



Decision Notice 214/2024

CCTV footage of an incident

Authority: Renfrewshire Council

Case Ref: 202400847

Summary

The Applicant asked the Authority for CCTV footage relating to a vehicle parked at a specified address over an eight-day period. 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), (4), (5) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 22 December 2023, the Applicant made a request for information to the Authority. They asked for CCTV footage over an eight-day period of a car parked at a specified address, in relation to damage resulting from an alleged “hit and run incident”. The full wording of the request can be seen (verbatim) at Appendix 1.
2. The Authority responded to the Applicant’s request and to their subsequent requirement for review. In its initial response, the Authority stated that it had reviewed relevant cameras for the CCTV footage requested but it had “no coverage of the incident”. In its review outcome, the Authority confirmed that it had deleted the CCTV footage requested, in line with its standard CCTV footage retention timescales.

3. On 14 February 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Commissioner decided that the Applicant's request dated 22 December 2023 was not valid as it did not contain the Applicant's name, meaning he could not investigate the application.
4. On 5 April 2024, the Applicant made a request for information to the Authority, repeating their request dated 22 December 2023 but including their full name in the request. The Applicant again asked for CCTV footage over an eight-day period of a car parked at a specified address in relation to damage resulting from an alleged "hit and run incident". The full wording of the request can be seen at Appendix 1.
5. The Authority responded to the Applicant's request on 26 April 2024. The Authority confirmed that it did not hold coverage of the incident described.
6. On 8 May 2024, the Applicant wrote to the Authority, requesting a review of its decision. The Applicant stated that they believed the Authority held the information requested as they had, in previous correspondence, explicitly instructed the Authority not to delete it.
7. The Authority notified the Applicant of the outcome of its review on 24 May 2024, upholding its original decision.
8. On 20 June 2024 the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied because:
 - they believed that the Authority held the information requested
 - they also believed the Authority had misinterpreted their request by stating that it held no coverage of the incident, rather than providing a copy of the CCTV footage for the specified location and time period.

Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
10. On 9 July 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
11. 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 related to the Authority's interpretation of the request, how it established what information it held falling within the scope of that request and on the retention, deletion (and potential recovery) of the CCTV footage requested.

Commissioner's analysis and findings

12. 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

13. 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.
14. 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.
15. 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.
16. 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 Applicant's submissions

17. The Applicant considered that the Authority had failed to provide them with a copy of footage of the location described over the period specified in their request.
18. The Applicant also submitted that, contrary to its response, the Authority did hold footage of the incident described in their request.

The Authority's submissions

19. The Authority accepted that the Applicant's request sought a copy of CCTV footage of the specified location and time period. The Authority referred to the review outcome it had issued in response to the Applicant's invalid request, which acknowledged that the Applicant had requested a copy of the CCTV footage rather than for confirmation of whether the incident referred to in their request was contained within the footage.
20. The Authority noted that its review outcome for the Applicant's valid request had incorporated its review outcome for the Applicant's invalid request, which was intended to show that the review outcome for the valid request was upholding the review outcome for the invalid request. The Authority apologised if this was unclear.
21. The Authority submitted that the CCTV footage requested was:
 - held at the time of the Applicant's invalid request
 - reviewed by police officers in December 2023, with no evidence of the incident described found
 - subsequently automatically overwritten at some point between 9 and 16 January 2024, in line with its standard 28-day CCTV retention schedule.

22. In the circumstances, the Authority confirmed that it therefore wished to rely on section 17(1) of FOISA as it did not hold the CCTV footage requested at the time of the Applicant's valid request.
23. The Authority confirmed that the process of overwriting CCTV footage was automated. The Authority explained that unless footage was manually downloaded within the 28-day retention period, retrieval of this information (once automatically overwritten) was not possible as footage was not retained or copied outwith that CCTV system.
24. The Authority confirmed that no such copy of the information requested was made or was held in this case, and that relevant officers (which it identified) had confirmed in January 2024 that the information falling within the scope of the Applicant's request (i.e. CCTV footage of the specified location and time period) had not been retained.
25. The Authority explained that a copy of the footage had not been downloaded and retained prior to the 28-day automated erasure date because:
 - the Authority had initially failed to identify that the Applicant's invalid request had sought a copy of the specified CCTV footage
 - police officers had reviewed the footage and found no coverage of the incident which was the focus of the Applicant's request (and the Applicant was informed of this).

The Commissioner's view

26. Having considered all of the relevant submissions, the Commissioner is satisfied that, at the time of the request, the Authority did not hold the information requested by the Applicant because it was overwritten (i.e. destroyed) in line with its standard, automated CCTV retention and erasure processes.
27. The Commissioner recognises that the Authority did hold the information requested at an earlier date (i.e. when it responded to the Applicant's invalid request). As rehearsed earlier, the information to be given in response to a request under FOISA is that held by the authority at the time the request is received, as defined in section 1(4).
28. In this case, the Authority did not hold the information requested at the time the Applicant's valid request was received (the Commissioner accepts that the earlier request was not valid, for the reasons stated by the Authority).
29. As the Applicant's valid request is the request under consideration in this decision, the Commissioner finds that the Authority does not (and did not, on receipt of the request) hold the information requested.
30. The Commissioner therefore concludes that the Authority was entitled to rely on section 17(1) of FOISA in response to the Applicant's valid request.
31. The Commissioner understands why the Applicant was dissatisfied with the Authority's interpretation of his request. It is not clear from the Authority's initial response or review outcome to the Applicant's valid request that it recognised that the Applicant had requested a copy of the CCTV footage of the specified location and time period, rather than confirmation of whether the specific incident referred to in their request was contained within the footage.
32. The Commissioner would urge the Authority to respond to information requests carefully, using precise and accurate language, in order to maintain the confidence of requesters (and the Commissioner) in its responses.

33. However, having reviewed the Authority's submissions and its review outcome in response to the Applicant's invalid request, the Commissioner accepts that the Authority did interpret the Applicant's valid request as seeking a copy of the CCTV footage of the specified location and time period.
34. In any event, the Authority's interpretation of the valid request became moot as a result of it deleting the CCTV footage requested – meaning that no copy could be provided to the Applicant. The Commissioner will address this further below.

Handling matters

35. As rehearsed earlier, the Commissioner's decision relates to the Applicant's valid request. However, in the circumstances, he must comment on the Authority's handling of the Applicant's invalid request.
36. While he found that the Applicant's information request dated 22 December 2023 was invalid, the Commissioner notes that the Authority had treated it as valid. Despite this, the Authority failed to prevent the automated overwriting (i.e. destruction) of information within the scope of that request. This information would have been relevant to the Applicant's valid request, which is the subject of this decision.
37. Section 1(4) of FOISA concerns information which would have been deleted or amended, regardless of the receipt of the request, between the time when the request was received and the time when the authority provides the information. Section 1(4) provides that the amendment or deletion can be made in these circumstances.
38. Section 1(5) of FOISA requires that requested information shall not be destroyed before it can be given to the applicant, unless the circumstances are such that it is not reasonably practicable to prevent such destruction.
39. As rehearsed earlier, the Authority held the CCTV footage requested at the time of the Applicant's invalid request. However, the Authority had certainly deleted the CCTV footage requested by 16 January 2024 at the latest, one day prior to receiving the Applicant's requirement for review (and well within the statutory timescale that a requirement for review must be submitted under FOISA).
40. In the circumstances, the Commissioner considers that the Authority should have taken steps to prevent the destruction of the CCTV footage, as a matter of good practice, given that the Applicant was plainly seeking it and it might well have been required for further examination under FOISA.
41. The Commissioner would urge the Authority to take greater care in future before allowing the destruction of information in such circumstances.

Decision

The Commissioner finds that, in respect of the matters specified in the application, 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.

Euan McCulloch
Head of Enforcement

1 October 2024

Appendix 1: Information requests

Request made on 22 December 2023

“My car was involved on a hit and run while parked in the carpark at [specified address]. I would like to request footage between 12/12/23 till 19/12/23

There is a camera pointing on the car park but not sure it covers my vehicle. I would like to request any other cameras footage to find out who has damaged it...”

Request made on 5 April 2024

“...I requested this information on the 22nd of December 2023 but I have been told I have to re-request this due to me not putting my name in the email by the Scottish commissioner. Please can I re-request this with a fresh response please

This was the initial email I sent

My car was involved on a hit and run while parked in the carpark at [specified address]. I would like to request footage between 12/12/23 till 19/12/23

There is a camera pointing on the car park but not sure it covers my vehicle. I would like to request any other cameras footage to find out who has damaged it...”