

Decision Notice

Decision 181/2017: Ms N and the University of Stirling

Review carried out on behalf of Action for Children

Reference No: 201701368

Decision Date: 23 October 2017



Scottish Information
Commissioner

Summary

The University was asked for information about a review conducted on behalf of Action for Children. The University disclosed the information it held and told the requester it did not hold other information.

An application was made to the Commissioner, questioning whether the University held more information. Following an investigation, the Commissioner was satisfied that the University had carried out appropriate searches and had located all the information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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 March 2017, Bates Wells and Braithwaite, Solicitors, on behalf of their client, Ms N, made a request for information to the University under both FOISA and (insofar as the request related to personal data) the Data Protection Act 1998 (the DPA). The information requested was in relation to a review carried out by the University on behalf of Action for Children (AFC), to consider how AFC had dealt with allegations of historic child abuse. This included a request for copy of the final review report and other documentation and records relating to the review and associated investigation.
2. In this decision, all references to communications with Ms N include communications with the solicitors acting on her behalf.
3. The University responded on 30 March 2017. It provided Ms N with information that it considered to be her personal data under the DPA, explaining that this information was exempt from disclosure in terms of section 38(1)(a) of FOISA.
4. The University also provided Ms N with information under FOISA, explaining that certain information had been withheld under various exemptions in FOISA. In relation to her request for the final report, and other items she had requested, the University advised Ms N that it did not hold the information (section 17(1) of FOISA).
5. On 16 May 2017, Ms N wrote to the University. She acknowledged that the University did not hold a copy of the final report. She submitted a new request, asking for the last draft version of the report the University held.
6. Ms N also asked the University to confirm that all relevant searches had been conducted to identify and locate the information requested, referring in particular to deleted files, back-up drives and archived files.

7. The University notified Ms N of the outcome of its review (through its own solicitors) on 13 June 2017. The University confirmed that all relevant files had been searched and that it held no further information falling within the scope of the request of 3 March 2017.
8. In relation to her request for a copy of the last draft version of the report, made on 16 May 2017, the University confirmed that it held the information, but that it considered it to be exempt from disclosure under sections 27(2) and 33(1)(b) of FOISA.
9. On 7 August 2017, Ms N wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms N was not satisfied that the University had identified and located all the information falling within the scope of her request of 3 March 2017. She also disputed that the last draft version of the report, requested on 16 May 2017, was exempt from disclosure.

Investigation

10. Ms N was informed that her application regarding the University's refusal to provide the last draft version of the report was not valid, as she had not asked the University to review that refusal. The application regarding her original request of 3 March 2017 was accepted as valid. The Commissioner confirmed that Ms N made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to him for a decision.
11. On 6 September 2017, the University was notified in writing that Ms N had made a valid application. The case was allocated to an investigating officer.
12. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 19 September 2017, the University was invited to comment on this application and answer specific questions, in particular to explain the steps it had taken to identify and locate the information requested.
13. The University responded, providing submissions in support of its position that, other than the information already identified, it did not hold any information falling within the scope of the requests. It also explained why it did not hold certain information.

Commissioner's analysis and findings

14. 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 Ms N and the University. He is satisfied that no matter of relevance has been overlooked.

Information held by the University

15. 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.
16. 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.

17. The Commissioner notes the submissions provided by Ms N, in which she provides reasons why she considers the University should hold the requested information. She has highlighted particular kinds of information she would expect the University to hold.
18. In its submissions to the Commissioner, the University provided some background information about the review conducted on behalf of AFC, and the sensitivity of the information considered as part of that review. It explained that, due to the sensitive nature of the information considered, certain matters had not been recorded or communicated in writing. The Commissioner does not find it necessary or appropriate to repeat that background detail here.
19. The University confirmed the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of Ms N's request, detailing the places searched. These included searches of relevant electronic and paper records, and consultation with relevant staff. The searches covered deleted items still held by the University. The University provided supporting evidence, confirming the outcomes of these searches. The conclusion of the searches and enquiries was that, other than the information identified at the time it dealt with Ms N's request, no information was held.
20. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the University interpreted Ms N's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held. Given the explanations provided, the Commissioner is satisfied, on the balance of probabilities that the University held no information falling within the scope of Dr Kindle's request, in addition to that identified in dealing with the request. For those parts of the request in respect of which it held no information, the University was correct to give Ms N notice to that effect, in terms of section 17(1) of FOISA.

Decision

The Commissioner finds that the University of Stirling complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms N.

Appeal

Should either Ms N or the University of Stirling 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

23 October 2017

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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