



Decision Notice 110/2022

GIRFEC guidance and processes

Applicant: The Applicant

Authority: East Dunbartonshire Council

Case Ref: 202101326

Summary

The Authority was asked for information in relation to GIRFEC, and guidance/processes following a wellbeing assessment that recommended a specific need for a young person. The Authority provided some information, but told the Applicant it had no further information. The Commissioner investigated and found that the Authority was correct to state that it held no further information, but that it had failed to provide adequate advice and assistance to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 15(1) (Duty to provide advice and assistance); 47(1) and (2) (Application for decision by Commissioner)

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 1 August 2021, the Applicant made a request for information to the Authority. He asked, in relation to Education, for information held by the Authority that related to:
 - GIRFEC (Getting it Right for Every Child) guidance and processes
 - Guidance/processes following a wellbeing assessment which determines that a specific intervention is needed for the young person, and
 - Whether there was a requirement to inform the parents of what adults would be involved and what role they would play

2. On 1 September 2021 the Applicant contacted the Authority as he had not received a response to his request.
3. The Authority responded on 7 September 2021. It provided two documents on its policy on GIRFEC. It did not provide any apology or explanation for its late response to the Applicant's request, and informed him that he could seek a review if he was dissatisfied with the response he had now received.
4. On 7 September 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the Authority's response because he expected much more information to be available. He clarified that his primary interest was in relation to employees of the Authority engaging in a specific intervention (which he described), and detailed the type of information he was seeking.
5. The Authority notified the Applicant of the outcome of its review on 5 October 2021. The Authority acknowledged its late initial response. It also stated that the Applicant's initial request was more expansive than had been initially interpreted in the Authority's response, and that it would have been advantageous for the Authority to have engaged with the Applicant before responding to establish the exact scope of the request. The Authority stated that it had made further enquiries and additional staff guidance that may have fallen within the scope of the initial request. A link to a copy of this information was provided to the Applicant. The Authority highlighted that the Applicant had now limited the scope of his requirement for review. It informed the Applicant that the terms he had highlighted may be an outcome from a "Team Around the Child Meeting" and that there was an expectation that parents would be informed of who this was and, equally, the role they would play.
6. On 5 October 2021 the Applicant informed the Authority that he could not access the information it had provided in its review response. He asked further questions, and offered a telephone conversation to clarify what he was seeking.
7. On 20 October 2021, the Applicant asked the Authority for a response to his previous email.
8. On 22 October 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he believed there must be further documentation held by the Authority underpinning the intervention he was concerned with, such as a defined role, guidance, training material, and paperwork such as progress reports. He also highlighted that the Authority had failed to rectify the issue he had in accessing the information it had provided to him at review (5 October 2021).

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 7 December 2021, the Authority was notified in writing that the Applicant had made a valid application and the case was 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 how and why it had

determined that it held no further information falling within the scope of the request (that the Applicant had narrowed at review).

Commissioner's analysis and findings

12. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Whether information was 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). This is not necessarily to be equated with the information an applicant believes an 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 this 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 considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reasons 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 as to what information the authority should hold, ultimately the Commissioner's role is to determine what information is actually held by the public authority (or was, at the time the request was received).

Submission from the Authority

16. The Authority's submissions explained the searches it had carried out to determine what information it held falling within the scope of the Applicant's request. The Authority concluded that any information would be held by its Secondary Wellbeing Support Service.
17. The Authority's view was that the phrase used by the Applicant in his revised request (of 7 September 2021) was used as natural language, rather than to be describing a formal process. The Authority said the phrase was individual to a specific young person. The Authority searched for the phrase in relevant policies and procedures, as the Applicant had expressed his interest in how staff are prepared for this type of work, but that it was only located in the file of an individual.
18. In answer to the Commissioner's questions, the Authority explained the background to how the process, that would lead to these circumstances arising, worked.

Submissions from the Applicant

19. The Applicant provided the Commissioner with information relating to his request and the circumstances around it, and detailed submissions to explain why he considered more information should be held by the Authority. The Commissioner will not set these out in this decision notice as they include the personal data of an identifiable third party.

20. The Applicant accepted that information within the records of individuals, that related to his request, should not be in the public domain.

The Commissioner's view

21. As stated above, 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 will consider the scope, quality, thoroughness and results of the searches carried out by the authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
22. The Applicant clearly believes that the Authority should hold information relating to training, guidance and procedures. However, as stated in previous decisions, the Commissioner's remit extends only to the considering whether a Scottish public authority actually holds the relevant information requested and whether it complied with Part 1 of FOISA in responding to a request. The Commissioner cannot comment on whether a public authority should have recorded any, or more, information.
23. The Commissioner has noted the explanations provided to him by the Authority about the nature of the information it did hold. The Commissioner has also noted the actions of the Authority in establishing what relevant information it held i.e. where and how it searched for any relevant information.
24. The Commissioner accepts that, on the balance of probabilities, given the very specific nature of the request after the Applicant had narrowed it in his review request, the Authority did not hold any further recorded information falling within the scope of the Applicant's request.

Duty to provide advice and assistance – section 15

25. Section 15(1) of FOISA requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
26. The Applicant offered, on more than one occasion in his correspondence with the Authority, to discuss what he was looking for.
27. The Authority, in its review of 5 October 2021, acknowledged that, due to the wide nature of the Applicant's initial request, contact should have been made to clarify the request.
28. After receiving the review response with a link to further information, the Applicant emailed the Authority on two further occasions (5 and 20 October 2021) to say that he could not access the information.
29. The Authority did not respond to these, nor provide any assistance or advice.
30. During the investigation, the Authority provided the Applicant with a copy of the information he could not previously access.
31. It is the Commissioner's view that it would have been helpful, given the nature of the request, for the Authority to have contacted the Applicant to assist him in framing a request in such a way as to be able access the information that it did hold, and that interested the Applicant. It should also have responded at an earlier stage to assist the Applicant to access the information it had provided.

32. In the circumstances, the Commissioner concludes that the Authority did not provide adequate advice and assistance to the Applicant at the time of his request, his requirement for review, or when he indicated to it that he could not access the information provided to him at review, and therefore that the Authority failed to comply fully with section 15(1) of FOISA.

Decision

The Commissioner finds that the Authority 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 Authority was correct to notify the Applicant that it did not hold further information.

However, he also finds that the Authority did not provide reasonable advice and assistance to the Applicant. In failing to do so, it failed to comply with section 15(1) of FOISA.

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.

Margaret Keyse
Head of Enforcement

26 October 2022

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.

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.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);and

(iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

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