



# Decision Notice 091/2023

---

## Report into the criminal abuse of autistic children

**Applicant: The Applicant**

**Authority: Scottish Borders Council**

**Case Ref: 202200380**

### Summary

The Applicant asked the Authority for a report by Andrew Webster KC concerning the abuse of autistic children at one of the Authority's schools. The Authority provided the Applicant with the requested information. The Applicant wished to ensure that no part of the report had been omitted, or redacted. The Commissioner investigated and found that the Authority had complied fully with FOISA in responding to the Applicant's request.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) 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 3 February 2022, the Applicant made a request for information to the Authority. They asked for a full (non-redacted) copy of a report by Andrew Webster QC (now KC) concerning the Authority's handling of allegations of abuse of children at one of its schools, which had led to a teacher being found guilty of assault.
2. The Authority responded on 3 March 2022 and provided a copy of an Authority meeting agenda, including the full report, where the report and findings were presented to Councillors.

3. On 7 March 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they wished to verify that the information provided constituted the full report.
4. On 8 March 2022, the Authority asked the Applicant to clarify their request for review. The Applicant did so on 9 March 2022, explaining that they wished to confirm if all the information concerning this enquiry had been provided, and for a weblink to the report.
5. The Authority notified the Applicant of the outcome of its review on 24 March 2022. It upheld its initial response, confirming that the report had been provided unredacted, with no information withheld from the public domain.
6. On 31 March 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated they were dissatisfied with the outcome of the Authority's review because they wished to ensure that the report had been provided in full.

## **Investigation**

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. 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 whether any information had been redacted or omitted from the report.

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

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

### ***Section 1(1) – General entitlement***

10. 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 (6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4) of FOISA.
12. The Authority submitted that there was only one report produced by Andrew Webster KC and that this full report had been provided to the Applicant, and was the same as [the report](#)<sup>1</sup> that was available in the public domain (on the internet).
13. It confirmed that, as only one report had been requested and provided, no further searches were considered necessary.
14. The Applicant, in their application to the Commissioner highlighted that they wanted to ensure that the full report had been published, and that nothing had been omitted.

---

<sup>1</sup> <https://scottishborders.moderngov.co.uk/documents/s62614/Item%20No.%2004b%20-%20SBC%20Final%20Report%20-%20Andrew%20Webster%20QC.pdf>

15. The only issue here is whether the specific report referred to (that of Andrew Webster KC) has been disclosed in full to the Applicant. The Commissioner has considered the information provided to the Applicant, as well as that available online, along with statements made by the Authority in the public domain that it had published the report in full.
16. The Commissioner can find no indication that any information has been redacted, or omitted, in contradiction to the Authority's statement, both to the Commissioner and to the public at large that the report has been made available in full.
17. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority complied in full with the Applicant's request. Consequently, the Commissioner is satisfied that the Authority responded to the request in accordance with Part 1 of FOISA.

## **Decision**

The Commissioner finds that the Authority complied fully 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 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**

**24 August 2023**

## 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.”
- ...
- (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.

...

#### 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).