

Decision Notice 114/2021

Role of staff member

Applicant: The Applicant

Public authority: West Lothian Council

Case Ref: 202100028



Scottish Information
Commissioner

Summary

The Council was asked for the role of the staff member within a named department who was tasked with rectifying specified false, maliciously defamatory and libellous reports.

The Council informed the Applicant that it did not hold the information. The Commissioner investigated and was satisfied that the Council did not hold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 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 3 December 2020, the Applicant made a request for information to West Lothian Council (the Council). The information requested was:
The role of the person with the responsibility from DASAT assigned the task of RECTIFYING false, maliciously defamatory and libellous reports (both from the iVPD, DALOs, MARAC's) recorded on social work DASAT systems once it has been identified that a false police report(s) has/have been made and recorded.
(The acronyms: DASAT - Domestic and Sexual Assault Team; iVPD – interim Vulnerable Persons Database; DALO - Domestic Abuse Liaison Officer; MARAC – Multi-Agency Risk Assessment Conference)
2. The Council responded on 22 December 2020. It informed the Applicant that information provided by Police Scotland is treated as a record of Police Scotland's information and any inaccuracies would need to be reported to and rectified by Police Scotland. It advised that, if the source of the information advised the Council of such inaccuracies, it would amend its systems accordingly.
3. On 5 January 2021, the Applicant wrote to the Council, requesting a review of its decision on the basis that the Council was a data controller in its own right (with a duty to ensure data received from Police Scotland was accurate) and reiterating the original request.
4. The Council notified the Applicant of the outcome of its review on 6 January 2021. It provided notice in terms of section 17(1) of FOISA, confirming that it did not hold the information requested. It explained that nobody within the Council was assigned the task of changing reports from Police Scotland, any other third party organisation or any individual.
5. The Council provided further explanation of its understanding of its obligation to ensure the accuracy of any data it collected.
6. On 7 January 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 Council's review because she did not accept that no information was held.

7. The Applicant also commented on compliance with Data Protection legislation by the Council and others. These matters do not fall within the remit of the Commissioner and, as such, the Commissioner will not comment further.

Investigation

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 5 February 2021, the Council 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 Council was invited to comment on this application and to answer specific questions, focusing on the steps it had taken to identify and locate any information falling within the scope of the request.
11. The Council responded with submissions as to its interpretation of the request, confirming it did not hold the information requested.

Commissioner's analysis and findings

12. 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.

Information held by the Council

13. 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.
14. 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 it to give the applicant notice in writing to that effect.
15. The Commissioner notes the submissions provided by the Applicant. As mentioned above, however, he can only consider the submissions which are relevant to FOISA, and not whether the Council is fulfilling its responsibilities under Data Protection legislation.
16. In its submissions to the Commissioner, the Council confirmed that it held no record of the information requested by the Applicant. In this regard, the Council stated that it had understood the Applicant was looking for the role of the staff member within its Domestic and Sexual Assault Team (DASAT) who was responsible rectifying reports that had been received from Police Scotland and were later found to contain inaccuracies. It did not consider its role in correcting inaccuracies to extend to amending reports received from third parties (such as Police Scotland).

17. The Council provided explanation as to the enquiries it had undertaken to establish whether it held information falling within the scope of the request. It submitted that the enquiries focused on the staff employed within DASAT, their job descriptions and systems used by them, including consultation with relevant staff. The Council confirmed that the role of rectifying such reports, as outlined in the request, was not contained within any job description. It provided supporting evidence, and commented that the Applicant had assumed that particular officers within DASAT had been assigned that task, which was not the case.
18. 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 lies, the Commissioner must first of all consider the interpretation and scope of the request and thereafter the quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, however, the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
19. In the case of the requests under consideration, the Commissioner accepts the Council's interpretation that the Applicant is seeking information as to the role of a staff member, within a specific department (DASAT), tasked with the role of rectifying reports as outlined in the request, subsequently considered to contain false information. It is not for the Commissioner to determine whether the Council's interpretation of any relevant Data Protection requirements is correct, but he can assess the likelihood of any relevant information being held in the light of that interpretation.
20. Having considered all relevant submissions, and the terms of the requests under consideration, the Commissioner accepts that the Council interpreted the Applicant's request reasonably and took adequate, proportionate steps in the circumstances to establish what relevant information it held. Given the explanations and other submissions provided, he is satisfied that the Council does not (and did not, on receipt of the request) hold the information requested by the Applicant and was correct to give the Applicant notice to that effect, in terms of section 17(1) of FOISA.

Decision

The Commissioner finds that West Lothian Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the Applicant's request.

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

3 August 2021

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.

...

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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