

Decision Notice

Decision 025/2018: Ms Tracy Wright and Falkirk Council

Definitions of “anti-social behaviour”

Reference No: 201702004

Decision Date: 6 March 2018



Summary

The Council was asked for information relating to its definitions of “anti-social behaviour”. The Council disclosed information

An application was made to the Commissioner, questioning whether the Council held more information. The Commissioner was satisfied that the Council had carried out appropriate searches and disclosed all the relevant information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulation 2(1) (definition of "environmental 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 2 September 2017, Ms Wright made a request for information to Falkirk Council (the Council). The information requested included Ms Wright asking the Council to confirm: “what Falkirk Council’s definitions of anti-social behaviour are”.
2. The Council responded on 10 October 2017 and apologised for its delay in responding. The Council stated that it adopted the legislative definition set out in the Antisocial Behaviour etc. (Scotland) Act 2004¹ (the ABA), with further explanation that each incident was considered on a case by case basis.
3. The Council advised that legislative definition (based on section 143 of the ABA) was :
"A person engages in antisocial behaviour if they act in a manner that causes or is likely to cause alarm and distress or pursues a course of conduct which causes or is likely to cause alarm and distress to at least one person who is not of the same household. (Course of conduct must involve conduct on at least two occasions)."
4. On 11 October 2017, Ms Wright wrote to the Council requesting a review of its decision, stating that the response provided did not answer, or detail, the “definitions” of antisocial behaviour as she had requested. She stated that other Councils had lists of behaviours/events considered to be anti-social behaviour. She also complained about the Council’s delay in responding to the request.
5. The Council notified Ms Wright of the outcome of its review on 3 November 2017. The Council stated that it had provided the definition requested, with further advice that each incident was considered on a case by case basis. It stated that the delay in responding had been addressed in its response of 10 October 2017.

¹ <http://www.legislation.gov.uk/asp/2004/8/contents>

6. On 7 November 2017, Ms Wright wrote to the Commissioner. Ms Wright applied to the Commissioner for a decision in terms of section 47(1) of FOISA. In summary, Ms Wright stated she was dissatisfied with the outcome of the Council's review because it had not provided the definitions it used. She stated she expected a definitive list of what constituted antisocial behaviour.
7. Ms Wright also stated that she believed that the request fell to be considered in terms of the EIRs and that by failing to provide the information under the EIRs, the Council was not compliant with the Aarhus Convention. She referred again to the Council's delay in responding to her original request, and raised a number of other points which do not fall within the Commissioner's remit.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Ms Wright 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.
9. On 22 December 2017, the Council was notified in writing that Ms Wright had made a valid application. The case was allocated to an investigating officer.
10. 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, with particular reference to the relevant points raised in Ms Wright's application.
11. The Council responded, advising that it had provided Ms Wright with the information falling within the scope of her request and that it did not consider the request fell within any part of the definition of "environmental information" in regulation 2(1) of the EIRs.
12. Having considered the terms of Ms Wright's request, the Commissioner agrees with the Council that the information requested would not fall within any part of the definition of "environmental information" set out in regulation 2(1) of the EIRs (see Appendix 1). Consequently, the Commissioner's investigation will consider Ms Wright's application under FOISA only.
13. In relation to the delay in responding to Ms Wright's request, the Council noted that it had acknowledged the delay in its original response to Ms Wright, with an apology, and that this was confirmed in its review outcome. The Commissioner cannot identify any basis for finding the Council's review outcome to be defective in this respect and therefore will not consider this point further in this decision.

Commissioner's analysis and findings

14. 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 Ms Wright and the Council. He is satisfied that no matter of relevance has been overlooked.

Information held by the Council

15. 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.

16. The information to be given 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.
17. The Commissioner has taken account of the submissions provided by Ms Wright, in which she provides reasons why she considers the Council should hold further information falling within the scope of his request.
18. In its submissions to the Commissioner, the Council confirmed the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of Ms Wright's request. The Council explained that it is required to work with the statutory definition set out in the ABA and it had advised Ms Wright of this, with the proviso that it considers each incident on a case by case basis.
19. The Council explained that the statutory definition requires it to consider behaviour "which causes or is likely to cause distress or alarm", and purposely does not include or require it to hold a list of types of behaviour.
20. In its submissions to the Commissioner, the Council advised that it published literature on its website, giving examples of types of behaviour which might be covered by the statutory definition, while making it clear that it considered incidents on a case by case basis and did not limit the scope of the definition to specific acts. It confirmed therefore that it did not have a definitive list, as highlighted by Ms Wright in her application to the Commissioner.
21. The information published on the Council's website was provided to Mr Wright during the investigation. The Council's procedures for responding to and managing antisocial behaviour have also been provided to Ms Wright, in response to another part of her request of 2 September 2017.
22. The Commissioner has considered the definition of what constitutes antisocial behaviour, as set out in section 143 of the ABA. This is the definition he would expect the Council to follow and use in determining whether an act or conduct constitutes antisocial behaviour. Given the way in which the definition is framed, the Commissioner accepts the Council's submission that it could not be expected to hold a prescriptive definitive list of every act or behaviour which would fall within the scope of that definition. The Council, reasonably in the circumstances, has explained that each complaint is dealt with on a case by case basis. In response to another part of her request, it has given her the relevant procedures.
23. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted Ms Wright's request reasonably and took adequate, proportionate steps in the circumstances to establish what relevant information it held. Given the explanations provided, the Commissioner is satisfied – on the balance of probabilities – that the Council held no further information falling within the scope of Ms Wright's request, in addition to that already provided to her. Consequently, in respect of the information it held, the Commissioner is satisfied that the Council responded to the request in accordance with Part 1 of FOISA.

Decision

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

Appeal

Should either Ms Wright 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.

Margaret Keyse
Head of Enforcement

6 March 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.

...

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

- (1) In these Regulations –

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

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- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the

environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

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