

Decision Notice

Decision 045/2019: Mr J and Dumfries and Galloway Council

Social work action plan and guidance

Reference No: 201801395

Decision Date: 15 March 2019



Scottish Information
Commissioner

Summary

The Council was asked about an “action plan” submitted for approval in September 2016 and information regarding its Request for Assistance (RFA) form and guidance.

The Council provided some information, but claimed that it did not hold an “action plan”.

The Commissioner determined that the Council did hold an “action plan” and that it had failed to disclose the correct RFA documentation and guidance. The Council identified and disclosed this information during the Commissioner’s investigation.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1)(b) (Notice that information is not held); 25(1) (Information otherwise accessible)

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 15 June 2016, the Complaints Review Panel of Dumfries and Galloway Council (the Council) convened to review a complaint from a named individual regarding their dissatisfaction with how the Council’s social work department had dealt with previous complaints. Mr J attended this meeting along with the named individual.
2. On 26 March 2018, Mr J made an information request to the Council, as follows:
 - Please publish the Social Work Action Plan submitted for approval to the Social Work Committee in September 2016. (Request (i))*
 - Please show how this Action Plan has been put into effect. (Request (ii))*
 - Is the current RFA document the one labelled “Version 26/7/17”? (Request (iii))*
 - For example, I understand that Requests for Assistance (RFA) procedures were supposed to have been amended to ensure service users MUST give INFORMED CONSENT and the service user MUST sign the RFA to confirm they have read and agree with the RFA.*
 - Please provide the training or instructions/guidance for Social Work staff for this procedure. (Request (iv))*
 - Please provide the 2016 RFA document (and guidance for completion). (Request (v))*
 - Please provide a copy of the current RFA form used (if there is a newer form) and current guidance for completion. (Request (vi))*
 - Is it the case that service users must confirm that they have read or have been informed of the contents and sign the form to provide proof of this? (Request (vii))*
3. The Council failed to respond to this request.

4. On 3 May 2018, Mr J wrote to the Council requesting a review of its decision on the basis that it had failed to provide him with the information he had requested.
5. Following the intervention of the Commissioner, the Council notified Mr J of the outcome of its review on 9 August 2018. For each part of his request, the Council gave the following responses:
 - (i) Under section 17(1) of FOISA, the Council gave notice that it did not hold the information he had requested as there was no Social Work Action Plan presented at the Social Work Committee in September 2016.
 - (ii) Similarly, the Council gave notice that it did not hold the information, as there was no Social Work Action Plan presented at the Social Work Committee in September 2016.
 - (iii) The Council confirmed that the current version of the RFA form was dated 27 June 2017 and provided Mr J with a copy of this form.
 - (iv) The Council provided Mr J with copies of CSEG (Children's Services Executive Group) briefings 56 and 66 and referred him to information contained within the RFA Form it had provided (part (iii) of the request).
 - (v) The Council gave Mr J notice, under section 17(1) of FOISA, that it did not hold the information he had requested, explaining that it had not retained the 2016 version of the RFA form.
 - (vi) and (vii) The Council referred Mr J to the information contained within the RFA form it had provided (part (iii) of the request).
6. On 21 August 2018, Mr J applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr J stated he was dissatisfied with the outcome of the Council's review because it had failed to provide him with the information he had requested.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr J 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 4 October 2018, the Council was notified in writing that Mr J had made a valid application and 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 its reasons for concluding that it did not hold the information requested by Mr J.
10. During the investigation, there was considerable correspondence between the Commissioner's office and the Council, as detailed below.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Mr J and the Council. He is satisfied that no matter of relevance has been overlooked.

Scope of investigation

12. During the investigation, Mr J was asked to provide detailed reasons for his dissatisfaction with the Council's response to his requirement for review. Mr J was dissatisfied that the Council claimed that it did not hold a copy of the Social Work Action Plan he had requested when the minutes of the meeting of 29 September 2016 indicated that an action plan existed. Mr J noted that the named individual had obtained information via a Subject Access Request which stated that Social Work had created an "action plan".
13. Mr J also expressed dissatisfaction that the RFA form the Council had provided to him did not contain the information he had expected (as there was no box for a service user to countersign). Mr J noted that the requirement for a counter signature was one of the key recommendations of the 15 June 2016 Complaints Review Panel.
14. Given Mr J's specified reasons for dissatisfaction, the Commissioner's Decision will consider the Council's response to parts (i), (ii), (iii), (iv), (vi) and (vii) of his information request.

Information held by the Council

15. 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. This is 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. These qualifications do not apply in this case.
16. 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 relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.

Parts (iii), (iv), (vi) and (vii) of the request – the RFA form and guidance

17. In parts (iii), (iv), (vi) and (vii) of Mr J's information request, he asked for information about the RFA procedure, including the current version of the RFA form and any guidance or training provided to staff regarding "informed consent" in the RFA process.
18. In response to part (iii), (vi) and (vii) of his request, the Council provided Mr J with a copy of (what it described as) the current RFA form. In response to part (iv) of his request, it provided him with two briefings (CSEG Briefings 56 and 66) which it claimed provided the guidance/instruction he had requested.
19. Mr J was dissatisfied with the information contained in the briefings as he did not consider that they addressed his request for information. Mr J was also dissatisfied with the RFA form that was disclosed as it did not contain a box for countersigning, a feature that he expected to be implemented as a result of the outcome of the Complaint Review Panel.
20. The investigating officer reviewed the content of CSEG Briefings 56 and 66 (provided to Mr J) and noted that page 2 of Briefing 56 stated "*A new revised Request for Assistance document has been produced and can be used for single-agency or multi-agency use. It is accompanied by supporting guidance*". The Council was asked if it had provided Mr J with a copy of this guidance as it appeared to fall within the scope of part (iv) of his information request. The Council was also asked to confirm whether these two briefings comprised all of the information covered by part (iv) of Mr J's request for "*the training or instructions / guidance for Social Work staff for this procedure*".

21. The Council provided the Commissioner with an updated version of the RFA form which contained embedded guidance, and explained that this was the guidance referred to on page 2 of CSEG Briefing 56. The Council noted that Mr J had been provided with a copy of this guidance on 9 August 2018.
22. The Commissioner reviewed the updated RFA form provided by the Council and compared it with the RFA form given to Mr J on 8 August 2018. The Commissioner noted that the two forms were completely different as the RFA form disclosed to Mr J did not contain any embedded guidance and arguably was not the guidance referred to on page 2 of CSEG Briefing 56.
23. The Council explained that the RFA form (with the embedded guidance) was updated in January 2017, but the version that was provided to Mr J on 8 August 2018 was the RFA form that was in use during the time of the Complaints Review Panel and subsequent report. The Council stated that it was willing to provide Mr J with a copy of the current RFA form (and its embedded guidance) and it did this on 12 February 2019.
24. The Council did not explain why the earlier version of the form was sent to Mr J in response to parts (iii), (vi) and (vii) of his information request, nor why it had originally withheld the current RFA form with the embedded guidance.
25. In part (v) of his information request, Mr J asked the Council for the 2016 RFA document (i.e. form) and guidance. The Council advised him that it no longer retained that version and gave him notice, under section 17(1)(b) of FOISA, that it did not hold the information. As Mr J has not challenged the Council's response to part (v) of his information request, the Commissioner cannot determine whether the Council was correct to give notice that it did not hold the 2016 RFA document. He will simply comment that the submissions from the Council strongly indicate that the Council may have held the information, contrary to its response.
26. The Commissioner is satisfied that the Council has now provided Mr J with the information he requested in parts (iii), (iv), (vi) and (vii) of his information request, but is disappointed that this was not done sooner and that it took several months of intervention from his staff before the Council identified and disclosed the relevant information to Mr J.
27. In the circumstances, the Commissioner finds that the Council failed to comply with section 1(1) of FOISA when it responded to Mr J's request, by failing to provide him with information falling within parts (iii), (iv), (vi) and (vii) and of his information request.

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

28. As noted above, 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.
29. 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 it does not hold the information.

Part (i) of the information request – Social Work action plan

30. The Council was asked how it established that it did not hold any information falling within the scope of parts (i) and (ii) of Mr J's information request. The investigating officer referred to the Social Work Services Committee minutes of 29 September 2016, which appeared to indicate that information might be held:
- point 14.1 states that the Committee "*NOTED the report and AGREED the recommendations given by the Complaints Review Panel*" and
 - point 14.2 states that the Committee "*CONSIDERED and AGREED the actions proposed by Social Work Services in response to the recommendations of the Complaints Review Panel.*"
31. The Council was asked whether it considered that the information referred to within points 14.1 and 14.2 of the aforementioned minutes fell within the scope of Mr J's information request and, if so, whether the Council was willing to disclose this information to Mr J.
32. In response, the Council maintained its view that there was no action plan relating to the named individual's complaint. It contended that there was no recommendation from the Comments & Complaints Panel held on 15 June 2016 that required Social Work Services to create an action plan, although there was comment with regards to the recording and sharing of agreed actions.
33. The Council was asked to provide the Commissioner with a copy of the papers presented to the meeting on 29 September 2016 and referenced at points 14.1 and 14.2 of the minutes, which it did.
34. After reviewing these papers, the Commissioner advised the Council that he was satisfied that the document referred to in point 14.2 of the minutes, entitled "*Response to the Complaints Review Panel held on 15 June 2016*", fell within the scope of part (i) of Mr J's information request. The Commissioner considered that this document was on the face of it a plan of actions to be taken by Social Work in response to the recommendations of the Complaints Panel and that it could reasonably be described as an "action plan". The Council was asked if it was willing to disclose this document to Mr J, with the personal data of the complainant redacted under section 38(1)(b) of FOISA.
35. The Council confirmed it was, and provided Mr J with a copy of this document with the personal data redacted on 16 January 2019. Mr J subsequently notified the Commissioner that he did not require access to the personal data withheld under section 38(1)(b) of FOISA, so the Commissioner will not consider this information in his Decision Notice.
36. In the circumstances, the Commissioner finds that the Council failed to comply with section 1(1) of FOISA as it failed to identify, locate and provide information falling within the scope of part I of Mr J's request for information. The Commissioner also finds that the Council was wrong to give Mr J notice under section 17(1) of FOISA that it did not hold any information covered by part (i) of his information request as it clearly did hold the "action plan" he had requested.
37. The Commissioner notes that the "action plan" disclosed to Mr J contained two appendices which were withheld by the Council. The Commissioner will go on to consider these two appendices.

Appendices to the “action plan”

38. As noted above, the action plan provided to Mr J had two appendices which were withheld by the Council:
- (i) Appendix 1 comprised the outcome of the Complaints Review Panel held on 15 June 2016.
 - (ii) Appendix 2 comprised a letter responding to points of note from the Complaints Review Panel report.
39. The Council provided the Commissioner with copies of both appendices and explained why it was withholding both documents under FOISA.

Appendix 1

40. During the investigation, the Council advised the Commissioner that it was withholding Appendix 1 from Mr J under section 25(1) of FOISA, on the grounds that he had already been provided with this information.
41. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.
42. Therefore, the issue to be considered is whether the information requested by Mr J could be reasonably obtained by him through means other than FOISA.
43. In this case, the Council argued that Mr J already had a copy of the Complaints Review Panel report as he was an attendee at the meeting on 15 June 2016.
44. Mr J confirmed to the Commissioner that he had a copy of this document in an email dated 23 October 2018, in which he stated “*We have copies of the CRP final report with its recommendations*”.
45. Given the above, the Commissioner is satisfied that the information contained in Appendix 1 was reasonably obtainable by Mr J other than by requesting it under FOISA. Consequently, the Commissioner concludes that the Council was entitled to withhold the information under section 25(1) of FOISA.

Appendix 2

46. The Council withheld Appendix 2 from Mr J, believing the information fell outwith the scope of his request. The Council referred to the wording of Mr J’s information request and argued that the information contained in the letter did not fall within its scope.
47. The Commissioner has considered the content of Appendix 2 and the wording of Mr J’s information request and he is satisfied that the information is not covered by the request. Each part of Mr J’s information request is quite specific and this particular document is not relevant to any part of his request. In the circumstances, the Commissioner is satisfied that the Council is not required to provide Mr J with a copy of Appendix 2 in response to his request.

Part (ii) of the information request – implementation of Action Plan

48. In relation to part (ii) of Mr J’s information request, the Council had previously notified Mr J that it did not hold any information falling within the scope of this part of his request.

However, the Commissioner notes that the Council took this view on the basis that it did not hold a copy of the “action plan” requested by Mr J in part (i) of his information request. Since it had been established that Council did hold the “action plan”, it was possible that it might also hold information regarding part (ii) of Mr J’s information request.

49. In light of this, the Commissioner asked the Council if it held any information that showed how the “action plan” had been put into effect and, if so, whether it was willing to disclose this information to Mr J.
50. The Council provided the Commissioner with a copy of its Learning and Development Calendar for 2018. The Council had highlighted the training sessions which reference the completion/content of RFAs. The Council disclosed this document to Mr J on 16 January 2019. Mr J expressed dissatisfaction with the disclosed Calendar, stating that it only showed dates for training sessions and did not contain any information about training or guidance.
51. The Commissioner notes the points raised by Mr J, but he would refer back to the wording of part (ii) of the information request, in which Mr J asked for information showing “how this Action Plan has been put into effect”. Part (ii) of the request was not specifically seeking guidance or training documents, and it is reasonable to interpret it as a request for evidence that demonstrates how the “action plan” developed by Social Work has been implemented.
52. The Commissioner is satisfied that a Calendar showing relevant training events scheduled over the course of a year can be considered evidence of the implementation of the “action plan”. The Commissioner notes that the headings of the training sessions include the following topics “*Child Protection Process Training*” and “*GIRFEC Assessment: Information Gathering and Analysis*”. The Commissioner has not seen the material or discussion that occurred at these session, so cannot be sure of the extent to which the Calendar can be considered as evidence of the “action plan” being implemented. However, given the subject matter of the sessions, he considers it likely that at least some of the issues raised in the “action plan” would have been discussed at these sessions.
53. In conclusion, the Commissioner is satisfied that the Calendar is information which falls within the scope of part (ii) of Mr J’s information request. He therefore finds that the Council failed to comply with section 1(1) of FOISA in relation to part (ii) of the request, as it failed to identify and provide relevant information which it held. The Commissioner also finds that the Council was wrong to give Mr J notice under section 17(1) of FOISA that it did not hold any information covered by part (ii) of his information request.

General comments on the Council’s handling of Mr J’s information request

54. In this case, the Council gave Mr J notice, in terms of section 17(1) of FOISA, that it did not hold any “action plan” and it claimed to have provided Mr J with the current RFA form and associated guidance in its review outcome.
55. During the investigation, it became clear that this was not the case. The Council did hold an “action plan” (which contained two appendices), and it had provided Mr J with an older version of the RFA form in its review outcome which did not contain the guidance he was seeking.
56. The Commissioner is concerned that the Council failed to identify the information that Mr J requested, and in doing so it delayed his access to the information. The Commissioner notes that Mr J made his original request on 26 March 2018, yet the Council did not provide him with the “action plan” until 16 January 2019, and he did not obtain the updated RFA form and

guidance until 12 February 2019. In both cases, the disclosures were the direct result of the Commissioner's investigation.

57. The Commissioner also notes that the investigating officer had to contact the Council eight times between October 2018 and February 2019 to seek clarification of its position and to determine what information the Council actually held. All of this resulted in a significant delay to Mr J obtaining the information he had requested.
58. The Commissioner would urge the Council to re-assess its processes for handling information requests, particularly with regard to identifying relevant information.

Decision

The Commissioner finds that Dumfries and Galloway 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 Mr J.

The Commissioner finds that the Council failed to comply with section 1(1) of FOISA by not providing Mr J with information he had requested.

However, he also finds that the Council was not required to disclose some information which was already available to Mr J.

Given that the Council identified and disclosed information to Mr J during the investigation, the Commissioner does not require the Council to take any action in respect of these failures in response to Mr J's application.

Appeal

Should either Mr J or Dumfries and Galloway 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

15 March 2019

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.

...

17 Notice that information is not held

- (1) Where-

...

- (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.

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

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