

# Decision Notice

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**Decision 005/2020: The Applicant and Glasgow City Council**

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**Social care delivery services**

Reference No: 201900328

Decision Date: 16 January 2020



Scottish Information  
Commissioner

## Summary

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The Council was asked to provide information on its guidance and protocols for delivering social care services. The Council partially responded, having first clarified part three of the nine-part request.

The Commissioner investigated, during which time the Council completed its responses and gave further advice on information not held. By not addressing the whole request at the time of asking, he decided that the Council breached part 1 of FOISA.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority)

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. This case involves Cordia, an arm's length external organisation ("ALEO"). Cordia was wholly owned by Glasgow City Council (the Council), with the purpose of delivering care services on its behalf. All services delivered by Cordia and the Cordia brand name transferred to the Council on 30 September 2018, at which time Cordia ceased to trade.
2. On 14 November 2018, the Applicant submitted a nine-part request for information to the Council. The Applicant requested information comprising guidance or protocols for
  - (1) Calculation of client contributions to the cost of their personal care
  - (2) Assessment of client income/outgoings
  - (3) Staff procedure for handling unusual/complicated cases
  - (4) Social workers, to assist in advising clients on care options
  - (5) Social services complaint handling, in relation to social care provision
  - (6) Requests by client to change care provider
  - (7) Scrutiny and assessment of care charges by Cordia
  - (8) Process used by Cordia in compiling monthly cost of care provided, including how calculation verified
  - (9) Cordia recording changes to care arrangements, including cancellation of care/charges for care not provided
3. On 13 December 2018, the Council asked the Applicant to clarify part 3, which he did the following day.
4. On 18 December 2019, the Applicant wrote to the Council, requesting a review of its failure to respond to his request within 20 working days

5. The Council conducted a review and notified the Applicant of the outcome on 24 January 2019. The Council stated that it was only able to provide a partial response and that it would complete the response “in due course”.
6. On 21 February 2019, the Applicant wrote to the Commissioner and applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the time taken to respond in full. He also disagreed with the outcome of the Council’s review, which in his view failed to fully address the terms of his request.
7. Shortly afterwards (1 March 2019), the Council emailed the Applicant a letter (dated 28 February 2019), in which it apologised for the delays. The Council enclosed what it considered was a full response, pulling together both the information already provided and any remaining information it had now identified as held.

## **Investigation**

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8. 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.
9. On 27 February 2019, the Council was notified in writing that the Applicant had made a valid application. 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 Council was invited to comment on this application and to answer specific questions, to establish (a) what information was held which was capable of addressing each and every part of the request, and (b) whether the request, or any part of it, remained unanswered at the time of the response and requirement for review.

## **Commissioner’s analysis and findings**

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11. 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.

### **Scope of investigation**

12. For parts 1, 2, 4, 5 and 6, the Council provided the Applicant with exact weblinks to published information on its website in its “partial response” of 24 January 2019. It explained that it believed this information to be reasonably obtainable, citing section 25(1) of FOISA (Information otherwise accessible) in this connection.
13. Later (1 March 2019) the Council also provided the Applicant with an exact weblink for part 7, again applying section 25(1).
14. Given the Applicant has not raised any dissatisfaction with the application of section 25(1) for these elements (he has simply expressed concerns as to whether all the information so identified is relevant to his request), no decision is required by the Commissioner in respect of this exemption.
15. However, the Applicant expressed areas of dissatisfaction in his requirement for review and application. These were whether the Council responded fully to the request, as well as delays in its handling. The Commissioner will now consider these matters in turn.

## Has all information been identified?

16. 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. This is 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. These qualifications do not apply in this case.
17. The information to be given 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 the authority to give the Applicant notice to that effect.

### *Information disclosed – parts 6, 8 and 9*

18. On 1 March 2019, the Council disclosed additional information as follows:

Part 6 – 2015 Social Work Framework Agreement for Selected Purchased Social Care Supports. For clarity, this was in addition to the information already published for part 6 on the website, as described above.

Parts 8 and 9 – Cordia Home Care Operational Manual (version 3) and associated documents.

### *Information not held – part 3*

19. The Council originally sought and obtained clarification on 13 and 14 December 2018, respectively, for part 3. On 1 March 2019, the Council told the Applicant, in terms of section 17(1)(b) of FOISA, that it did not consider it held information capable of addressing this element. The Council explained that there was no guidance or procedural document with which to advise officers on how to deal with situations outwith current guidance. It commented that, in such cases, the matters would be dealt with on a case by case basis.
20. The Commissioner's remit is to investigate and reach a determination on information held by a Scottish public authority, including whether any relevant information is held. He cannot comment on what the Council ought to hold, but he can consider whether the Council took adequate and proportionate steps to establish what information, if any, it held and which fell within the scope of the Applicant's request.
21. The standard of proof in considering 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 and investigations 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.
22. The Council was asked to explain how it established what information it did hold.
23. The Council stated that, when the request was first received, Council officers were identified from its Social Work Service, as well as staff previously employed by Cordia. These officers then provided the information for each of the nine questions in the request, based on the officers' knowledge of care services. The Council commented that the information was identified "without the need to conduct specific searches" of the Council's records.
24. The investigating officer also asked the Council to confirm and explain if its searches were still ongoing during the investigation (as at 23 May 2019).

25. In its submissions, the Council confirmed that it had conducted, and completed, further inquiries during this investigation. The Council confirmed (on 14 June 2019) that no recorded information was identified as a result of these.
26. The Council also stated in its submissions that it wished to provide advice and assistance to the Applicant in light of this investigation. The Council did so the same day (14 June 2019) and supplied the Commissioner with a copy of its correspondence with the Applicant. This letter sought to explain what relevant information it held, why this was considered relevant to the request and what requested information was not held. The Applicant acknowledged receipt of this letter, but continued to express dissatisfaction with the Council's previous handling of the request.

### *Conclusions*

27. Clearly, the Council recognises its initial "partial" response of 24 January 2019 was incomplete and so was not fully compliant with the legal obligations placed upon it by FOISA. Even at the time of the additional response of 1 March 2019, however, it is apparent that the Council was still not satisfied that it had located all relevant information. Only at the time of its further response of 14 June 2019 does the Council appear to have been satisfied that it had brought the matter to a conclusion.
28. Therefore, the Commissioner finds that the Council failed to comply with its legal obligations under sections 1(1) and (4) of FOISA, either in response to the Applicant's request for information or at the time he sought a review, by failing to take adequate steps to identify what information was held and by failing to issue a notice in terms of section 17(1) of FOISA where no relevant information was held.

### **Timescales and handling of the request**

#### *Delays and clarification*

29. The Applicant has expressed dissatisfaction with the Council's request for clarification, coming as it did on the twentieth [last] working day for part of the request. This is set against the pattern of partial responses and delays.
30. Section 10(1) of FOISA stipulates that authorities must comply promptly and in any event not later than the twentieth working day after receipt of the request. The Commissioner notes that the Council apologised for its failure to meet this timescale in responding to the Applicant's requirement for review, but he cannot leave that failure without comment in the circumstances. In particular, it is not entirely clear why a request for clarification had to wait until practically the end of the period for responding to the request. The Scottish Ministers' Code of Practice on the discharge of functions under FOISA and the Environmental Information (Scotland) Regulations 2004 makes it clear (5.4.1) that clarification should be sought as soon as reasonably possible.
31. The Council explained in its submissions that staff shortages and changes, as well as changes in its processes, impacted on its ability to handle this request at such a time. The Council has also acknowledged that its responses were partial at the time of asking, for which it has repeatedly apologised.

### *Section 21 of FOISA – review by a Scottish public authority*

32. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to qualifications which are not relevant in this case.
33. The Council has apologised to the Applicant for its failure in responding timeously to the Applicant's review requirement. It is evident that the Council did not provide even a partial review outcome until after the 20 working days had expired, failing to provide a full one until well after that. Accordingly, it failed to comply with the requirements of section 21(1) of FOISA. While the Commissioner notes the Council's comments on staffing issues contributing to the delays in this case, and the Council's repeated apologies for those delays, they were still unacceptable.
34. The Commissioner's compliance database, which informs his intervention work, has been updated for this case.

## **Decision**

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The Commissioner finds that Glasgow City 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 the Applicant, by:

- (i) failing to complete adequate and proportionate searches to identify all relevant information held, in breach of sections 1(1) and (4) of FOISA; and
- (ii) failing to respond to the Applicant's request and his review requirement within 20 working days (in breach of sections 10(1) and 21(1) of FOISA).

Given the actions undertaken by the Council during this investigation, the Commissioner does not require the Council to take any action on these failures, in response to this application.

## **Appeal**

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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**

**16 January 2020**

## 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.

...

- (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.

...

#### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

#### 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.

...

## **21 Review by Scottish public authority**

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...





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