



Scottish Information
Commissioner
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Decision Notice 042/2024

Ward in Glasgow with the highest density of Houses in Multiple Occupation (HMOs)

Authority: Glasgow City Council

Case Ref: 202200606

Summary

The Applicant asked the Authority for information on which ward in Glasgow has the highest density of Houses in Multiple Occupation (HMOs) as a percentage of all residential housing. The Authority informed the Applicant it did not hold the information. The Commissioner investigated and was satisfied the Authority did not hold the information requested.

Relevant statutory provisions

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

Background

1. On 25 February 2022, the Applicant made a request for information to the Authority. The Applicant asked which ward in Glasgow has the highest density of HMOs, what the density of HMOs is in that ward as a percentage and the number of HMOs in that ward.
2. The Authority responded on 23 March 2022, providing the Applicant with a list of current HMO licences in Glasgow. The Authority noted it did not consider it clear what the Applicant meant by "density" but it hoped the information he sought could be extracted from the information it provided.
3. On 24 March 2022, the Applicant clarified his request and explained he wanted to know:

- the ward in Glasgow with the largest number of licenced HMOs as a percentage of all residential housing in that ward
 - what percentage of residential housing in that ward is a licenced HMO
 - the number of licenced HMOs in that ward
4. On 3 May 2022, the Applicant wrote to the Authority requesting a review of its decision after it did not respond to his clarification. The Applicant stated that he was dissatisfied with the decision because the Authority provided him with an answer to a different question and then ignored his clarification of his request.
 5. The Authority notified the Applicant of the outcome of its review on 24 May 2022 with a notice, under section 17(1) of FOISA, that it did not hold the information requested. By way of advice and assistance, the Authority provided the Applicant with a link to its Open Data Hub, which contains an up-to-date record of current HMO licences in Glasgow (which can be filtered by ward).
 6. On 25 May 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because the answer it provided him with was incomplete and he did not believe it did not have access to the data required to provide him with a complete answer.

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 13 July 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was 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, which it did.

Commissioner's analysis and findings

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

Section 17(1) – Notice that information is not held

11. 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.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4) of FOISA. 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.

13. 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 lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority.
14. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant recorded information is actually held by the public authority (or was, at the time it received the request).

The Authority's submissions

15. The Authority explained that, as part of its overall response to the Applicant's request, it contacted two separate departments to determine whether it held the information requested:
 - the Licensing Department, as it is responsible for processing HMO licensing applications in Glasgow
 - the Housing and Regeneration Services Department, as it has significant dealings with HMOs in Glasgow
16. The Authority stated that both departments confirmed that they did not hold a record of the number of residential houses in each ward or information on which ward has the greatest density of HMOs as a percentage of all residential housing.
17. The Authority explained that both departments were certain that it did not hold the requested information and it therefore did not consider searches were required.
18. The Authority noted that, by way of advice and assistance, it did provide the Applicant with a link to its Open Data Hub. This is the Authority's current HMO register containing a list of all accommodation in Glasgow that currently has an HMO licence. The Authority explained that the register allows users to filter the data by ward and it specifies the total number of HMOs and the percentage it accounts for of the total number of HMOs in Glasgow.

The Applicant's submissions

19. The Applicant explained that the answer provided by the Authority was incomplete and that he did not believe it did not have access to the data required (i.e., the number of residential properties in a specific ward) to provide him with a complete answer.

The Commissioner's view

20. Given the explanations and submissions provided, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held and is satisfied, on balance, that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.
21. The Commissioner notes that the Applicant's request seeks information on the ward in Glasgow with the largest number of licenced HMOs as a percentage of all residential housing in that ward.

22. In the Commissioner's view, this is a request that seeks an answer based on a full data set and which cannot be answered where the underlying data are not recorded (i.e., where the number of residential houses for each ward are not recorded).
23. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied that this was not the case. Whether a public authority *should* hold information which it does not hold is not a matter for the Commissioner to decide.
24. While he accepts the Authority does not (and did not, on receipt of the request) hold the information requested by the Applicant, the Commissioner is nevertheless satisfied the Authority, by providing links to its Open Data Hub, offered appropriate advice and assistance to attempt to provide him with information relevant to his request.
25. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

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.

**David Hamilton
Scottish Information Commissioner**

21 March 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.
...

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).