



# Decision Notice 139/2022

---

## Forth Valley Rape Crisis Centre; LGBT Youth Scotland

**Authority: Clackmannanshire Council**

**Case Ref: 202101248**

### Summary

The Applicant asked the Authority for any recorded information held by a named school about or in relation to Forth Valley Rape Crisis Centre and LGBT Youth Scotland. The Authority disclosed some information, but the Applicant believed further information was held. During the investigation, it became clear that the Authority's searches were inadequate, and that further information was held. The Commissioner required the Authority to carry out further searches and issue the Applicant with a new review outcome.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner)

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 11 February 2020, the Applicant made a request for information to the Authority. The information requested was in relation to a named school (and insofar as relevant to this decision) any recorded information held by the school about or in relation to:
  - (i) the Forth Valley Rape Crisis Centre (FVRC) since 2017.
  - (ii) LGBT Youth Scotland since 2017
2. The Authority responded on 9 March 2020. It stated that these were repeated requests and applied section 14(2) (Vexatious or repeated requests) of FOISA.

3. On 10 March 2020, the Applicant wrote to the Authority, requesting a review of its decision on the basis that she disputed that requests (i) and (ii) were repeated requests.
4. The Authority notified the Applicant of the outcome of its review on 7 April 2020, upholding the original response.
5. On 15 September 2020 (and following an appeal to the Commissioner), the Authority issued a second review outcome to the Applicant, withdrawing its reliance on section 14(2) of FOISA and instead applying section 12(1) of FOISA, stating that the costs of providing a response would be in excess of the £600 limit.
6. On 28 September 2021 (and following a second appeal to the Commissioner), the Authority issued a third review outcome to the Applicant, withdrawing its reliance on section 12(1) of FOISA and providing the Applicant with what it claimed to be all of the information falling within the scope of requests (i) and (ii).
7. On 4 October 2021, 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 Authority's review of 28 September 2021. She did not accept that the Authority had provided her with all of the information held and falling within the scope of her request. The Applicant was also unhappy that the Authority appeared to have provided her with information that was outwith the scope of her request.

## **Investigation**

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 29 November 2021, the Authority was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These related to the Authority's insistence that it had provided the Applicant with all of the information falling within the scope of her request.

## **Commissioner's analysis and findings**

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

### ***Does the Authority hold more information?***

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 given is that held by the authority at the time the request is received, as defined by section 1(4).

### ***The Applicant's submissions***

14. The Applicant expressed dissatisfaction with the Authority's handling of her information request. She argued that the Authority had disclosed information to her in its review outcome of 28 September 2021 that it had withheld in response to a previous FOI request she had made. She also contended that the Authority had given her information in response to previous FOI requests that was omitted from the review of 28 September 2021. She noted that her daughter's pastoral notes, which she had obtained under a subject access request, also seemed to contain information that fell within the scope of her request, but this had not been provided to her.
15. The Applicant provided detailed background information that documented the Authority's engagement with her requests for information. The Applicant referred to inconsistencies in the Authority's handling of this request and other FOI requests she had made, and she expressed concern with the thoroughness of the searches conducted by the Authority. The Applicant identified specific individuals within the Authority and the named school that she thought were likely to hold relevant information. She submitted that the named school was forwarding her correspondence (including any FOI requests she made) to the Authority's Education Department. Given this, the Applicant suggested that named staff in several Authority departments should also have conducted searches for information falling within the scope of her request.
16. The Applicant also provided the Commissioner with a response she had received from the Authority on 7 October 2022, in relation to a new FOI request she had made seeking emails involving a named individual. The 19 emails identified and disclosed by the Authority appeared to fall within the scope of this request.
17. The Applicant repeatedly stressed her view that the Authority had failed to disclose all of the information falling within the scope of her request. She believed that the Authority had been dishonest in its correspondence with the Commissioner's office.

### ***The Authority's submissions***

18. The Authority initially submitted that it had provided all of the information falling within the scope of the Applicant's information request in its review outcome of 28 September 2021. It later acknowledged that some of the documents it had provided did not fall within the scope of the request, and it apologised for this error. The Authority maintained that the named school had identified and provided all of the information held on their records.
19. When questioned further, the Authority provided more details of the searches it had undertaken, and identified the postholders who had carried out these searches. The Authority confirmed that staff searched their emails and the school staff share drive and that all information that was identified was provided as part of its response.
20. The investigating officer noted that the Authority provided the Applicant with information about S4 workshops (carried out by FVRC) in a separate FOI request, in July 2021, but this information was not included in the Authority's review outcome of 28 September 2021. Furthermore, the Authority provided the Applicant with information about a S2 workshop, in its review outcome of 28 September 2021, but this information had been omitted from its response to the separate FOI request in July 2021. The Applicant had raised concerns about this inconsistency, and the Authority was asked to explain these omissions, given that it appeared that information about the S2 and S4 workshops were captured by both requests.

21. The Authority argued that the workshops were in fact “teacher-led” sessions, but it acknowledged that it had failed to provide information regarding the dates of both S2 and S4 sessions in response to this request and the previous request it answered in July 2021. The Authority apologised for its failure, but it explained that it was focusing on providing recorded information held in relation to FVRC and LGBT Youth Scotland, and at that time the school did not consider the teacher led lessons to fall within the scope of the FOI (as they did not understand them to be workshops). The Authority provided the Commissioner with a copy of the earlier FOI request, in which the Applicant sought (and, it submitted, was provided with) information about workshops delivered by FVRC.
22. The Authority was unable to confirm whether or not it had previously disclosed the date of one of these workshops to the Applicant, but it acknowledged that it had not been disclosed in response to this information request. The Authority subsequently provided the Applicant with information about the date of the S2 workshop. The Authority also confirmed that a member of FVRC staff was present during the “teacher led” session, and that the session used materials provided by FVRC.
23. The Authority was asked whether it held any administrative record or other evidence of FVRC or LGBT Youth Scotland representatives being on school premises during the time period specified in the request. It explained that, while pupil log-in sheets are retained for five years, visitor log-in sheets are only kept for two months as they are used as fire logs, i.e. they keep a record of individuals who are on the premises that day, in case the fire alarm goes off.
24. The Authority was told about the references to further information in the Applicant’s daughter’s pastoral notes, and in response to this, it identified a PowerPoint presentation that was provided by LGBT Youth Scotland, along with an email chain between the school and FVRC. The Authority disclosed this information to the Applicant, but it commented that the Applicant would have received this information previously, on numerous occasions, although not in response to this FOI request.
25. The Authority confirmed that the named school did not hold recorded information about any other dates on which workshops or teacher-led sessions may have been held and it reiterated that all information concerning FVRC had been provided.
26. The Authority was asked about the 19 emails concerning the FVRC that were disclosed to the Applicant on 7 October 2022, in response to a separate FOI request, and it was asked to conduct new searches for relevant information. In response, the Authority acknowledged that these 19 emails fell within the scope of the current request and, while it claimed that one of these emails had previously been disclosed to the Applicant, it confirmed that the remaining 18 emails had not been provided. The Authority submitted that it had carried out further searches and had located a large volume of emails and documentation which it would need to check to ensure that it fell within the scope of this FOI request. The Authority also noted that some information would need to be redacted, as it included third party personal data.
27. When questioned about its failure to identify this information earlier, the Authority advised the Commissioner that the emails only came to light when a search was carried out for the name of one of the Principal Teachers for Pupil Support and FVRC. The Authority acknowledged that this was “extremely unfortunate” and that it had gone back to the school to discuss this oversight. The Authority stressed that at no point had it attempted to conceal any information.

### ***The Commissioner's comments on the Authority's handling of the request***

28. The Commissioner has grave concerns about the Authority's handling of the Applicant's information request. He notes that this request was made on 11 February 2020, and yet the Authority is still locating information falling within the scope of the request. In fact, the Authority has indicated that it has identified so much information that it was unable to send it to the Commissioner as an email attachment. It is clear that the searches that the Authority has carried out throughout this investigation have fallen far short of the standard expected. The Authority has repeatedly stated that the school did not hold any further information and that all relevant records had been searched. Given the late identification of large amounts of information, these claims were clearly wrong.
29. The Commissioner notes that, even when the Authority disclosed 19 emails to the Applicant on 7 October 2022, in response to a separate FOI request, it failed to notify him that this information had been identified and that it also fell within the scope of this request. The Authority may have presumed that the Applicant would raise this matter with the Commissioner, but it had a responsibility to keep him apprised of developments relevant to this case, particularly when these related to the identification of new information. Arguably, if the Applicant had not contacted the Commissioner and provided him with these emails, he may have accepted the Authority's repeated claims that it had carried out thorough searches and that the school did not hold any further information. If this had occurred, it would have seriously undermined FOISA and the Commissioner's role in enforcing the legislation.
30. The Commissioner would remind the Authority that, under FOISA, schools are not separate legal entities but are considered part of the Council in same way as any other department or service, such as planning or waste management. The Council is responsible for the effective delivery of FOI across all of its services, including the schools under its management, and it needs to be able to comply with FOISA on that basis. There is nothing in the legislation which sets local authority schools apart for FOISA purposes.
31. The Commissioner would refer the Authority to [Decision 067/2022 \(South Lanarkshire Council\)](#)<sup>1</sup> which considered information held by a school. In that case, the Authority argued that it did not hold teachers' notes as these would be held by the individual teachers and it would have no locus to see them. However, the Commissioner found that teachers' notes were held by the authority in terms of FOISA, and that it was the authority's duty (under section 1 of the Education (Scotland) Act 1980) to secure adequate and efficient provision of school education for its area and (under section 7 of the Standards in Scotland's Schools etc. Act 2000) to define and publish standards of performance for its schools. These responsibilities apply equally to the Authority in this case.
32. In this case, there appears to be a disconnect between the school and the Authority, and it would appear that the Authority has failed either to compel the school to conduct the searches that were required, or to ensure the adequacy of such searches. In either case, it was the Authority's responsibility to ensure that thorough searches of the school records, including emails sent or received by specific staff members, were carried out. In any case, it appears that the Authority has failed to instil in the school the standards to be expected of it in responding to requests for information.
33. The Commissioner is concerned that, while the Authority repeatedly tried to assure him that no further information was held, it does not appear to have taken any steps to ensure that the

---

<sup>1</sup> <https://www.itspublicknowledge.info/decision-0672022>

searches that were being claimed to have been carried out, were in fact conducted, or that the submissions it was putting forward in this case were correct. The Commissioner must advise the Authority that he is deeply concerned with its failings in this case, which appear to be systemic, and that he is considering further action under his Enforcement Policy.

34. In conclusion, as the Authority disclosed further information to the Applicant during the investigation, and as it failed to identify all of the information falling within the scope of the request, the Commissioner must find that the Authority failed to comply with section 1(1) of FOISA. He must require it to ensure that it has carried out fully adequate searches for the information requested by the Applicant, with a view to finally bringing this matter to a close.

## **Decision**

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

By failing to identify and locate all of the information that fell within the scope of the request, the Authority failed to comply with section 1(1) of FOISA.

The Commissioner now requires the Authority to ensure that it has carried out fully adequate searches for the information requested by the Applicant and then to issue a new review outcome to the Applicant, either disclosing any further information identified and located or notifying the Applicant why the information cannot be provided under a provision in Part 1 or 2 of FOISA.

The Authority must carry out these steps and notify the Applicant of the outcome of its review, by 16 January 2023.

## **Appeal**

Should either the Applicant or the Authority 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**

**5 December 2022**

## 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

#### 47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
  - (a) a notice under section 21(5) or (9); or
  - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
  - (a) be 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) state the name of the applicant and an address for correspondence; and
  - (c) specify –
    - (i) the request for information to which the requirement for review relates;
    - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
    - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...