

Decision Notice



Decision 212/2012 Mr N and Aberdeen City Council

Programme information

Reference No: 201201424

Decision Date: 14 December 2012

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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Summary

Mr N requested from Aberdeen City Council (the Council) certain information relative to specific offender programmes. The Council failed to respond but, following a review, informed Mr N that certain information was not held, providing an explanation. Following an investigation, the Commissioner accepted this position.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 19 March 2012, Mr N wrote to the Council and, in relation to a number of specified offender programmes, requesting the following information:
 - a) a breakdown of the timetables when such programmes were delivered by/or on behalf of the Council during the past five years, to include when each programme began and ended;
 - b) the level of participation for each programme, including attendance and completion rates;
 - c) which of the programmes met and/or had met the rigorous criteria research had indicated were required for interventions to be effective; and
 - d) the targeted participants for each programme, their demonstration of need and the dynamic risk factors each programme sought to change.
2. Mr N did not receive a response to his request and, on 30 April 2012, wrote to the Council requesting a review on the basis that it had failed to respond.



3. The Council responded on 10 May 2012. It informed Mr N that it held no information, other than information relative to a programme known as the Caledonian programme. The Council provided Mr N with explanation and stating that he had the right to require the Council to review its decision.
4. On 4 June 2012, Mr N wrote to Council and requested a further review, on the basis that he believed the Council had not provided him with the information it held.
5. On 20 July 2012, Mr N wrote to the Commissioner, stating that the Council had failed to respond to his requirement for review of 4 June 2012 and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr N had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. The Commissioner's office contacted the Council and informed it that, while Mr N had made an application relative to its failure to respond to his requirement for review of 4 June 2012, the Council had actually responded to his requirement for review of 30 April 2012. Therefore, although the Council had informed Mr N in its letter of 10 May 2012 of his right to seek a review, that had been unnecessary.
8. The Council explained that, on 21 August 2012, it had written to Mr N in response to his letter of 4 June 2012. In this response, the Council confirmed that it did not hold information falling within parts a) and b) of his request and provided further information and explanations in response to parts c) and d).
9. At this point, Mr N had only applied to the Commissioner in respect of the Council's perceived failure to respond. On 11 September 2012, Mr N wrote to the Commissioner, confirming that he had received the further response from the Council of 21 August 2012. He confirmed that he wished to make a new application to the Commissioner, on the basis that the Council had not provided him with the information requested. This application was validated (see paragraph 6 above) and the case was then allocated to an investigating officer.
10. On 25 September 2012, the investigating officer notified the Council in writing that an application had been received from Mr N, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain the steps it had taken to identify and locate the information Mr N had requested.



11. The Council responded on 1 November 2012, providing submissions in support of its position that it did not hold the requested information (except to the extent that it had been provided to Mr N).
12. The relevant submissions received from both the Council and Mr N will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr N and the Council and is satisfied that no matter of relevance has been overlooked.

Information held by the Council

14. 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 certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
15. The Commissioner notes that, in the review outcome of 10 May 2012 the Council informed Mr N that it held no information falling within the scope of his request. She notes, however, that in its further response of 21 August 2012, the Council provided Mr N with the information falling within parts c) and d) of his request.
16. In his application to the Commissioner, following the 21 August 2012 response, Mr N contended that the Council should hold information falling within parts a) and b) of his request (suggesting that it was required to do so) and that he had not been provided with all the information it held relating to parts c) and d).
17. In its submissions to the Commissioner, the Council explained the processes it followed in relation to offender programmes, with reasons why (with the exception of the information already provided) it did not hold the information requested by Mr N.
18. The Commissioner notes the terms of the requests made by Mr N, it being apparent that he is seeking information relative to the specific offender programmes named in his request. In explaining the processes followed, the Council confirmed that individual programmes of work were delivered as a routine part of any intervention identified in individual prisoner supervision plans, on a one to one basis in response to assessed risk and need. In the circumstances, the Commissioner accepts the Council's contention that the individual programmes will not necessarily specify a particular programme, but rather will identify a particular area of intervention, tailored to meet the individual's needs.



19. The Commissioner acknowledges that the description set out in the preceding paragraph does not conform to Mr N's expectations of how the programmes in question should be delivered, but nonetheless she is inclined to accept the Council's description of how it delivers its own services. Mr N has given her no reason for believing that he should have a better understanding of how the programmes are delivered in practice. In the circumstances, having accepted the description provided by the Council, she does not consider the information in individual supervision plans to be information falling within the scope of Mr N's request
20. The Council also submitted that there were an estimated 5,374 individual supervision plans and that such plans were held within papers files. If the plans were to fall within the scope of the request, therefore, the Commissioner would consider it highly likely that the cost to providing any relevant information would exceed the £600 limit and section 12(1) of FOISA would be applicable. In other words, the Council would not be obliged to comply with the request.
21. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted each part of Mr N's request reasonably and took adequate, proportionate steps to establish what information it held which fell within the scope of the request. In the circumstances, she is satisfied that it was reasonable for it to conclude that it did not hold any information, with the exception of what it provided to Mr N.
22. In reaching this conclusion, the Commissioner accepts that it will not necessarily follow from the Council's obligations in relation to offender management (or from the statistical information published in this area) that it will hold the particular information sought by Mr N.
23. The Commissioner is therefore satisfied that the Council provided Mr N with any information it held and which fell within the scope of parts c) and d) of his request and was correct to give Mr N notice, in terms of section 17(1) of FOISA, that it held no further information falling within the scope of his request.

DECISION

The Commissioner finds that, in respect of the matters specified in Mr N's application, the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr N.



Appeal

Should either Mr N or Aberdeen City Council wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
14 December 2012



Appendix

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.
- ...