

Decision Notice 096/2020

Housing benefits

Applicant: The Applicant

Public authority: North Ayrshire Council

Case Ref: 201901005



Scottish Information
Commissioner

Summary

The Council was asked, among other matters, for information about the successful granting of housing benefit to adult applicants and to disabled adult applicants.

During the Commissioner's investigation, having reconsidered its response to the request, the Council disclosed some information to the Applicant. The Applicant remained dissatisfied.

Following the investigation, the Commissioner concluded that the Council had not conducted adequate searches or provided adequate advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15 (Duty to provide advice and assistance)

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 October 2018, the Applicant made a request for information to North Ayrshire Council (the Council). The information requested was:
 - all communications, information, guidance, required criteria and document vis-à-vis housing benefit, and its successful granting to:
 - an adult applicant (Part 1)
 - an adult disabled applicant (Part 2)
 - an adult disabled applicant renting a house from family or a third party firm or trust (Part 3)
 - all communications, information, guidance, required criteria and document vis-à-vis Universal Credit, and its successful granting to an adult disabled applicant (Part 4).
2. The Council wrote to the Applicant on 5 October 2018, asking him to clarify his request. The Council asked what he meant by "communications" and "successful granting".
3. The Applicant replied to the Council on 9 October 2018 that "communications" would include emails, letters, faxes or any other form of documented communication and "successful granting" would be where an applicant for a benefit has been successful in his/her application and has been awarded the benefit.
4. The Council replied to the Applicant on 10 October 2018 and thanked the Applicant for his email clarifying the request. It stated that any letters or faxes or documented communication relating to applications for Housing Benefit may contain personal data as defined by the Data Protection Act 2018 (DPA) and this information would therefore be withheld in terms of the exemption in section 38(1)(b)(Personal information) of FOISA. The Council said it could:

...request information and guidance regarding applying for Housing Benefit from the Service, and also ask if they can provide a figure for successful applications for each category.

It asked the Applicant to confirm if it had interpreted the request correctly.

5. The Council wrote to the Applicant on 10 December 2018, stating that, as it had not received a response to its request for clarification within 40 working days, it was closing the case. This email did not provide the right to request a review or right of appeal to the Commissioner.
6. The Applicant responded to the Council later that same day, noting that he had provided clarification on 9 October 2018.
7. On 28 December 2018, the Applicant wrote to the Council requesting a review of its decision on the basis that he had not received any information for his request and had been told that the Council was “not processing” his request.
8. The Council notified the Applicant of the outcome of its review on 28 January 2019. The Council’s review decided that the Council had reasonably sought clarification on each issue, but that, in line with good practice, it should have provided a warning letter that it was closing his case. The Council’s review stated that, as no clarification was received in response to its email of 10 October 2018, it was entitled to close the case. However, as the Applicant was only notified of the closure of the case after it had happened, the Council apologised and decided that it would re-open the case and would be in touch.
9. On 18 March 2019, the Applicant wrote to the Council asking why he had not been contacted in the way the Council’s review had indicated.
10. On 19 March 2019, the Council wrote to the Applicant. It referred to its review, and asked the Applicant to provide a timeframe for his request. In addition, the Council stated:

As previously mentioned questions 1 and 2 will be subject to the Data Protection Act and information may require to be redacted.

and

Please note that question 4 relates to Universal Credit which is managed by Department for Working (sic) Pensions (DWP).

Again, the Council asked the Applicant to confirm that it had correctly interpreted the request, referring to its email of 10 October 2018.

11. The Council wrote to the Applicant again on 4 April 2019 to remind him that it had sought clarification and asked him to provide clarification as soon as possible to allow it to proceed.
12. The Applicant replied on 11 April 2019. He confirmed that his request was not restricted to a specific time period, and stated that if a policy was written 20 years ago, but still in force, he would expect it to fall within the request. He commented that, if the Council wanted him to restrict a date for emails and letters, he would restrict it to five years from the date of request. He confirmed that he was not seeking personal data and was happy for information to be redacted and that he only sought information in Universal Credit to the extent that it related to Housing Benefit.
13. The Applicant did not receive a response and wrote again to the Council on 7 June 2019, asking for a review to be carried out.

14. The Council notified the Applicant of the outcome of its second review on 10 June 2019. The Council's review stated:
- Part 1: Housing Benefit is governed by Housing Benefit Regulations 2006 (the 2006 Regulations), which outline how Housing Benefit is determined and calculated. It stated that it adheres to the 2006 Regulations and does not hold separate policies. It also provided a link to a UK Government website¹
 - Part 2: A system-generated notification letter informs an applicant whether they have been awarded Housing Benefit and provides details of their award/entitlement. The Council did not provide a copy of these letters as they considered them to contain personal information, the release of which would breach the principles of the DPA.
 - Part 3: The Council stated that regulation 9 of the 2006 Regulations outlines the conditions for renting from a relative or trust. The Council confirmed that it adheres to those regulations and does not hold separate policies.
 - Part 4: The Council confirmed that it does not hold information on Universal Credit. Universal Credit is managed by the DWP. It therefore notified the Applicant, under section 17 of FOISA (Notice that information is not held) that it did not hold information falling within the scope of this request..
15. On the same date, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review because he had received no information. He said that it was untenable to say that all the Council's officers (involved in Housing Benefit) work from information on an external website, and take no notes.
16. The Applicant submitted that the failure to furnish information about the criteria for successfully applying for housing benefit was a serious failure to provide young people and their guardians with the correct information required to transition from Children's Services to Adult Services.

Investigation

17. 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.
18. 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. These related to compliance with Part 1 of FOISA in dealing with the Applicant's request.
19. On 20 September 2020, the Council told the Commissioner that it would conduct a further review (the third review) of how it had dealt with the Applicant's request. That review, of 26 September 2019, accepted that the Council's review of 10 June 2019 had not been "as comprehensive as it could have been".
20. The Council also indicated that it would discuss any specific circumstances with the Applicant and provide support, guidance and information tailored to those circumstances.

¹ <https://www.gov.uk/housing-benefit>

The Council gave the Applicant contact details, and it also apologised for the poor service the Applicant had received and that the Applicant had to seek a review to obtain all information available.

21. The Council's review of 26 September 2019 explained about Housing Benefit, and informed the Applicant of pages on its website² which outline eligibility and mirror what is in the 2006 Regulations. The Council said that there were no local policies which determine the eligibility or the calculation of Housing Benefit, and the Council adhere to the 2006 Regulations at all times. The Council said that the calculation of Housing Benefit is complex and dependent on individual and household circumstances. It informed the Applicant that the UK Government's website³ had extensive information about eligibility, how to claim, and what benefit may be awarded.
22. For the volume of Housing Benefit applications received by the Council in relation to adult applicants and the percentage of those successfully granted, the Council provided information relating to the Council's Housing Benefit new claims for financial years 2017-18 and 2018-19. The Council stated that it did not hold information relating to previous years and does not differentiate by disability - only by claimant age and financial/household circumstances. These statistics are reported to the DWP. The Council said that regulation 9 of the 2006 Regulations outlines the conditions for renting from a relative or from a trust. The Council said that it adheres to the 2006 Regulations and does not hold or maintain separate policies in relation to renting for a family or third party.
23. The Council again confirmed that Universal Credit was not administered by the Council and the Applicant would need to approach the DWP for this information. The Council provided a contact for the DWP and a link to webpages^{4 5} of the UK Government.
24. On 18 November 2019, the Applicant stated that he remained dissatisfied with the Council's response stating that the information from the Council was still incomplete and the Council had only given information on their website pages. He repeated that:

It is inconceivable that [the Council] who administer Housing Benefit have not other paperwork, emails, faxes, minutes of meeting vis-a-vis my FOI requests, yet not one single email or document has been furnished to me vis-a-vis my requests...

I have not requested that [the Council] stated which statutes they are using, yet they seem to think that they can circumvent their obligation to furnish me with documentation by just identifying statutes.
25. The Applicant said that the Council had excluded information about the criteria for successfully applying for housing benefit for people living in an "Annex" or "Granny House" of another property. The Applicant submitted that the Council had an obligation to decide on these cases, and yet had not disclosed any guidance, criteria or assessments used and what requirements are needed to be successful in securing Housing Benefit in such a case. The Applicant also commented that he had not requested statistics from the Council.

² <https://www.north-ayrshire.gov.uk/benefits/benefits.aspx>

³ <https://www.gov.uk/housing-benefit>

⁴ <https://www.gov.uk/universal-credit>

⁵ <http://www.legislation.gov.uk/uksi/2006/213/contents/made>

Commissioner's analysis and findings

26. In coming to a decision on this matter, the Commissioner considered all 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.
27. The Applicant stated that he did not wish to obtain "private information", but that the Council had not even supplied redacted information. He highlighted that the Council had asked him to stipulate a time period (for his request), but had then provided no information for that time. He confirmed that he did not wish to obtain information on Universal Credit, but wanted any documentation about the relationship of Universal Credit and the impact on the Council awarding Housing Benefit.
28. The Applicant has not questioned the withholding of personal data: indeed, he has acknowledged that he does not wish personal data. The Commissioner will therefore not consider whether personal data was correctly identified or withheld. The Applicant has not expressed dissatisfaction with the Council's response to Part 4 of his request, except insofar as it is connected to Housing Benefit (which would, in any event, fall within Part 1 of the request).

Section 1 - General entitlement

29. 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, subject to certain qualifications which are not applicable in this case.
30. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
31. In Parts 1, 2 and 3 of his request, the Applicant asked for information relating to the successful granting of Housing Benefit to subsets of people: to an adult applicant; an adult disabled applicant; and to an adult disabled applicant renting a house from family or a third party firm or trust.
32. The Commissioner notes that Part 1 of the Applicant's request is very wide: it asks for "all communications, information, guidance, required criteria and document" about "housing benefit, and its successful granting to an adult applicant." Parts 2 and 3 of the request are subsets of Part 1: they ask for information that falls within Part 1, but narrow the terms by stipulating the successful granting (of housing benefit) to an adult applicant and to an adult disabled applicant. Although the inclusion of narrower requests may indicate an area of housing benefit that is of particular interest to the Applicant, nonetheless all parts of the requests must be treated equally. Part 1 of the request specifies no timescale, making it wide, and possibly relating to information that now may not be current, and uses several categories of information – guidance, communications, etc. Also, the request refers to "Housing Benefit", which although a clearly identifiable type of information may include other types of benefit, such as Local Housing Allowance.
33. The Council has said that it follows the 2006 Regulations and does not hold separate policies/procedures. Therefore, in the Council's view, it was right and proper to provide the

Applicant with details of the 2006 Regulations the Council is governed by and links to relevant web pages that provide more information.

34. The Council is correct to refer the Applicant to its website, and in this context should have cited section 25 of FOISA (Information otherwise accessible). This exempts information from disclosure if it is information an applicant can reasonably obtain other than by requesting it under FOISA. The Council's website does have information about Housing Benefit - as does the website of the DWP and the Scottish Government. For specific instances, the Council maintains that it has no separate policies or Guidance for Housing Benefit. The Applicant does not accept this.
35. It seems to the Commissioner that there is a difference in how the Council and the Applicant interpret the request. The Council appears to interpret the request as relating to more formal guidance on the Housing Benefit. In contrast, the Applicant is clear that his request is much wider. On 9 October 2018, he stated that by "communications", he sought emails, letters, faxes or any other form of documented communication related to housing benefit, not just those related to individual claimants or documentation restricted to policies and guidance.
36. Having considered this carefully, the Commissioner acknowledges that the Council's third review does go some way to addressing the Applicant's dissatisfaction. However, the issue is still whether the Council has interpreted this request correctly and has identified all the information it holds that falls within the Applicant's wide request. The Applicant has consistently disputed this.
37. 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 (or, in this case, more information) is not held.
38. The Commissioner is not satisfied that the Council has fully explained its searches, nor why these would have been likely to locate any information covered by the request. The Commissioner does acknowledge the Council's comments that responsibility for Housing Benefit is with the DWP and the Council was correct to advise the Applicant that information may be held by the DWP that is relevant to his request. In this context, Housing Benefit is a national scheme administered by local authorities on behalf of the DWP and is governed by the 2006 Regulations. The Council said it has information pages on its website⁶ which outline eligibility and mirror the 2006 Regulations.
39. Having considered all the relevant submissions, the Commissioner cannot accept that the Council has shown that the only information held by it is that identified in each review. It may be that the Council does not hold recorded information that falls within the narrower part of the request (that is, Part 3), but evidence of adequate and proportionate searches have not been fully supplied to establish that (on the balance of probabilities) no further information is held by the Council.
40. It may also be the case that the Council holds so much information that it would not be obliged to respond to the request (section 12(1) of FOISA). Without further information from the Council, the Commissioner is unable to come to a conclusion on this point.

⁶ <https://www.north-ayrshire.gov.uk/benefits/benefits.aspx>

41. Although the Applicant indicated to the Council that he did not want to obtain any personal data in respect of Housing Benefit, he is clearly unhappy that he has not been provided with information with personal data redacted. The scope of his request is so wide as to suggest that it covers individual cases – which will clearly include personal data. It is not clear to the Commissioner whether such information could be disclosed without identifying the individual(s) involved.
42. Additionally, the Commissioner has not been shown any evidence that the Council does not hold any information (for example guidance or policies) that relate to the internal processing of applications in respect of Housing Benefit. Such information would technically fall within the Applicant's request i.e. guidance, required criteria and document about housing benefit, and its successful granting to an adult applicant.
43. The Commissioner has not been provided with details of reasonable and proportionate searches or explanations. Consequently, he cannot be satisfied, on the balance of probabilities, that the Applicant has been provided with all of the information held by the Council which falls within the scope of his request, and finds that the Council failed to comply fully with section 1(1) of FOISA in responding to his request.

Section 15 of FOISA: advice and assistance

44. Section 15 provides that 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.
45. In the case of *Glasgow City Council v The Scottish Information Commissioner*⁷[2009] CSIH 733 , the Court stated [at paragraph 45]:
If there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15. That is reflected in the Code of Practice issued by Scottish Ministers under section 60 of the Act
46. In the *Glasgow City Council* case, the Court of Session [again at paragraph 45] clearly distinguished between applicants who may be able to describe precisely what they want and applicants who cannot be expected to do that. The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code) also recognises that there will be certain individuals who may not be expected to express themselves with precision and who need more support in describing the information they wish to receive.
47. Requesters using FOISA, however experienced they are, cannot have the knowledge of the information held by a public authority equal to that of the public authority itself.
48. On balance, the Commissioner accepts that the Council has now partially complied with its duty to provide reasonable advice and assistance under section 15 of FOISA. However, he believes the Council should have provided more advice and assistance at the outset in terms of clarifying this request and indicating the information it held. Although the Council's subsequent reviews have assisted the Applicant, the Applicant has still expressed dissatisfaction that he has not obtained recorded information. The failure to provide

⁷ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>

reasonable advice and assistance has, in turn, led to the Commissioner being unable to determine whether adequate searches have been carried out or to determine whether all information held by the Council has been disclosed to the Applicant.

49. Given that the Council has not fully complied with its duty under section 15 of FOISA, the Commissioner requires the Council to contact the Applicant with a view to providing further advice and assistance to him in terms of section 15 of FOISA to enable him to make a further request for specific information should he wish. The Commissioner would urge the Applicant to cooperate with the Council in this.

Handling of request

50. The Commissioner notes, and the Council acknowledges, the poor handling of this request. The Council recognises that its initial review outcome was not as comprehensive as it could have been. The Commissioner also notes that the Council failed to provide the Applicant with his right to seek a review and rights of appeal, as per paragraph 5.5 of the Section 60 Code, when it sought to close his request on the basis that it considered the Applicant to have failed to provide clarification.

Decision

The Commissioner finds that North Ayrshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

As acknowledged by the Council, in initially failing to provide a response compliant with section 1(1), the Council failed to comply with Part 1. In addition, in failing to provide reasonable advice and assistance during the handling of this request, the Commissioner finds that the Council failed to comply with section 15 of FOISA.

By failing to provide details of adequate and proportionate searches, the Commissioner is not satisfied that the Council has identified all information falling within the scope of this request and therefore he cannot accept that it has complied fully with section 1(1).

The Commissioner requires the Council to provide the Applicant with advice and assistance in making a new request to the Council, by 9 October 2020.

Appeal

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

25 August 2020

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.

...

- (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.

...

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.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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