

Decision Notice

Decision 029/2018: Ms Jacqueline Carter Brown and West Lothian Council

Counselling service for children and young people

Reference No: 201702141

Decision Date: 6 March 2018



Scottish Information
Commissioner

Summary

The Council was asked for statistics about children and young people who had been referred to the Council's Counselling Service. The Council disclosed some information, but told the requester that it was not obliged to provide statistics for other years as doing so would cost more than £600.

The Council also told the requester that it did not have a record of how many children and young people who had self-referred in 2010-12.

The Commissioner found that the Council was correct to state that it did not have a record of how many children and young people had self-referred in 2010-12. However, it failed to give notice that it did not hold the other information from 2010-12.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 17 (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 27 July 2017, Ms Carter Brown made a request for information to West Lothian Council (the Council). The information requested was:
 - Number of children and young people who were referred to the Council's Counselling Service in the years 2010-2011, 2011-2012, 2015-2016 (request 1).
 - Number of children and young people who received a counselling service in the years 2010-2011, 2011-2012, 2015-2016 (request 2).
 - Length of time young people were on a waiting list to receive a counselling service in 2010-2011, 2011-2012, 2015-2016 (request 3).
 - Number of children and young people who self-referred to the counselling service in 2010-2011, 2011-2012, 2015-2016 (request 4).
 - Number of children and young people currently on the waiting list for counselling in year 2017 (request 5).
2. The Council responded on 9 August 2017. The Council supplied information for 2015-16 and 2017 for requests 1 - 4, but indicated that the information for 2010-11 and 2011-12 was not available.
3. On 15 August 2017, Ms Carter Brown wrote to the Council requesting a review of its decision on the basis that she believed information from the years 2010-12 was held: she believed the Council held information going as far back as 2006. She wrote to the Council again on 16 September 2017, repeating her request for a review. Ms Carter Brown did not express dissatisfaction with the Council's response to request 5, nor (in relation to requests 1 – 4) with the statistics supplied for 2015-16.

4. The Council notified Ms Carter Brown of the outcome of its review on 10 November 2017. For the data for 2010-11 and 2011-12 sought in requests 1, 2 and 3, the Council told Ms Carter Brown that the cost of complying with each request would exceed the £600 cost limit in section 12(1) of FOISA. The Council explained that it had no centrally-held records of referrals and would therefore have to examine each pupil record (of which there were 25,771 in that year). This would take 2,147 hours. For request 4, the Council gave notice in terms of section 17 of FOISA that it held no record of children and young people who had self-referred in the years 2010-12.
5. On 26 November 2017, Ms Carter Brown applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Carter Brown was dissatisfied with the outcome of the Council's review. In summary, she believed that the information would be held centrally by a different Council department. She did not accept that the Council did not hold information about the number of children and young people who had self-referred in 2010-12 (request 4).

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Ms Carter Brown 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. 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 answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

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

Section 12(1) - Excessive cost of compliance

9. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. This amount is currently set at £600 (regulation 5). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for information exceeds this sum. (In respect of section 12 of FOISA, the public interest is not a matter which the Commissioner can take into account.)
10. On 9 January 2018, the Council told the Commissioner that it no longer wished to rely on section 12 of FOISA in relation to requests 1, 2 and 3; instead, it should have given notice that it did not hold the information. It stated that it did not hold any accurate record which would answer questions 1, 2 or 3 for the years 2010-11 and 2011-12.

Section 17(1) - Notice that information is not held

11. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable

here. 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 when responding to the request.

12. The Commissioner has therefore investigated whether the Council holds any information relating to the years 2010-12.
13. Ms Carter Brown did not accept that the Council did not hold information from the years 2010-12. She explained to the Commissioner why this was the case.
14. The Commissioner asked the Council to explain how it had satisfied itself that it held no relevant information.
15. The Council explained that, for the years in question, the information was not recorded on its electronic database (SWIFT). The Council supplied the Commissioner with information about its search of the SWIFT database and about its referral system for the counselling service during the years in question.
16. The Council also said that its Education Services do not have any centrally held record of the number of referrals. Any information which Education Services held about referrals would be in individual Pupil Progress Records, which are paper records and would have to be reviewed manually. It stated that these records:

“...would only contain information about school pupils which the school was aware of. For example, schools may not be aware of self-referrals, referrals by another service or referrals by the NHS.”
17. Ms Carter Brown questioned whether records might be held by the Council’s Social Policy Service rather than by Education Services. The Council commented that paper records for individuals held by Social Policy would be similarly limited in respect of the information held. Paper records relating to children or young people known to Social Policy would only contain information relating to referrals which originated through the Social Policy Service.
18. In relation to request 4, Ms Carter Brown referred the Commissioner to a Counselling Service Annual Report submitted in 2010 to the Council’s Head of Social Policy. The Council supplied the Commissioner with a copy of the report referred to by Ms Carter Brown, and explained why (contrary to Ms Carter Brown’s belief) it did not contain the information she had requested.
19. The Commissioner is satisfied that the report does not give the number of self-referrals to the counselling service (request 4). It includes a pie chart representation of the number of self-referrals, but without giving the actual number. It is not possible to calculate the number of self-referrals from the information in the report. The Commissioner therefore accepts that the report does not include the information which would answer request 4.
20. The 2010 report does not contain any information that would fall within the terms of requests 1, 2 or 3. It provides a figure for the number of young people who attended a counselling service, which could be regarded as potentially falling within request 2. However, this figure does not correspond exactly to the periods covered by Ms Carter Brown’s request, either by financial years or by calendar years. (The Council has indicated that it does not accept the report as accurate or validated as it was not based on records from the SWIFT system.)
21. The Council was asked whether the number of referrals might appear in any internal reports or other documents, and whether the requested information would be needed for any business purpose, e.g. for payment for the service, reports to a committee or head of service, minutes of meetings.

22. The Council confirmed that the number of referrals was not required for any business purpose. Due to the small scale of the Children's Counselling Service, there were no reports in respect of counselling services to any Council Governance or Strategic Groupings. The Council also confirmed that reports about the service were not submitted to Performance Development Scrutiny Panels or other forums. It carried out a search of COINS (the Council Information System which contains the information relating to Council Minutes, Meetings and Agendas), but supplied the Commissioner with a screen shot which showed that no documents were found. The Council confirmed that there is no other business purpose that would have necessitated production of figures independent of those produced by provider of the service.
23. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
24. Having considered all the relevant submissions, the Commissioner accepts that the Council has now taken adequate and proportionate steps to establish whether it held more information falling within the scope of Ms Carter Brown's request. The Commissioner accepts that the Council has provided Ms Carter Brown with all the information it holds, in relation to her requests.
25. In reaching this conclusion, the Commissioner has taken account of the searches undertaken by the Council, which were reasonable and proportionate and likely to identify relevant information. The staff involved in searching for the information had experience and knowledge of the subject, reducing the likelihood of searches being faulty or relevant information being overlooked. The Council has evidenced its searches to the Commissioner. It has also explained why it holds information for recent years, but not for the years 2010-12.

Decision

The Commissioner finds that West Lothian 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 Ms Carter Brown.

The Commissioner finds that the Council does not hold additional information relating to requests 1, 2, 3 and 4. As such, it was not entitled to refuse to comply with requests 1, 2 and 3 on the basis of section 12 of FOISA.

Given that the Commissioner is satisfied that the Council does not hold any more information covered by the requests, he does not require the Council to take any action in respect of this failure.

Appeal

Should either Ms Carter Brown 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
6 March 2018

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.

...

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

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

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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