

Decision Notice 003/2020

Self-Directed Support Assessments

Applicant: The Applicant

Public authority: Fife Council

Case Ref: 201900921



Scottish Information
Commissioner

Summary

The Council was asked how many Self-Directed Support Assessments were conducted by the Council in 2017, 2018 and (to date) 2019. After a delay, it disclosed some information, but withheld some low numbers which it considered to be exempt personal data.

An application was made to the Commissioner, questioning the time taken to respond and the Council's use of an exemption. It also contained a query about the amount of information identified by the Council.

During an investigation, the Council dropped the exemption and disclosed the low numbers. The Commissioner agreed that the Council had failed to respond in time, but was satisfied that the Council's searches were capable of identifying all of the information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance)

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 March 2019, the Applicant made a request for information to Fife Council (the Council). The information requested was in two parts:
 - (1) The number of Self Direct Support [SDS] Assessments that were carried out by Fife Social Work at the request of parents/carers in 2017, 2018 and so far in 2019. This is to cover the whole of Fife and relates to children with disabilities specifically under the age of 16.
 - (2) A breakdown of the number of assessments in which support was granted and the number of assessments complete but no support granted.
2. On 3 April 2019, the Council emailed the Applicant, confirming it was processing this request and that it hoped to issue a response shortly.
3. On 9 April 2019, the Applicant wrote to the Council, reminding it of the legal timescales and requiring a review as she had not received a response to her request.
4. The Council confirmed to the Applicant on 11 April 2019 that a review would be conducted and then, on 2 May 2019, it notified the Applicant of the outcome of its review, with an apology for its failure to respond. In its review decision, the Council disclosed some information to the Applicant. The Council also withheld some data, which it contended was exempt in terms of section 38(1)(b) of FOISA (Personal information).
5. On 5 June 2019, the Applicant wrote to the Commissioner's office. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the Council's review because she did not accept the Council was correct to use the exemption, nor did she accept that this represented all the information held

for Fife. She was also unhappy at the delay in responding and how hard it had been to get information from the Council.

Investigation

6. 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.
7. On 22 August 2019, the Council was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
8. 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 the data sources which existed and what searches had been undertaken. It was also asked about the handling of the request and its application of section 38(1)(b).
9. On 1 October 2019, the Council dropped the exemption under section 38(1)(b) of FOISA and disclosed the withheld data to the Applicant (who queried whether more information existed, and should now be disclosed, for the whole of Fife).

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.

Information Held

11. 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.
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, although an applicant's reasons may be relevant to the investigation of what is actually held.
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 of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
14. During this investigation, the Council changed its position on an exemption it had relied on at review stage to withhold information. This information was disclosed by the Council to the Applicant (on 1 October 2019). The data provided comprised exact figures, and breakdowns, for "Assessments completed", "SDS granted" and "SDS not granted", by year. The Council believed that all of the data capable of addressing the Applicant's request had been disclosed and that no further information was held.

15. In not providing this information at the time of the request or the requirement for review, the Commissioner finds that the Council failed to comply with section 1(1) of FOISA.

Did the Council identify all the information it held?

16. In correspondence with the Commissioner (10 October 2019), the Applicant expressed dissatisfaction with this outcome. In her view, the information disclosed to her was incomplete, given how low some of the figures were. She also queried whether the information covered the whole of Fife, as she expected far higher numbers for the whole local authority area.

Searches

17. The Council confirmed that all of the information described by the Applicant is held by the Social Work Service Manager in a single spreadsheet. This spreadsheet is considered to be the only source of recorded information capable of addressing the terms of this request. The Council clarified that none of its other systems are used to record the assessment information, so there would not be records elsewhere. The Council also confirmed that all of the information in the spreadsheet and which existed at the time of searching had now been provided to the Applicant.
18. The Council was asked to explain (on 18 October 2019) how it assured itself that the searches conducted were capable of locating all information held. The Council stated that the individual who provided the information is responsible for the assessments being carried out within the Council. The review uncovered information not previously provided by the relevant service (which failed to respond to the initial request). When the review request was received, an email was sent to the Service Manager responsible for carrying out self-direct support assessments. The Manager then searched and sent the information located directly to the officer carrying out the review.
19. The Service Manager who provided the information also explained that Self-Directed Support assessments are presented at the Children and Families SDS Group and that these decisions are not agreed outside of this decision making framework. Therefore, the "SWIFT" system, which is the Council's current Social Work Management system, does not hold relevant information. It was not searched for this reason.
20. The Council explained how the spreadsheet is maintained and the currency of the data in the spreadsheet. The spreadsheet is updated by the Business Support for this service area. As the spreadsheet is accessible to all relevant users, the Council keeps the data up to date at all times.
21. The Commissioner accepts, on the balance of probabilities that the Council complied with Part 1 of FOISA in responding to the request, given the record keeping practices outlined above. As there is only one place that the Council is likely to hold the requested information – a spreadsheet maintained for this purpose – he is satisfied that there was no need to search the SWIFT, or other, systems. He is also satisfied that a suitably qualified member of staff checked the spreadsheet for information held at the time of the request and requirement for review. He is satisfied that the processes followed would have identified any information held and falling within the scope of the request.

Handling of request/timescales

22. The Applicant complained of the lack of response by the Council within statutory timescales, commenting that it had been difficult it had for her to obtain this information.

23. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to qualifications which are not relevant in this case.
24. It is a matter of fact that the Council did not provide a substantive response to the Applicant's request for information (9 March 2019). The Council acknowledged this failure during the investigation, for which it has apologised to the Applicant.
25. Clearly, the Council had to be reminded about its lack of response within the statutory timescale. The request has undoubtedly taken a prolonged period of time to fulfil, particularly given that all the data was located electronically in a single, searchable spreadsheet. The task does not, on the face of these submissions, appear to have been particularly onerous or time-consuming, so it should have been fairly routine to produce data of this nature from this particular source.
26. The Commissioner has recorded this procedural failure in his interventions database, which he uses to inform and monitor FOISA practice by authorities.

Decision

The Commissioner finds that Fife 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.

By disclosing some information at review, the Commissioner finds that the Council complied with Part 1. He is also satisfied that the searches carried out were capable of identifying all relevant records, if held.

However, the Commissioner also finds that the Council failed to respond to the Applicant's request for information within the timescale laid down by section 10(1) of FOISA and, in the absence of reasons from the Council as to why information was originally withheld under section 38(1)(b), failed to comply with section 1(1) of FOISA. Given that the Council disclosed that information during this investigation, no further action is required in respect of this failure.

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

16 January 2020

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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.

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