

Decision Notice

Decision 014/2018: Mr Ian Watt and Aberdeen City Council

Open data project review

Reference No: 201701934

Decision Date: 6 February 2018



Scottish Information
Commissioner

Summary

The Council was asked for details of the review it was carrying out on its Open Data project. The Council stated that it did not hold any relevant information as it was not carrying out a project review.

During the investigation, the Commissioner concluded that, in response to a subsequent information request, the Council had identified and disclosed some information which was also covered by the request under consideration.

The Commissioner required the Council to carry out another review of its handling of Mr Watt's request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 21(4) (Review by Scottish public authority)

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 12 August 2017, Mr Watt made the following information request to Aberdeen City Council (the Council):

"I understand that a project review is to take place of Aberdeen City Council's participation in the national programme led by Scottish Cities Alliance to improve (in this case) the provision of open data for the city of Aberdeen. This programme is sometimes referred to as The Data Cluster.

Can you please tell me:

- a) The date, format and criteria to be used in that review
- b) The job titles, and previous experience in working with Open Data, of those who are to carry out the review, and
- c) If the review is already concluded at the time of processing of this FOI request, the outcome of the review".

Mr Watt also asked for copies of various documents relating to the project.

2. The Council responded on 11 September 2017. It provided Mr Watt with some information. In response to part a) of his request, it explained that while there was no specific Open Data project review, there had been discussion around the future of the project within the context of the wider health check of all IT related projects. The Council noted that, on 23 August 2017, a new framework had been set out whereby all ongoing projects and commitments were being examined. The Council gave Mr Watt notice, under section 17(1) of FOISA, that it could not provide him with information on the date, format and criteria to be used in an Open Data review, as it did not hold that information.

3. On 19 September 2017, Mr Watt wrote to the Council requesting a review of its decision in relation to part a) of his request, as he considered the Council's response to be disingenuous and perhaps wilfully obfuscatory.
4. The Council notified Mr Watt of the outcome of its review on 26 September 2017. It reiterated that there was no project review being undertaken into the Open Data Project. However, the Council said that, in an effort to help Mr Watt receive the information in which he was interested, it had decided to "revise" his request to fit with the Council's current situation. The Council now deemed his request to be made in relation to a project health check rather than a project review. It stated that it was treating this as a new request.
5. On 4 November 2017, Mr Watt applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Watt was dissatisfied with the outcome of the Council's review because he considered that the Council was withholding information from him and that it had chosen to place a narrow constriction on the term "review", insisting that a health check and not a review was taking place.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Watt 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.
7. On 27 November 2017, the Council was notified in writing that Mr Watt had made a valid application and 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 and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Mr Watt and the Council. He is satisfied that no matter of relevance has been overlooked.

Information covered by Mr Watt's request

10. 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.
11. Section 1(4) of FOISA provides that the information to be given to the applicant is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold, although the applicant's reasons may be relevant to the investigation of what is actually held.
12. In its review outcome, the Council told Mr Watt:

"A project review is an assessment of the status of a project at a particular point in time, for example at the end of a particular phase. A Health Check is a learning opportunity, a quick glance at the status of a project to determine how well the project is performing in terms of its objectives, its accordance with procedure and company standards and to validate the case

for business, especially in times of significant change to that business, such as agreement to revise the entire structure of a local authority”.

13. Mr Watt has submitted that the Council chose to place a narrow construction on the term “review” by insisting that a “health check” and not a “project review” was taking place. Mr Watt suggested that by placing a narrow interpretation on the terms of his request, the Council is seeking to avoid disclosing information.
14. Mr Watt is “deeply sceptical” about the lack of emails and meeting notes identified by the Council regarding the “health check”. He stressed that the purpose of his information requests was to establish what process the Council is going through to review its own open data programme and its participation in the national programme, and this has yet to be answered.
15. In its submissions to the Commissioner, the Council acknowledged that, to a layman, the terms “project review” and “health check” could be construed to be similar, but submitted that it is important to be accurate and consistent when responding to requests for information. The Council argued that it would have been inaccurate for it to have advised Mr Watt that a project review was being undertaken on the Open Data project when that was not the case. The Council confirmed that there was no “project review” of the Open Data project and that it did not hold any relevant information.
16. The Council submitted that it held two pieces of recorded information at the time of the request that were related to the “health check”: an action note following a discussion around failure to progress with the open data platform contract; and an email which comprised legal advice. The Council explained that on receipt of Mr Watt’s review request (19 September 2017), it had dealt with this as a new request seeking information about the “health check” and had provided Mr Watt with a redacted copy of the action note (withholding personal data). The Council had withheld the email which comprised legal advice under section 36(1) of FOISA.
17. The Council described the actions it had taken to establish whether it held information falling within the scope of Mr Watt’s request for information. The Manager of the Open Data Project had confirmed there was no project review but that a “health check” had begun. The Project Manager explained that the health check was still at an early stage and most discussions at that point had taken place informally, by face-to-face conversation or by telephone. The Project Manager identified that the only recorded information held by the Council was the action note and the email which contained legal advice.
18. The Commissioner has considered the terms of Mr Watt’s request carefully and he considers that, on a plain English reading, his request would encompass information regarding both a “project review” and a project “health check”. The Council has not provided the Commissioner with any convincing reason why a different view should be taken.
19. While the Commissioner acknowledges that each public authority may use different terminology to reflect the work it undertakes, he considers that the Council’s description of a “health check” is so similar to a layperson’s idea of what a project review would comprise that the Council’s refusal to extend the request to encompass information about the “health check” is disingenuous. It would be reasonable to interpret a request for information about a project review as covering information about a “health check” of the same project.
20. The Commissioner agrees that it is important that authorities provide accurate responses to information requests; however, if the difference between a “health check” and a “project

review” was significant, he would have expected this to be explained in the Council’s initial response to Mr Watt. If the difference was not significant, in terms of information held, he would have expected the Council to recognise this and to have provided Mr Watt with information pertaining to both. At the very least, the Commissioner would have expected that when it was reviewing its response to Mr Watt’s request, the Council would have expanded its searches to encompass information about a “health check”, given that Mr Watt had questioned its interpretation of his request in his requirement for review.

21. The Commissioner notes that the Council later disclosed a redacted version of one document regarding the health check, but this disclosure was in response to correspondence which it had deemed to be a new request; the Council did not disclose the redacted document in response to the request under consideration.
22. The Commissioner is satisfied that the Council should have identified and disclosed the redacted action point document to Mr Watt in response to his information request of 12 August 2017 and by failing to do so, it failed to comply with section 1(1) of FOISA.

Adequacy of searches

23. The Commissioner has reviewed the searches undertaken by the Council to locate information about the “health check” of the Open Data Project (which the Commissioner understands to equate to information about the “project review” referred to in Mr Watt’s request). The Council submitted that, as confirmed by the Manager of the Open Data project, most of the discussions had taken place informally, either face to face or by telephone, and the action note and the email containing legal advice were the only two pieces of recorded information.
24. The Council did not explain or detail what searches it had carried out to locate relevant information or list the records and/or datasets that were searched. The Commissioner is not satisfied that the Council has provided evidence that it carried out searches capable of identifying all relevant recorded information.
25. As the Commissioner is not satisfied with the searches undertaken by the Council, he requires the Council to carry out a new review of its handling of Mr Watt’s request and to issue him with a new review response in terms of section 21(4) of FOISA. The Council is also required to provide the Commissioner with evidence that it has carried out searches which will address points on which the Commissioner requires to be satisfied. (These points to be notified separately to the Council.)

Decision

The Commissioner finds that Aberdeen City Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Watt. The Council failed to identify all of the information covered by Mr Watt's request. In doing so, it failed to comply with section 1(1) of FOISA. The Commissioner requires the Council to:

- provide Mr Watt with a new review outcome
- provide the Commissioner with evidence that it has carried out searches specified in the letter accompanying this decision.

The Council must do this by **23 March 2018**.

Appeal

Should either Mr Watt or Aberdeen City 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.

Enforcement

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

Margaret Keyse
Head of Enforcement

6 February 2018

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.

...

21 Review by Scottish public authority

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.

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