

Decision Notice 095/2021

Valuation Roll entries from 1989

Applicant: The Applicant

Public authority: The National Library of Scotland

Case Ref: 202100217



Scottish Information
Commissioner

Summary

NLS was asked for extracts from the 1989 Valuation Rolls. NLS told the Applicant that, due to Covid-19 restrictions, the Library was closed and it was unable to fulfil the request. The Commissioner found that, although NLS did not comply with the request and request for review on time, the failure was due to the effect of the Covid-19 pandemic. In the circumstances, and in line with his power in the Coronavirus (Scotland) Act 2020, the Commissioner found that the NLS had not failed to comply with FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 10(1) (Time for compliance); 21(1) (Review by Scottish public authority)

Coronavirus (Scotland) Act 2020, Schedule 6, Part 2, paragraph 6 (Commissioner's ability to take account of impact of coronavirus)

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 19 February 2021, the Applicant made a request for information to the National Library of Scotland (NLS). The requested information was that held in the Valuation Rolls for 1989 for specified properties in Edinburgh.
2. NLS responded on the same day. NLS explained that, due to current government restrictions, the Library was closed. Therefore, it was only able to offer a limited service and this did not include access to the Valuation Rolls, which would normally have to be viewed in their original form in the Library's Reading Rooms. NLS suggested other places where the Applicant might be able to access copies of the Valuation Rolls.
3. Later that day, the Applicant wrote to NLS, requesting a review of its decision. He considered it unlikely that he would be able to access the Valuation Rolls elsewhere and asked NLS to reconsider its refusal to provide the information.
4. NLS clarified that its response had not been a refusal to provide the information, but rather an indication that it could not access the information until further notice. It apologised for the inconvenience caused, but re-iterated that the Library remained closed to both staff and members of the public. This meant that it was unable to access the Valuation Rolls, as they were not available in digital format.
5. On 19 February 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied because the fact that no one could retrieve the information for an indeterminate amount of time was not a valid exemption under FOISA.

Investigation

6. 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.

7. On 18 March 2021, NLS was notified in writing that the Applicant had made a valid application. 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. NLS was invited to comment on this application and to answer specific questions. These related to why it considered the effect of Coronavirus impacted on its ability to respond to the Applicant's request in this case.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and NLS. He is satisfied that no matter of relevance has been overlooked.
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, 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.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
12. As mentioned above, the Applicant was dissatisfied with NLS's response as he considered the fact that no one could access the information for an indeterminate amount of time was not a valid exemption in FOISA.
13. In its submissions to the Commissioner, NLS confirmed that it was unable to supply information in response to the Applicant's request due to the restrictions put in place by the government in response to the Covid-19 pandemic.
14. Because of the current coronavirus pandemic, the Scottish Ministers passed legislation on 6 April 2020 (Coronavirus (Scotland) Act 2020), amended on 26 May 2020 (Coronavirus (Scotland) No.2 Act 2020).
15. Under Schedule 6, Part 2, paragraph 6 of the Coronavirus (Scotland) Act 2020 (as amended), the Commissioner may decide that a Scottish public authority has not failed to comply with Part 1 of FOISA by reason of its failure to comply with the timescales in section 10(1) and section 21(1), if the Commissioner is satisfied that the failure was due to the effect of the coronavirus on the authority generally or its ability to carry out its functions (including any action it had to take to better utilise its resources to deal with the effects of the coronavirus).
16. The Commissioner would also have to be satisfied that the failure to comply in time was reasonable in the circumstances. In considering what is reasonable, the primary consideration for the Commissioner is the public interest in responding promptly.

Submissions from NLS

17. NLS explained that the Valuation Rolls are held by it as part of its national collections, and are held in physical (hard copy) format and not digitally. NLS submitted that these Rolls are held in its building on George IV Bridge in Edinburgh in closed stacks (only accessible to staff, who have to locate the items and make them available for public inspection). Some of these Valuation Rolls are held in microfiche format and can only be viewed (on site) using a microfiche reader.

18. NLS explained that, at the time of the Applicant's request, the Library's buildings were closed to the public and accessible to essential staff, for example security and maintenance teams, only. Therefore, it was unable to make this information available to him, either on the date of his request or within the 20 working days following. Relevant staff who would have been responsible for securing public access to the Valuation Rolls, were not working within the Library.
19. NLS considered its failure to provide the requested information to the Applicant within the 20 working days to be reasonable in the circumstances, due to the undue risk that providing the information in a shorter period would have posed to its staff.
20. NLS noted that a core function of the Library is to enable access to its collections and to respond to requests and enquiries from the public relating to the collections. It stated that it continued to offer these services where possible during the pandemic, with staff working from home to respond to enquiries. However, in order to access collection items stored on the premises, it would have been necessary for it to maintain a significantly greater workforce in its facilities during lockdown, which it believed would have contravened government restrictions on movement and work. NLS submitted that, had it maintained its capacity to provide access to its on-site collections throughout lockdown, it would effectively have been working against those restrictions by maintaining on-site services and requiring staff to attend its premises for work that was not "essential" (as that term was used in respect of working away from the home during the pandemic).
21. NLS was of the view that it would not have been reasonable to make an exception in the case of the Applicant's request, as it would have been incumbent on it to provide comparable services for other individuals seeking to access items held on site in its collections. This would, NLS submitted, have led to it re-starting onsite services before this was permitted on 26 April 2021.
22. NLS commented that it had explained to the Applicant to why it was unable to handle his request at the time and had suggested other locations that might also hold the requested records and could be in a position to provide more immediate access (if, for example, they held the records digitally). It also notified the Applicant that it would be able to provide access to the information in its normal manner, either via making the Rolls available for onsite consultation or by providing extract copies, once it re-opened in line with government guidelines.
23. NLS noted that, during the pandemic, its Reference Services and other collection enquiry teams had increased their enquiry turnaround targets from 10 to 20 working days because of staff working from home and having access to fewer resources.
24. It also noted that other functions within the Library, including work to collect items from closed stacks to fulfil user requests and work to provide reproductions through its copy order services, had operated under reduced capacity when its facilities were open (during a period in Autumn 2020 and since 27 April 2021), in order to accommodate social distancing, and so service response times might be slower than before the pandemic.
25. The Commissioner understands that, since the Library building physically re-opened on 27 April 2021, NLS has written to the Applicant (on 1 May 2021) informing him that it was able to access the requested Valuation Roll and the information he was seeking. NLS invited the Applicant to view the information on site, or offered to produce a copy for him following payment of a fee.

Commissioner's conclusions

26. Having fully considered the submissions from NLS, the Commissioner accepts that the provisions of Schedule 6, Part 2, paragraph 6 of the Coronavirus (Scotland) Act 2020 (as amended) would be applicable in this case.
27. Given the nature of the information requested by the Applicant, the format in which it is held and where it is stored, the Commissioner is satisfied that it was not possible at the time of the Applicant's request or requirement for review, or indeed within 20 working days of them, for NLS to be able to access this information and make it available to the Applicant while complying with government Coronavirus restrictions.
28. It is evident that the closure of the Library building (in compliance with government restrictions) had a significant impact on the ability of NLS to fulfil its core business functions and services, of which compliance with this request was one. Although staff were able to work from home, it is apparent that this did not enable them to access all of the information or resources to allow them to work normally or deliver the usual level of service they would be expected to.
29. The Commissioner recognises that the Applicant made his request during the height of the second lockdown, at a time when restrictions were particularly tight and movements curtailed for anything other than essential reasons. The Commissioner agrees with the point made by NLS that, had it made an exception in this case to seek to fulfil the Applicant's request, it would have to offer the same level of service to others, and under the restrictions in force at the time, this would not have been possible, or reasonable in the circumstances. Furthermore, the Commissioner acknowledges that the level of staffing that would need to have been maintained by NLS to enable it to offer the service required would have been significant and, due to government restrictions, was not achievable at that time.
30. In considering whether the actions of NLS were reasonable, the Commissioner must bear in mind that the public interest lies in ensuring that requests for information are responded to promptly. However, given the extent to which restrictions put in place by the government as a consequence of the Covid-19 pandemic directly affected the NLS's ability to carry out its business and respond to the request and requirement for review timeously in this case, the Commissioner is satisfied that its failure to respond to the request within the required timescales was reasonable in all the circumstances. Furthermore, the Commissioner notes that the NLS took action as soon as it was able to re-open the Library to locate the information covered by the Applicant's request and offer means to enable the Applicant to access this.
31. While the Commissioner acknowledges that the NLS did not fulfil the Applicant's request or requirement for review within 20 working days, he finds, for the reasons given above, and in the circumstances, that the NLS did not fail to comply with section 10(1) and 21(1) of FOISA. The Commissioner is satisfied that the impact of the restrictions in force to combat the Covid-19 pandemic directly affected the NLS' ability to respond to the Applicant's request and requirement for review and that the failure to comply with the timelines was reasonable in all the circumstances.
32. It should be noted, however, that while the Commissioner accepts that this was the case here, his decision may not have been the same had the request and/or requirement for review been submitted by the Applicant at a time when the restrictions in place were less severe.

33. As mentioned above, the Commissioner is aware that the Library is now open (albeit subject to some restrictions) and the NLS has contacted the Applicant to invite him to view the requested information on site, or to have a copy of it provided following payment of a fee. The Commissioner would encourage the Applicant to respond to the NLS's communication with a view to having his request fulfilled.

Decision

The Commissioner finds that the National Library of Scotland did not fail to comply 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 National Library of Scotland 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

11 June 2021

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.
...
- (6) This section is subject to sections 2, 9, 12 and 14.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
...

Coronavirus (Scotland) Act 2020

Schedule 6 – Functioning of public bodies

Part 2 – Freedom of Information

6 Commissioner’s ability to take account of impact of coronavirus

- (1) This paragraph applies in relation to an application made under section 47(1) (which is not excluded by section 48) in respect of which there is a failure of the Scottish public authority to comply with a relevant period.
- (2) Despite section 49(6), the Commissioner may decide that the Scottish public authority has not failed to comply with Part 1 by reason only of its failure to comply with a relevant period if the Commissioner is satisfied that the failure was –

- (a) due to
 - (i) the effect of coronavirus on the authority generally or its ability to carry out its functions (including any action it had to take to better utilise its resources to deal with the effect of coronavirus), or
 - (ii) the authority operating under requirements of Part 2 of this schedule that were subsequently repealed before the end of the period during which Part 1 of this Act is in force.
 - (b) reasonable in all the circumstances.
- (2A) In considering whether the failure was reasonable in all the circumstances, the Commissioner must regard the public interest in section 1(1) being complied with promptly as the primary consideration.
- (3) For the purposes of this paragraph, “relevant period”, in relation to a request for information (or a subsequent requirement for review), means a period specified in section 10(1) or section 21(1), either as it has effect of paragraph 3 or otherwise.

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