

Decision Notice 044/2022

Competency based internal interviews

Applicant: The Applicant

Public authority: Glasgow City Council

Case Ref: 202101103



Scottish Information
Commissioner

Summary

The Council was asked for information on competency-based interviews for its grade 6 posts in the previous six months. The Council supplied some information (a total), but refused the rest of the request.

During the Commissioner's investigation, the Council changed its approach and disclosed the information it held (including a corrected total). While recognising the change in approach, the Commissioner found that the Council had initially failed to comply with FOISA in responding to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held); 38(1)(b) and (2A)(a) (Personal information)

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 11 June 2021, the Applicant made a request for information to Glasgow City Council (the Council). He asked:
 - (i) How many Council employees have been the subject of (competency based) interviews for grade 6 in the last six months?
 - (ii) Of these, what was the percentage of BAME employees interviewed?
 - (iii) How many BAME employees were successful at the job interviews?
 - (iv) How many interviewees were assigned zero score for communications – and how many of these interviewees were from BAME communities and from a Caucasian background?
2. The Council responded on 6 July 2021. It told the Applicant that 63 internal applicants had been offered an interview in the past six months. However, the Council told the Applicant that, having inspected its records, it did not hold information which would answer the other parts of his request. The Council therefore refused those parts of the request in terms of section 17(1) of FOISA. The Council explained that it was not mandatory for those seeking an interview to provide equality information.
3. On 15 July 2021, the Applicant wrote to the Council requesting a review of its decision. He believed the Council's response was factually incorrect. He believed it would be possible for the Council to access the employment records, recruitment outcomes and equality data of the 63 applicants. Although the Applicant appreciated there was no mandatory requirement for employees to provide their equality data, that did not mean that no information was held: that would only be the case if all 63 had not provided any equality data.
4. The Applicant also referred to the Council's duties under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. He believed that, to meet these requirements, the Council would have to hold employee equality data to inform equality outcomes and diversity

reporting. He suggested that, at the very least, a partial response made up of the information available should have been provided to him.

5. The Council notified the Applicant of the outcome of its review on 11 August 2021. The Council confirmed it did hold information relevant to the applicants who had provided their ethnicity details, but notified that Applicant that this information was exempt from disclosure under section 38(1)(b) of FOISA, as it was personal data and disclosure would contravene the data protection principles contained within Article 5(1) of the UK General Data Protection Regulation.
6. On 2 September 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He believed the Council's response (that it did not hold accurate data records regarding the ethnicity of all 63 internal applicants) conflicted with its Council's equality outcomes charter 2021/2025 and that the Council did hold recorded information that could be supplied to him or used to answer his questions. He did not accept that the information was exempt from disclosure under section 38(1)(b) of FOISA.

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. 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 how it had assessed what information it held that fell within the request and why it had refused the Applicant's request with reference to sections 17 and 38(1)(b) of FOISA.
9. Part (ii) of the request was for the percentage of BAME interviewees interviewed and part (iii) for the number of BAME employee who were successful at interview. The Council advised the Commissioner that, because some of the candidates had chosen not to disclose ethnicity information, it could not answer these requests in full. However, it had decided to disclose the information that it did hold for these parts of the request.
10. The Council also advised the Commissioner that, when preparing the data for release, it became apparent that there were some inconsistencies in the information: 91, not 63, employees had been offered an interview during the relevant period.
11. The Council explained in detail how this error had occurred: the Applicant's request was misinterpreted and that, together with the fact that, due to lockdown, many interviews were delayed, had led to the figure being miscalculated.
12. The Council subsequently provided the correct information (for part (i)) to the Applicant, and apologised for the error. It also responded to parts (ii) and (iii), based on the information it held.
13. The Council also explained the information that it held for part (iv) of the request. For 18 of the 19 internal posts, no one had been awarded a zero for communications-based competency questions. However, the Council was unable to confirm the situation with one of these posts as the paperwork was no longer held, as the paperwork had been destroyed.

14. The Council disclosed provided a new response to the Applicant. The Applicant confirmed, however, that he wanted the Commissioner to complete the investigation and issue a decision.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner considered all 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.
16. He finds that the Council failed to comply with section 1(1) of FOISA when responding to the Applicant. This requires an authority, subject to various provisions and exemptions (section 1(6)), to disclose the recorded information it holds at the time the request is received (section 1(3)). Where the information an authority holds is not complete, it is open to the authority to explain any limitations on the information held. The information disclosed to the Applicant should, therefore, have been disclosed to the Applicant in response to his original request.
17. In addition, there were two issues with the information which was covered by the request.
18. Firstly, the Council initially gave the Applicant the wrong number of candidates. The Commissioner accepts the Council's explanation as to why this happened, and notes the Council has already apologised to the Applicant.
19. Secondly, it appears that information about part (iv) of the request was deleted after the Applicant requested it. The Council explained that it uses a standard email template when a request is received to notify information holders across the Council states that information falling within the scope of a request must be kept securely and not deleted. Unfortunately, the way that the initial request was interpreted meant that not all of the information was captured and that some staff who held relevant information were not made aware of the request. Again, the Commissioner accepts the explanations given by the Council. The Council has also reassured the Commissioner that it is taking steps to address these issues and that additional training will be provided.
20. Given the above explanations and reassurances, and the fact that a new, compliant response has been issued to the Applicant, the Commissioner does not require the Council to take further action.

Decision

The Commissioner finds that Glasgow City Council (the Council) failed to comply with Part 1 (and, in particular, with section 1(1)) of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Given that the Council has now disclosed the information it holds, the Commissioner does not require the Council to take any action in response to this failure in response to the Applicant's application.

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.

Daren Fitzhenry
Scottish Information Commissioner

13 April 2022

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.
- ...
- (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.
- ...

38 Personal information

- (1) Information is exempt information if it constitutes-
- ...
- (b) personal data and the first, second or third condition is satisfied (see subsections (2A) to (3A));
- ...
- (2A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act -
- (a) would contravene any of the data protection principles, or
- ...

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