissioner therefore requires the Authority to issue a revised review outcome, otherwise than in terms of section 17(1) of FOISA, to the Applicant for part (ii) of the request.

Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that, by treating the first part of the request as a repeated request and relying on section 14(2) of FOISA, the Authority complied with Part 1.

However, the Commissioner also finds that, by incorrectly informing the Applicant that it did not hold any information falling within the scope of the second part of the request, the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to provide a revised review outcome to the Applicant for the second part of the request, otherwise than in terms of section 17(1) of FOISA, by **26 February 2024**.

Appeal

Should either the Applicant or the Authority 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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

10 January 2024

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

14 Vexatious or repeated requests

- ...
- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

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.

...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
- (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...