

Decision Notice

Decision 164/2019: The Applicant and West Lothian Council

Social work policies

Reference No: 201900809

Decision Date: 6 November 2019



Scottish Information
Commissioner

Summary

The Council was asked for information about social work policies. The Council responded stating that no information was held but provided the Applicant with some explanations.

The Commissioner investigated and agreed that the Council did not hold most of the information requested, but found that the Council did not comply in full with its duty to provide advice and assistance in relation to one part of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3), (4) and (6) (General entitlement); 8(1) (Requesting information); 15(1) (Duty to provide advice and assistance); 17(1) (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 25 November 2018, the Applicant made a request of information to West Lothian Council (the Council). The Applicant requested:

Your official policy and procedure on recording all communications on the official records between the service user and social work? (part one)

Please advise why service users are told NOT to communicate in writing to WLC [West Lothian Council] SW [Social Work] Department, leaving them without an audit trail of accurate information supplied to your service? (part two)

Please advise your policy on the service users rights to amend inaccurate/subjective/bias/prejudged information that is recorded in your official records that are available to other agencies via your inter agency data sharing policy? (part three)

As information provided by the service user forms part of a legal procedure, it is arguable that any recorded information that is recorded by your staff from the basis of a telephone call to your service is verbatim, therefore what checks and balances do you have in place to ensure that accurate information and not false, inaccurate and prejudged information is recorded on the office record for inter agency data sharing. (part four)

Please provide me with detail of your inter agency data sharing policy held in your records. (part five)

2. On 24 December 2018, the Applicant wrote to the Council requesting a review of its decision on the basis that the Council had failed to respond to her request.
3. Following an investigation by the Commissioner, the Council responded to the request for review on 27 February 2019. The Council's review provided information and explanation to the Applicant.

4. On 21 May 2019, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA and stated that she was dissatisfied with the outcome of the Council's review because she believed more information was held by the Council.

Investigation

5. 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.
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.

Commissioner's analysis and findings

7. 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.

Validity of requests

8. FOISA gives the right to request any recorded information already held by a public authority when the information request is received. FOISA does not require a public authority to create new information in order to respond to a request or to respond to requests which are, in effect, requests for advice or guidance rather than requests for recorded information.
9. Section 8(1)(c) of FOISA states that, for a request to be valid, it must describe the recorded information being requested. Unless the request adequately describes the information (there is generally a low test for this), the request will not be valid. Where a request is unclear, the authority may ask the requester to clarify the request (section 1(3)).
10. When dealing with requests which appear to be for advice or guidance, or with requests which do not adequately describe the recorded information being requested, authorities must always take account of section 15(1) of FOISA, which requires them to provide reasonable advice and assistance to a person who has made, or intends to make, an information request. This could include, for example, giving the requester advice on what to do to make a valid request under FOISA.
11. The Council submitted that parts two and four of the Applicant's request were not valid requests for information. The Commissioner has reviewed parts two and four of the Applicant's request.

Part two

12. The Commissioner has concluded that part two of this request is not a valid information request.
13. The Council submitted that the request presumes that there is a general instruction issued to all service users and that there is a policy or procedure to support this. The Council confirmed that no such information is recorded and an explanation has been provided to the Applicant.

14. The Commissioner notes that the request is clearly worded to elicit an explanation of what appears to be related to the Applicant's particular circumstances. The Commissioner is satisfied that the only way that the Council could respond to this element would be to provide its view or opinions on the scenario described. The Commissioner is satisfied that part two of this request is not valid request for information.

Part four

15. The Council submitted that this request was based on assumption that telephone calls are recorded verbatim. The Council stated that this was not the case. The Council argued that this was not a request for recorded information.
16. The Commissioner has considered the wording of part four of this request. He notes that the request is for "checks and balances" to ensure that accurate information is recorded. It is conceivable that the Council may have recorded information ensuring that accurate records are maintained.
17. As the Commissioner considers it conceivable that recorded information could be held falling within the scope of this request, he is satisfied that part four of this request is a valid request for information in line with section 8 of FOISA. Part four of the request will be considered in what follows.

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

18. 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.
19. 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.
20. For each of the remaining parts of the request, the Council was asked by the investigating officer to explain how it established that no information was held.
21. The Commissioner will look at parts one, three, four and five separately below:

Part one

22. The Council's review response confirmed that there was no formal procedure regarding this matter. The Council explained that its staff receive training and support to use client recording systems in an appropriate manner and the content of recordings is reviewed with staff during formal supervision with their line manager. This included sign posting to associated guidance such as that published by the Care Inspectorate (for example, *On the record – getting it right: Effective management of social work recording*). There were a number of procedures that indirectly related to this, and the Council listed them in its response to the Applicant.
23. The Council explained to the Commissioner that social work staff were satisfied that there is no formal procedure "regarding this specific point" and no additional searches were required to establish this. The Council said that training and numerous guidance documents may

inform how information is recorded. This, the Council said, was explained to the Applicant and a list of procedures that indirectly relate to the matter was provided.

24. The Commissioner is satisfied that, in light of the explanations provided by the Council and on the balance of probabilities, the Council does not hold information that would fall within the specific terms of this request. In providing the Applicant with a range of procedures which indirectly related to the subject of the request, the Commissioner is satisfied that the Council complied with its obligations to provide advice and assistance in terms of section 15(1) of FOISA.

Part three

25. In response to part three, the Council stated that there was no formal procedure. The Council explained to the Applicant that service users were entitled to request information via the Data Subject Access process and, following the receipt of information, if the individual wants to review matters of accuracy, they can discuss the matter with the appropriate member of staff.
26. The Council's submission to the Commissioner confirmed that service users have the right to request the amendment of inaccurate personal data in terms of data protection legislation. The Council said that, at the date of the Applicant's request, there was no written policy or procedure for requesting amendments to recorded information.
27. The Commissioner is satisfied that the Council's interpretation of this request was reasonable and, on the balance of probabilities, it holds no information falling within the scope of this request which would equate to that specifically sought by the Applicant. The Council advised the Applicant of her rights in terms of ensuring accuracy of personal data. The Commissioner is satisfied that the Council complied with its obligations in terms of section 15(1) of FOISA.

Part four

28. The Council commented that this request was based on an assumption made by the Applicant that telephone calls are recorded verbatim. That is not the case. The Council commented that it had explained how information is recorded to assist the Applicant.
29. As stated above, the Commissioner regards the request as one that - on a reasonable interpretation - seeks recorded information on any "checks and balances" to ensure that accurate information is recorded for inter-agency data sharing. It is possible that such checks and balances would be stipulated in recorded information: for example, there may be a policy that recommends that notes of calls would be shared between parties to ensure the note is accurate.
30. The Council's review response confirmed that information is not recorded verbatim and explained that children services staff and social policy colleagues "reflect a summary of relevant points on a service users record following contact them." Content of recordings are reviewed with staff during formal supervision with their line manager and this includes associated guidance such as that published by the Care Inspectorate e.g. *On the record – getting it right: Effective management of social work recording*. The Council's review stated; *"Children and families staff do not work in isolation of multi-agency partners to ensure a holistic approach is taken to information gathering. This enables information and assessments to be checked with others working with the child or family - a particular feature in Child Protection and looked after child planning."*

31. The Commissioner has considered the terms of this request and the explanations provided by the Council to the Applicant, which describes the “checks and balances” which are integrated into various processes. In light of this explanation, the Commissioner is satisfied that, on the balance of probabilities, no information is held by the Council which would satisfy the terms of this request.

Part five

32. The Council’s response to this part of the request was that Children Services and wider social policy have a range of data sharing agreements in place with partner agencies. These are specific and tailored to the nature of service or business being taken forward. In some instances, such as child protection, there is specific guidance in place regarding the sharing of information between core agencies to manage risk and need e.g. inter-agency child protection procedures Edinburgh and the Lothians.

33. The Council clarified that there was no one data sharing agreement and no data sharing policy with all agencies. The Council explained that it would not be possible to draft such a document as the reasons for sharing, the types of information being shared and the sharing arrangements will be many and varied. This knowledge meant that no searches were required in response to this request.

34. The Commissioner does not consider that the Council’s interpretation of this request was reasonable. The Council has confirmed that it has a range of data sharing agreements in place. The Commissioner therefore does not accept that it does not hold any information in terms of section 17.

35. Section 15(1) requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.

36. The Council, in its failure to respond to this request in the timeframe allowed, missed its opportunity to seek clarification from the Applicant in terms of section 1(3). This opportunity to clarify the request could determine whether the Applicant sought all such policies, a list of the policies, or one single overarching policy. The Commissioner considers that the Council could not reasonably provide the Applicant with a response to her request until it obtained more information from the Applicant.

37. The Commissioner does not accept the Council’s reliance on section 17 and finds that the Council should have provided the Applicant with advice and assistance on this point. In failing to provide adequate advice and assistance, the Council has also failed to comply with section 1(1). The Commissioner requires the Council to offer advice and assistance to the Applicant in formulating a new request in light of the information that it holds.

Conclusions

38. With respect to parts one, three and four of this request, the Commissioner is satisfied, in light of the explanations provided by the Council, that it does not hold any information which falls within these parts of the request.

39. In respect of part five of this request, the Commissioner finds that the Council failed to comply with Part 1 of FOISA by failing to provide the Applicant with adequate advice and assistance as required by section 15(1) of FOISA.

40. In the circumstances, the Commissioner requires the Council to give advice and assistance to the Applicant, in line with section 15(1) of FOISA to allow her make a valid information request in relation to part five of this request.

Decision

The Commissioner finds that the 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 the Applicant.

The Commissioner finds that part two of the request was not a valid request for the purposes of section 8 of FOISA. As such, the Council was not required to respond to this request.

With regard to the remaining parts of the request, the Commissioner finds that the Council correctly notified the Applicant that it did not hold any information falling within parts one, three and four of the request. However, the Commissioner found that the Council was not entitled to rely on section 17 of FOISA in response to part five of this request and therefore failed to comply with Part 1 of FOISA. The Commissioner also found that the Council failed to offer reasonable advice and assistance (as required by section 15(1) of FOISA) in order to clarify the interpretation of part five of this request.

The Commissioner therefore requires the Council to provide reasonable advice and assistance to the Applicant with a view to the Applicant submitting a new request to address part five of the request. This must be done by 23 December 2019.

Appeal

Should either the Council or the Applicant 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.

Enforcement

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

6 November 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.

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (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.

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
- (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) states the name of the applicant and an address for correspondence; and
- (c) describes the information requested.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

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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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info