

# Decision Notice

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**Decision 126/2019: Ms Samantha Kerr and West Lothian Council**

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**Grant funding for child protection**

Reference No: 201900409

Decision Date: 22 August 2019



Scottish Information  
Commissioner

## Summary

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The Council was asked about funding for child protection services. The Council replied that this information was on its website.

The Commissioner investigated and found that the Council failed to comply with the request. He did not agree that the information was available on its website.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 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

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1. On 26 December 2018, Ms Kerr made a request for information to West Lothian Council (the Council). Ms Kerr requested, with reference to West Lothian child protection funding:
  - the annual amounts of funding received from the public purse for the last six financial years [part 1]
  - for each year the conditions of grant/grant funding, which stipulate what criteria is expected of the service for the monies budgeted [part 2]
  - the professional standards and reporting required to comply with the conditions of funding "... to ensure the (sic) you are providing VfM whilst not cutting back on Quality." [part 3]
  - the accountable person for social work Child Protection service, and who underwrites any risk? [part 4]
  - the person responsible for Quality Assurance [part 5]
2. On 23 February 2019, Ms Kerr wrote to the Council requesting a review of its decision on the basis that the Council had failed to respond to her request.
3. The Council notified Ms Kerr of the outcome of its review on 25 February 2019. The Council apologised for its failure to respond. It advised Ms Kerr that the information requested was otherwise accessible (and exempt from disclosure under section 25(1) of FOISA). With the exception of part 3, the Council provided links to its website in response to each part of her request. In response to part 3 of her request, the Council said that the request was not clear and further information would be needed e.g. clarification of 'VfM'.
4. On 3 March 2019, Ms Kerr applied to the Commissioner for a decision in terms of section 47(1) of FOISA. She was dissatisfied with the outcome of the Council's review as the Council had not provided the information requested.

## Investigation

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5. The application was accepted as valid. The Commissioner confirmed that Ms Kerr 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.
6. 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.
7. Ms Kerr wrote to the Council on 29 March 2019, providing clarification of part 3 of her request.
8. During the investigation, the Council acknowledged that it had not replied to all parts of Ms Kerr's request appropriately and offered to supply information to her. The Council apologised for these oversights. The Council provided a further response to Ms Kerr on 19 June 2019. This further response provided Ms Kerr with: more information, specific guidance on where, within the documents referenced online, she could access the information and clarified that some of the information she sought was not held.
9. Ms Kerr provided her comments on this additional information.

## Commissioner's analysis and findings

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

### **Section 25 - Information otherwise accessible**

11. Information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt from disclosure. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA. Section 25(1) is not intended to prevent or inhibit access to information, but to relieve public authorities of the burden of providing information that an applicant can access readily without asking for it.
12. The Council's review relied on section 25 of FOISA for four parts of the request and provided Ms Kerr with links to its website.
13. The Commissioner will look at each part of Ms Kerr's request separately.

#### *Part 1*

14. For this part of the request, the Council's review gave a link to information on its website.
15. The Council explained to the Commissioner that its Social Policy Services Management Plans report on how budget allocation is progressed to meet service demands across these service areas and these are published on the Council's website. The Council clarified that the information referred to and held by the Council does not relate to child protection as an individual category.
16. The Council also acknowledged that it had made an error in dealing with the original request in that it did not address the last six financial years, as was requested. It apologised. The Council said that the plans for the period covered by the request could be accessed on its website (though the Management Plan for 2014/15 was on a separate website page). The

Council explained that Budget information specific to Children and Families, which incorporates child protection, could be found in each of the Social Policy management plans. The Council provided Ms Kerr with details of the relevant pages of each plan on 19 June 2019.

17. Ms Kerr asked for information about funding for child protection. Whilst the Commissioner is satisfied that the information identified and withheld under section 25(1) is information which Ms Kerr can reasonably obtain other than by requesting it under section 1(1) of FOISA, and may be of use to Ms Kerr, it is not the specific information she requested.
18. The Council should have explained why the information did not specifically relate to child protection, and therefore did not fall within the terms of part 1 of her request, and should have refused this part of her request in terms of section 17 of FOISA.
19. As the Council has now provided a further response Ms Kerr with further direction as to where other relevant information is located, he does not require the Council to take any action in respect of this failure.

### *Part 2*

20. In its submission to the Commissioner, the Council said there were no specific conditions or criteria stipulated as to how the Council manages the allocated funds for Children and Families. However, the Council is empowered by legislation and national policy drivers relating to the provision of social work and social care services to children, young people and families. The Council said that this was explained on page 5 of the 2017/18 Management Plan, which refers to the Single Outcome Agreement, which can also be accessed on the Council's website.
21. The Council acknowledged that Ms Kerr's request related specifically to child protection and the information identified by the Council did not relate to child protection as an individual category. The budget information identified in the Management Plans related to Children and Families, rather than specifically to child protection. The Council submitted that it did not hold funding information related to child protection. The Council confirmed that budgets are not separated into a child protection category.
22. In this light of this, the Commissioner is not satisfied that the information to which the Council applied section 25(1), as described above, is information that technically falls within Ms Kerr's request. Whilst the information in the Management Plan may assist her, the information does not specifically relate to child protection, consequently the Council should have advised Ms Kerr that the information was not held.
23. The Commissioner must conclude, on the basis that the Council has now explained that no information is held, that the Council was not entitled to rely on section 25(1) of FOISA in responding to this part of Ms Kerr's request. As the Council has now made this clear, he does not require the Council to take any action.

### *Part 3*

24. The Council's review told Ms Kerr that this part of her request was not clear and further information was required e.g. clarification of VfM.
25. Ms Kerr wrote to the Council on 29 March 2019 and confirmed that VfM is "Value for Money". This clarification came after Ms Kerr's application to the Commissioner.
26. In its response to Ms Kerr, dated 19 June 2019, the Council explained that as there were no specific conditions or criteria which apply to child protection funding it notified Ms Kerr that no

information was held. However, the Council provided more general information to Ms Kerr in relation to professional standards and reporting.

#### *Part 4*

27. The Council's review supplied Ms Kerr with a link to its Corporate Plan 2018/19 to 2022/23 on its website. The Council did not specify where the relevant information was in this document.
28. In its submissions, the Council confirmed that the accountable person for the Council's social work child protection service was the Head of Service. The Council confirmed that the Head of Service was named within the 2017-18 Management Plan, available on its website.
29. The Council was asked about risk and insurance and replied that it works with a range of insurers/underwriters that the Council would approach and the issue of which party the Council would approach would depend upon the presenting issue, for example, financial risk or personal injury. This explanation was provided to Ms Kerr on 19 June 2019.
30. Although the Head of Service is named within documents cited, this alone does not directly answer the terms of Mr Kerr's request. The Commissioner also notes that not all of the information requested by part 4 (underwriting of risk) is available in this online document. The Commissioner finds that the information available online and originally referenced by the Council does not address Ms Kerr's requests and therefore finds that the Council was incorrect to apply section 25(1).
31. As the Council has now provided information to Ms Kerr that satisfies the terms of part 4 her request the Commissioner does not require the Council to take any action in respect of this failure.

#### *Part 5*

32. In response to this request, the Council's review again provided Ms Kerr with a link to its Corporate Plan 2018/19 to 2022/23.
33. In its submissions to the Commissioner, the Council explained that quality assurance is the responsibility of the Head of Service and the Care Inspectorate: the Head of Service is ultimately responsible internally and the Care Inspectorate is the external inspection agency.
34. That information was available on the Council's website, within its Management Plan 2017/18. The Management Plan named the Council's Head of Service and referred to the external body responsible for auditing the quality of care services, inspects registered care services annually.
35. Again, the Commissioner is not satisfied that the Council applied section 25(1) appropriately to this request. The links provided by the Council do not provide a response to Ms Kerr's specific request.
36. As a further response has been provided to Ms Kerr, providing a response to her request, the Commissioner does not require the Council to take any action in respect of this failure.

## **Decision**

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The Commissioner finds that West Lothian Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Kerr.

The Commissioner finds that by relying on section 25(1) the Council failed to comply with Part 1 of FOISA. As a further response was provided to the applicant during the investigation, the Commissioner does not require the Council to take any action in respect of these failures in response to Ms Kerr's application.

## **Appeal**

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Should either Ms Kerr 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**

**22 August 2019**

## Appendix 1: Relevant statutory provisions

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### 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.

...

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

#### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

...

#### 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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