



Decision Notice 023/2023

Graffiti reports

Applicant: The Applicant

Authority: City of Edinburgh Council

Case Ref: 202200151

Summary

The Applicant asked the Authority for information regarding the number of times the Authority had asked the University of Edinburgh to clean up graffiti on University property. The Authority notified the Applicant that it held no recorded information which would fulfil the request. Following an investigation, the Commissioner was satisfied that the Authority did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner); 73 (Interpretation) (definition of “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 27 October 2021, the Applicant made a request for information to the Authority. She asked:
 - (i) *How many times the local authority has asked the University of Edinburgh (the University) to clean up graffiti vandalism issues reported with evidence on their property since June 2020.*

- (ii) *The last time the Local Authority contacted the University about graffiti vandalism issues reported with evidence on their students accommodation property overlooking the Meadows tennis courts.*
 - (iii) *The first time date of when the Local Authority contacted the University about graffiti vandalism issues reported with evidence on their students accommodation property overlooking the Meadows tennis courts.*
2. The Authority sought clarification of this request on 23 November 2021. It explained that it could not identify the information the Applicant had requested from the details she provided.
 3. For request (i), the Authority asked the Applicant if she wanted the request to focus on Ascham Court or if she was referring to all University buildings.
 4. For request (iii), the Authority asked the Applicant to specify the date range of the search.
 5. The Applicant responded the same day and confirmed that she did want to restrict request (i) to Ascham Court, and that in request (iii) she was seeking information from October 2019 to October 2021.
 6. The Authority responded on 21 December 2021. It explained that it had not recorded any requests to the University to remove graffiti from Ascham Court in the time period specified.
 7. On 22 December 2021, the Applicant wrote to the Authority requesting a review of its decision, because she was not satisfied that the information was not held. In her requirement for review, the Applicant provided the Authority with several emails demonstrating that she had complained about graffiti at Ascham Court on numerous occasions in the specified time period.
 8. The Authority notified the Applicant of the outcome of its review on 21 January 2022. It upheld its previous response, and maintained that it did not hold any records that requested the University remove graffiti from any of their buildings. The Authority also provided the Applicant with an overview of the procedures that related to the reporting of graffiti.
 9. On 3 February 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the Authority's review because she did not accept that the information was not held, and she wanted the Commissioner to investigate the matter.

Investigation

10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
11. On 29 March 2021, the Authority was notified in writing that the Applicant had made a valid application.
12. 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 searches and enquiries undertaken by the Authority to establish what information it held falling within the scope of the Applicant's request.

Commissioner's analysis and findings

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

Was the information held?

14. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
15. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not usually require a public authority to create recorded information in order to respond to a request, or to provide information which is not held in a recorded form (e.g. from a person's memory).
16. In her application to the Commissioner, the Applicant provided him with reference numbers that related to four separate instances where she had contacted the Authority to report graffiti at Ascham Court. The Applicant noted that she had also reported the graffiti to the Chief Constable of the Police Service of Scotland, because of its derogatory nature.
17. The Applicant argued that if someone reports graffiti to an Authority and it is not removed, then the working relationship the Authority has with the University is clearly not in the interests of the people.
18. In its review outcome, the Authority explained that it had discussed the matter of graffiti reporting with the relevant Service, and that it had specifically raised the complaints the Applicant included in her request for review (the four reference numbers she provided to the Commissioner).
19. The Service responded that normal practice and procedure means that if graffiti is identified by or reported to the Authority, then the Authority will look to attend the site to assess the damage. If, upon inspection, the graffiti contains an image or wording which is deemed to be offensive according to the Authority's internal policy, then the Authority will either attempt to contact the owner of the property (e.g. by knocking on their door) or it will remove the graffiti itself, should it be particularly offensive. With regard to Ascham Court, which is owned by the University, the Service reiterated that it held no records of the Authority requesting the University remove graffiti from any of their buildings.
20. The Authority explained that it had entered into a working relationship with the University, whereby the University was able to contact the Authority directly regarding the removal of offensive graffiti on the University estate. However, at the present time, there had been no records or information found which falls within the scope of the Applicant's request.
21. In its submissions to the Commissioner, the Authority provided details of the searches it had carried out to find information relevant to the Applicant's request. It explained that it had carried out a search on the Service's asset management system, where all reports of graffiti received via its contact centre and website are recorded. The Authority noted that this system had been in place since 2016. The Authority provided a list of the search terms used for the search, which included terms such as; Boroughloch, Ascham Court and Edinburgh University. The Authority explained that while these searches did retrieve some information, there was no record of the Authority contacting the University. The Authority explained that

each result was checked manually for information. The Authority provided the Commissioner with the results of this search. The Authority submitted that a further search was also carried out on the Street Enforcement Team's contact management system, and this failed to retrieve any results.

22. The Authority referred to the agreement it had with the University regarding the removal of graffiti from University premises. It explained that it held no formal written record of this agreement, and that the original agreement may have been made verbally or the records no longer exist. The Authority submitted that the Area Managers and Supervisors for the Street Cleansing Team that might have had knowledge of the agreement, had since retired from the Authority and their digital accounts had been removed. It noted that the current agreement has been in place for at least 10 years. The Authority spoke with current members of the Service, who indicated that the agreement was not "formal" and that the practice evolved out of verbal discussions between previous members of staff and the University.

The Commissioner's conclusions on whether the requested information is held or not

23. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
24. The Commissioner acknowledges that the Applicant has made four complaints to the Authority regarding graffiti at Ascham Court, but he accepts the Authority's submissions that it has not contacted the University in relation to any of these complaints. The Authority has explained that the University can contact it directly about graffiti removal on its premises, due to an established working relationship, but that no information is held that falls within the scope of the Applicant's request. The Commissioner notes that the Authority cannot provide any written evidence of its "agreement" with the University, but he is satisfied that a working agreement was reached with former Authority employees and, while no records of this agreement exist, it is still upheld by current staff members.
25. The Commissioner notes that the Applicant is only seeking information about the number of times the Authority has asked the University to remove graffiti from its buildings. She is not seeking information on the number of times the University may have contacted the Authority about such graffiti.
26. The Commissioner also notes that in the Authority's response to one of the Applicant's complaints about graffiti at Ascham Court, it advised her that, "If graffiti is on private land or street furniture (e.g. utility boxes) then it's the responsibility of the owner to remove it if they wish." In the circumstances, the Commissioner considers it unlikely that the Authority would hold the information requested by the Applicant as, in the "working relationship", the onus falls on the University to contact the Authority about graffiti removal, not the other way round. He is satisfied that the Authority has carried out relevant and sufficient searches, and that none of these searches have identified information falling within the scope of the Applicant's information request.
27. On balance, and having considered all of the relevant submissions in this case, the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant.

Decision

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

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.

Margaret Keyse
Head of Enforcement

20 March 2023

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.

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).

73 Interpretation

In this Act, unless the context requires a different interpretation –

...

“information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

...