

Decision Notice 151/2021

Time for Me Funding

Applicant: The Applicant

Public authority: Fife Council

Case Ref: 202100060



Scottish Information
Commissioner

Summary

The Council was asked for the total amount of “Time for Me” funding allocated to it. The Council notified the Applicant that it did not hold this information, and explained why.

The Commissioner was satisfied that the information was not held by the Council but considered that it should have given the Applicant more by way of advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1) (Notice that information is not held)

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 9 June 2020, the Applicant made a request for information to Fife Council (the Council). The information requested was:
 - a) how much funding the Council had been awarded for Time for Me (from the Scottish Government) to assist young carers;
 - b) how this would be distributed and by whom;
 - c) how a young person got access to this funding.The Applicant also stipulated that she sought information for the current financial year.
2. The Council asked the Applicant to confirm her name on 10 June 2020. The Applicant did this on the same day.
3. The Council responded on 23 June 2020, providing some further information about what it understood to be the fund in question. It stated that “no funding has yet been confirmed”, but provided some information on how funding would work if any were allocated.
4. On 25 July 2020, the Applicant wrote to the Council, requesting a review of its decision. As the beginning of the financial year has long passed, even with disruption due to Covid-19, she found it difficult to understand why the Council could not confirm how much funding had been allocated for the current financial year.
5. The Council notified the Applicant of the outcome of its review on 25 August 2020, with an apology for being late. The Council stated that funding had not been allocated to the Time for Me fund for the current financial year, with a further explanation.
6. On 1 February 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the Council’s review because she did not believe she had been given a clear answer on the availability of funding for the current financial year.

Investigation

7. 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.
8. On 1 February 2021, the Council was notified in writing that the Applicant had made a valid application. 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 Council was invited to comment on this application and to answer specific questions. These related to whether any relevant information was held for the purposes of FOISA.

Commissioner's analysis and findings

10. 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 the Council. He is satisfied that no matter of relevance has been overlooked.

Whether Information was held by the Council

11. Section 1(4) 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). 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 the authority 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 considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
14. The Applicant expressed dissatisfaction with the Council's responses, believing that an answer had still to be provided on whether any relevant information was held. The Applicant believed that given when, in the financial year, the request was submitted, there would be clear information on the availability of funding.
15. The Council acknowledged that it had not referred to the correct fund in its initial response to the Applicant. Regarding Time for Me (the correct funding stream), the Council provided some explanation of how this worked and confirmed that it did not receive specific external funding to support its Time for Me funding. Consequently, no information was held.

16. Having considered all relevant submissions provided during this investigation by both the Applicant and the Council, along with the terms of the Applicant's request, the Commissioner is satisfied that the Council was entitled to conclude that it held no information falling within the scope of that request, and so was correct to give the Applicant notice to that effect, in terms of section 17(1) of FOISA.

Section 15 – Advice and Assistance

17. In her application, the Applicant submitted that the Council had not given clear reasons for not being able to confirm the availability of funding.
18. Section 15 provides that 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.
19. In this case, clearly, a degree of confusion was caused in the initial response by reference to the wrong fund. Also, the request actually asked how much funding the Council had been awarded for Time for Me, by the Scottish Government. It appears that is not the way the fund works, but it would have helped if the absence of specific Scottish Government funding had been made clear in the Council's review outcome.
20. Effectively, the review outcome stated that the Council had not yet allocated any funding for Time for Me at that point (i.e. a decision on that year's funding had not been made). The Commissioner appreciates that his may have been a frustrating response for the Applicant, but it appears to have been accurate. Funding appears to have been allocated later in the financial year but, in the absence of any decision on allocation at the time of the review, the Commissioner understands that it is unlikely to have been appropriate for the Council to say any more on the availability of that year's funding at that point.
21. In the Commissioner's view, however, it would have been helpful for the Council to have highlighted in the review outcome that, if and when funding was made available, any application would have to be made through Fife Voluntary Action (relevant information and guidance being available on their website).
22. In the circumstances, the Commissioner concludes that the Council did not provide adequate advice and assistance to the Applicant at the time of her request or requirement for review, and therefore failed to comply fully with section 15(1) of FOISA. In all the circumstances, including the information set out above, discussions with the Applicant during the investigation and the passage of time, no further action is necessary from the Council in respect of this breach.

Decision

The Commissioner finds that Fife 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 the Applicant.

The Commissioner finds that the Council was correct to notify the Applicant that it did not hold the requested information but, in the circumstances, it should have given better advice and assistance to comply with section 15(1) of FOISA.

For the reasons set out in this notice, the Commissioner does not require the Council to take any action in relation to this failure, in response to the Applicant's application.

Appeal

Should either the Applicant 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

1 October 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.

...

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.

...

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.

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