

Decision Notice 123/2020

Policy on informal care agreements

Applicant: The Applicant

Public authority: Dundee City Council

Case Ref: 202000196



Scottish Information
Commissioner

Summary

The Council was asked for information about its policy and procedure for Informal Residence/Special Guardianship/Kinship Care Agreements.

The Council informed the Applicant it did not hold this information. Following investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), and (4) (General entitlement); 17(1) (Notice that information is not held); 73 (Interpretation) (definition of “information”)

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 30 August 2019, the Applicant made a request for information to the Council. The information requested was:
 - a) The total amount of the tax payer’s money spent on Informal Residence/Special Guardian/Kinship Care Agreements since 1 April 2014 until the present date.
Please break this figure down year on year, month on month and week on week. Please also include the number of types of agreement into your criteria, i.e. Informal Residence Order; Informal Guardianship Order; Informal Kinship Carer Agreement.
 - b) The total number of children that Social Work have arranged an Informal Residence/Special Guardian/Kinship Care Agreement for since 1 April 2014 until the present date?
Please break this figure down year on year, month on month and week on week. Please also include the number of types of agreement into your criteria, i.e. Informal Residence Order; Informal Guardianship Order; Informal Kinship Carer Agreement.
 - c) Please provide me with your full policy and procedure used to ensure that all informal agreements are done within the confines of the law.
2. The Council responded on 5 September 2019, providing “nil” returns where figures had been requested (and therefore no corresponding breakdowns) and stating that it did not hold the information requested in part c) of the request.
3. On 5 September 2019, the Applicant wrote to the Council, requesting a review of its decision and submitting that she found it disingenuous for an “OAC” to deny using any form of care agreements.
4. The Council notified the Applicant of the outcome of its review on 12 September 2019. In response, the Council explained that it had provided a nil return to all questions because the Applicant’s request was about “informal” agreements. The Council pointed out that there is no such thing as an informal Residence/Special Guardian/Kinship Care Agreement.

However, the Council did advise the Applicant that details of formal arrangements could be provided, in response to a new request.

5. On 3 February 2020, the Council provided the Applicant with a document it considered to answer part c) of her request. This document was a Kinship Care Agreement. The Council explained that this agreement is made with formal kinship carers after a period of assessment following their approval.
6. On 5 February 2020, 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 it failed to provide her with the information requested at part c) of her request. Following receipt of the document provided by the Council on 3 February 2020, the Applicant informed the Commissioner that what she had been given was a Kinship Care Agreement form, not the policy guidance requested.

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 20 February 2020, 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 the nature of searches carried out to establish whether it held information falling within scope of part c) of the Applicant's request.
10. The Council responded, maintaining that it did not hold the information requested by the Applicant and explaining the actions taken and searches carried out.

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

Information held by the Council

12. 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.
13. The information to be provided 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 it to give the applicant notice in writing to that effect.

14. In its submissions to the Commissioner, the Council confirmed, with details, the enquiries and searches it undertook to determine whether any relevant information was held relating to a policy on informal carers falling within scope of part c) of the Applicant's request. This included conversations with appropriate staff members within the Children and Families service, together with checks of information on its website. Consideration of the appropriate legislation and guidance was also undertaken and the Council submitted that it could see no requirement within either legislation or Scottish Government guidance or policy indicating that it should have a policy on informal agreements. The Council's conclusion was that no information was held which fell within scope of part c) of the Applicant's request.
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 reason offered by the public authority to explain why it does not hold the information. Ultimately, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request) – it is not for him to determine whether the Council should hold the information, or to require it to create information it does not hold.
16. Having considered the relevant submissions and the terms of part c) of the request, which is the subject of this application, the Commissioner accepts that the Council took adequate, proportionate steps in the circumstances to establish what information it held. Given the explanations and submissions provided, he is satisfied that the Council did not hold the information under consideration here and was correct to give the Applicant notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of this part of the request.

Decision

The Commissioner finds that, in the matters raised in the application, Dundee City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

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

6 October 2020

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-
- (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.

...

73 Interpretation

In this Act, unless the context requires a different interpretation –

...

“information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

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