

Decision Notice

Decision 211/2018: Company A and Angus Council

Business rate properties in area

Reference No: 201801187

Decision Date: 19 December 2018



Scottish Information
Commissioner

Summary

The Council was asked for information on business rate properties in its area.

The Council initially withheld all of the information under various exemptions in FOISA. At review stage, the Council modified its position and disclosed some information, withholding the remainder under section 25 of FOISA as it considered this to be otherwise available.

The Commissioner investigated. While he agreed that the Council was entitled to refuse to provide the remaining information as it was otherwise available, he found that it had failed to provide adequate advice and assistance on accessing the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 15 (Duty to provide advice and assistance); 25(1) and (2)(a) (Information otherwise available)

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 14 May 2018, Company A made a request for information to Angus Council (the Council). The information requested was:
*I would like the following information about business rate properties in Angus Council:-
Properties where transitional relief has been granted in 2017/18, a list in excel format containing the property address and 2017 rateable value and amount of relief granted.
Please could you also supply me with a list (MS excel format again) of all business rates properties in your area, to include the property address, rateable value, property description and, if possible, the ratepayer name.*
2. The Council responded on 19 June 2018, stating it was unable to provide the information as it did not hold it in a format which identified the precise legal status of the ratepayers concerned, in terms of whether they were organisations or sole traders. The Council applied section 38(1)(b) (Personal information) of FOISA, on the basis that disclosure of third party personal data would breach data protection laws.
3. The Council further stated the information was exempt from disclosure under section 36(2) (Confidentiality) of FOISA as disclosure of each individual ratepayer's liability, including data relating to reliefs, exemptions or credits, would breach taxpayer confidentiality.
4. The Council informed Company A that much of this information, concerning rateable values, property descriptions etc. was available via the Scottish Assessors Association (SAA) website/portal.
5. Later that day, Company A wrote to the Council requesting a review of its decision. It did not consider the exemption in section 38(1)(b) applied to the first part of the request, as that part

did not ask for ratepayers' names. For the second part of the request, Company A contended that it was not possible to extract any information from the SAA website, nor was it possible to identify which properties were in the Angus area.

6. The Council responded on 29 June 2018. For the first part of the request, it modified its original decision and disclosed the information requested, accepting that the information did not constitute personal data as it related to the valuation and type of commercial use of a property and the capping of business rate increases.
7. For the second part of the request, the Council explained that valuations were carried out by the Tayside Assessor, not by the Council, and that the information requested was publicly available via Tayside Valuation Joint Board's (TVJB's) publication scheme. The Council provided the relevant weblink.
8. The Council asked Company A to confirm if it remained dissatisfied, so that the request for review could be progressed by the Council's review panel.
9. On 10 July 2018, Company A wrote again to the Council stating that the link provided for the second part of the request merely led to the SAA website and it was not possible to identify only those properties which were in Angus. Company A again asked the Council to provide the information requested.
10. On 13 July 2018, the Council responded to Company A's contention that the rating information sought in the second part of the request was publicly available. It referred to its earlier response, in which it had:
 - (i) advised Company A that the information was not the Council's and, as such, it was unable to provide it, and
 - (ii) referred Company A to the Tayside Assessor's Publication Scheme (with the relevant weblink), which indicated how the information could be obtained (with specific reference to the Valuation Rolls section).
11. The Council stated that information reasonably obtainable by an applicant, even where it is available only against payment of a charge, was exempt from release in terms of section 25 of FOISA.
12. On 13 July 2018, Company A wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Company A stated it was dissatisfied with the outcome of the Council's review because, while the Council believed the information sought in the second part of the request could be obtained elsewhere (i.e. via the SAA website), the information on that site could not be downloaded "in any shape or form", nor was it possible to identify properties within Angus alone.

Investigation

13. The application was accepted as valid. The Commissioner confirmed that Company A 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.
14. On 6 September 2018, the Council was notified in writing that Company A had made a valid application and the case was allocated to an investigating officer.
15. 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 focused on asking the Council to justify its reliance on section 25 of FOISA to withhold the information requested in the second part of the request.

Commissioner's analysis and findings

16. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both Company A and the Council. He is satisfied that no matter of relevance has been overlooked.

Information under consideration

17. 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.
18. In its application to the Commissioner, Company A was dissatisfied that the Council had failed to provide the information requested, and did not accept that this information was otherwise accessible in terms of section 25 of FOISA.
19. The Council was asked to confirm whether it held the information Company A had requested. In response, the Council confirmed that it held the information in order to levy business rates in the Angus area. The Council explained that:
- (i) it was not responsible for the Valuation Roll, and that this statutory responsibility lay with TVJB,
 - (ii) all business rate information for properties in its area was made available to the Council by another authority (i.e. the Tayside Assessor – TVJB) in the same form as was available for purchase directly under TVJB's publication scheme, and
 - (iii) given the availability of this information elsewhere, the Council did not consider it necessary to carry out any searches to identify the information requested in this case.
20. The Council was asked to confirm that the information held in the Valuation Roll covered all of the categories stipulated in Company A's request. In response, it explained that the content of the Valuation Roll was prescribed by article 2 of the Valuation Roll and Valuation Notice (Scotland) Order 1989/2385 (as amended). The Council provided the Commissioner with an extract from that Order, which listed the information (in article 2) to be included in the Valuation Roll.
21. The Council submitted that TVJB had a legal responsibility to maintain the Valuation Roll, and confirmed that it held no other information than the Valuation Roll provided to it by TVJB.
22. Having considered the Council's submissions in this regard, the Commissioner is satisfied that the Council holds the information requested by Company A in the second part of its request.

Section 25 - Information otherwise accessible

23. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. Section 25(2)(a) provides that information may be reasonably obtainable even if payment is required for

access to it. The exemption in section 25 is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA.

24. The Council confirmed that it wished to maintain reliance on section 25(1) of FOISA for all of the information sought in the second part of Company A's request.
25. In its application to the Commissioner, Company A contended that the information requested could not be downloaded from the SAA website, nor was it possible to identify those properties in the Angus area alone. As such, Company A argued that it was impossible to reasonably obtain this information elsewhere.
26. The Council was asked to explain how the information requested could be accessed by Company A, and why it considered the information to be reasonably obtainable. It was also asked, where the information was available via a publication scheme, to provide the link to the scheme, the relevant part of the scheme where the information could be located and any charges applicable in obtaining the information.
27. In its submissions, the Council stated that this request was the latest in a series of substantially similar annual requests received from Company A since 2015. It explained that, in each case, it had informed Company A that the Valuation Roll (business rate properties) was information collated by another public authority, not the Council, and was available in its entirety via the TVJB publication scheme, via the link already provided to Company A, upon payment of a fee.
28. The Council provided the Commissioner with the relevant link, together with an extract of the relevant section of TVJB's publication scheme pertaining to Fixed Charge Publications and Valuation Rolls. The Council submitted it had informed Company A, in this and previous responses, that as an alternative to the full Roll, individual property valuation information was available through the SAA portal. The Council contended, contrary to Company A's view, that the SAA portal allowed for the preselection of Angus-specific information.
29. The Council submitted that the Valuation Roll information available through the SAA portal included categories of reference number, description, property address, proprietor, tenant, occupier, rateable value, effective date, appeal and revaluation appeal.
30. During the investigation, and noting the Council's contention (above) that the SAA portal allowed for the preselection of Angus-specific information, the investigating officer carried out various searches of the SAA portal in an attempt to access the information Company A had requested. These searches identified that by preselecting "Angus", this led to the wider Tayside (not the Angus) section of the portal. Further, the "Advance Search" option did not allow the search to be broken down to Council area, but limited results to 1,000 matches, and any further searches appeared to require some level of local knowledge (e.g. street, town, postcode). Given these findings, the Council was asked to provide the Commissioner with a step-by-step overview of how the information requested, relating to business properties in the Angus area, could be accessed via the SAA portal.
31. In response, the Council stated that its submissions in this regard relied on the availability of the information via TVJB's publication scheme, not the availability of the information online via the SAA portal. It maintained that, in its response to Company A, it indicated that the online version via the portal was an alternative to the full Roll; it essentially provided a search facility of the Roll information, and covered information for individual properties. The Council acknowledged it was not aware that search results were limited on the SAA portal, and

suggested that the SAA might intentionally have set up its website with this restriction, given full Valuation Rolls are available (on payment of a fee) under various publication schemes.

32. During the investigation, the investigating officer confirmed with both the Principal Valuer at TVJB, and the SAA Portal Data Custodian, that an “Angus-only” set of Valuation Roll information could be obtained for a fee of £50 upon request to the SAA Portal Data Custodian, as set out in TVJB’s publication scheme. It was further ascertained that this information could be provided in a format that could be downloaded, manipulated and printed.

The Commissioner’s view

33. The Commissioner has considered all of the relevant submissions in this case, together with the nature of the information requested, and the details published in TVJB’s publication scheme relating to the availability of Valuation Roll information and associated charges.
34. It has already been established that the information under consideration here (i.e. information relating to business rate properties in the Angus Council area) is held by the Council.
35. TVJB’s publication scheme (referred to in the Council’s responses to Company A’s request for review) states that Valuation Roll information can be obtained upon request from the SAA Portal Data Custodian on payment of the relevant fee. It has been established, during the investigation, that Angus-only information, meeting the requirements of the request, can be obtained in this way.
36. The Commissioner notes that the Council’s original response, in referring Company A to the SAA portal, was unfortunate and potentially misleading. However, he recognises that, in responding to Company A’s requirement for review, the Council modified its response (as it is entitled to do under the review provisions in section 21(4) of FOISA) and informed Company A that the information could be obtained via TVJB’s publication scheme.
37. In all the circumstances, therefore, the Commissioner is satisfied that the information requested could reasonably be obtained by Company A other than requesting it under section 1(1) of FOISA. The fee payable is the standard fee charged for obtaining this type of information, a service which FOISA was not designed to circumvent. Consequently, the Commissioner is satisfied that this information was properly withheld under section 25(1) of FOISA, read with section 25(2)(a).

Section 15 – Duty to provide advice and assistance

38. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Section 15(2) states that a Scottish public authority shall be taken to have complied with this duty where (in relation to the provision of advice and assistance in a particular case) it conforms with the Scottish Ministers’ Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 code¹).
39. It is essential to any requester pursuing their right to information (where the public authority is not simply providing the information, but rather is directing the requester to a place where it may be obtained), that the requester has been provided with clear explanation about how

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

and where to access that information, to be able to pursue that right effectively. To this end, the authority's duty to provide advice and assistance can be vital.

40. At section 9.5 in Part 2, the Section 60 Code states:

Where a public authority refuses a request on the grounds that the information is otherwise accessible, it must send the applicant a refusal notice which acknowledges that it holds the information and explains why the exemption at section 25(1) of FOISA (or exception at regulation 6(1)(b) of the EIRs) applies.

The authority should not assume that the applicant will know where and how the information can otherwise be obtained. If the information is already publicly available (e.g. on the authority's website) the authority should tell the applicant how to access it and provide adequate signposting, for example, providing direct links to online information. In all cases the authority should bear in mind its general duty to provide advice and assistance to applicants.

41. As discussed previously, in applying section 25(1) of FOISA to information which the Council claimed to be publicly available, the Council chose not to disclose the information to Company A. While the Commissioner has upheld the Council's decision to do so, the duty to provide advice and assistance stands alone and must be considered separately.

42. During the investigation, the Council was asked to explain what advice and assistance it had given to Company A to allow it to access the information requested. The Council submitted that it had advised Company A that the information was exempt from disclosure as it was otherwise available from TVJB upon payment of a fee of £50. It further submitted that, while it had informed Company A that valuation information could be searched online, it had not explicitly stated that the full Roll information was available online. The Council submitted that TVJB's publication scheme set out all ways to access the information.

43. In its initial response dated 19 June 2018, the Council informed Company A that much of the information was available "at/from" the SAA portal. It has been established, during the investigation, that while the information for individual properties can be viewed on this website, the data cannot be downloaded or printed in any meaningful list or dataset, and the number of search results returned is limited to 1,000. It is also clear, from the Council's submissions, that it did not check this.

44. While the Commissioner notes the Council's contention that it did not claim to have explicitly stated that full Roll information was available online in this way, he can understand that the Council's initial response may have led any reasonable person to believe the information could be obtained via the SAA portal in the format stipulated in the information request. In the Commissioner's view, the Council's response in this regard was confusing and misleading.

45. The Commissioner notes that, in responding to Company A's request for review, the Council provided a link to the publication scheme via which the information could be obtained. In his view, however, the Council appears to have made no effort to clarify that the full Valuation Roll could not be obtained, in the format requested, via the SAA portal, as appears to have been suggested by the Council in its original response. Neither did it explain to Company A the nature of the service available the SAA portal, essentially an online search facility for individual property valuation information. Nor did it confirm that provision of the information, via TVJB's publication scheme, would incur a fee.

46. The Commissioner cannot accept, therefore, that the Council provided Company A with reasonable advice and assistance to enable it to locate the information it held, and which it considered exempt under section 25(1) of FOISA. Such advice as it did provide was insufficient to enable Company A to understand what information was available and where. In consequence, the Council failed to comply with section 15(1) of FOISA in this regard.

Handling issues

47. The following observations are not part of the Commissioner's findings on compliance with FOISA, but cover practice issues which he has identified during this investigation and about which he has concerns. He hopes these comments are helpful to all Scottish public authorities and requesters.
48. In the Council's response of 13 July 2018, the Council claimed it had already informed Company A, in an earlier response, that the information was not the Council's (and so it could not provide it). The relevant preceding correspondence (i.e. the Council's responses dated 19 and 29 June 2018) contains no such statement and the Commissioner considers the Council's response in this regard to be somewhat confusing and misleading. If it had made such a statement elsewhere, it should at least have identified precisely where that statement could be found.
49. In any case, the Commissioner would ask the Council to note that the relevant point here is whether the Council *holds* the information requested, and not who *owns* it. There will undoubtedly be numerous instances where Scottish public authorities hold information, for their own purposes, which they themselves have not created. However, where that information falls within the scope of an FOI request, it must be considered as being held by the public authority for the purposes of FOISA, and so the matter of "ownership" becomes a secondary issue.
50. In its submissions to the Commissioner, the Council stated it had informed Company A, in this and previous responses, that – as an alternative to the full Valuation Roll – individual property valuation information could be searched online through the SAA portal, which essentially provided a search facility of the Roll information. The Council also claimed (to the Commissioner) it had informed Company A that it would cost £50 to obtain the Roll, in its entirety, via the TVJB publication scheme.
51. While the Council may have done so in previous responses, it is clear from the key correspondence relating to the request under consideration here (i.e. the Council's responses to Company A dated 19 and 29 June 2018 and 13 July 2018), that the Council did not provide such detailed advice and explanation when responding to Company A's request and requirement for review in this case. Again, if these points had been addressed by the Council in other correspondence, it should have indicated where and not left that for the applicant to surmise.
52. It is unclear why the Council has made these claims in its submissions to the Commissioner, where the key documents clearly indicate otherwise. It may be the case that the Council believes that, having provided relevant information in response to previous similar requests, this was sufficient to allow a requester to understand its position in relation to the request in question. It will be apparent that the Commissioner does not agree.
53. The Commissioner considers this to be an unwise position to take, given there is always the possibility that circumstances may have changed over the course of time, i.e. since the previous request was received and dealt with. As such, the Commissioner would expect

public authorities, when responding to information requests similar to those received previously, to include all relevant information in each response (or at least direct applicants clearly where other correspondence is considered relevant).

54. The Commissioner would also ask the Council, and indeed all other public authorities, to ensure all submissions are accurate and evidenced, in order to avoid any delays or confusion in any future investigations.

Decision

The Commissioner finds that Angus Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Company A.

The Commissioner finds that the Council complied with Part 1 of FOISA by correctly withholding information under section 25(1) of FOISA.

However, the Commissioner also finds that the Council failed to provide Company A with adequate advice and assistance when responding to its request and requirement for review and in this respect, failed to comply with section 15(1) of FOISA.

Given the explanations set out in this Decision Notice, the Commissioner does not require the Council to take any action in respect of this failure, in response to Company A's application.

Appeal

Should either Company A or Angus 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

19 December 2018

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.

...

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

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

- (2) For the purposes of subsection (1), information-

- (a) may be reasonably obtainable even if payment is required for access to it;

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