

Decision Notice



Decision 215/2013 Mr Nigel Dale and Aberdeen City Council

Social work policies and procedures

Reference No: 201301801

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Summary

On 24 June 2013, Mr Dale asked Aberdeen City Council (the Council) for a copy of its written policy and procedures regarding social workers and employers in certain areas (risk assessment and exploitative behaviour) and for a breakdown of complaints received regarding social workers in the last five years. Following a review, as a result of which the Council supplied information to Mr Dale, Mr Dale remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found the Council had generally complied with FOISA in responding to Mr Dale's requests, although she noted that they had not been dealt with within the timescale set down in section 10(1) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (3) (General entitlement); 10(1)(a) (Time for compliance); 20(1), (3) and (4) (Requirement for review of refusal etc.); 21(1), (4) and (5) (Review by Scottish public authority).

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.

*The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs*¹ ("the Section 60 Code")

¹ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



Background

1. On 24 June 2013, Mr Dale wrote to the Council requesting the following information:
 - a) *A copy of the written policy and procedures regarding social workers and employers in the following areas:*
 - (i) *Risk assessment;*
 - (ii) *Exploitative behaviour.*
 - b) *A breakdown of how many complaints have been received regarding social workers in the five years.*
 - (a) *Please list as upheld / not upheld and area of social work they refer to.*

Mr Dale stated that he was not requesting any personal details.
2. On the same day, the Council asked Mr Dale to clarify his requests: it asked whether he was looking for information on complaints regarding social workers in the past five years (i.e. 2008, 2009, 2010, 2011 and 2012).
3. Mr Dale responded on the same day, confirming this was what he wanted.
4. On 26 June 2013, the Council wrote again to Mr Dale and asked him to clarify whether he was looking for policies and procedures regarding Social Workers completing risk assessments for clients, or for risk assessments with regard to workers carrying out their duties. The Council also asked Mr Dale to clarify what he meant by “exploitative behaviour”. It explained that it had “corporate-wide policies” such as the *Anti-bribery policy* and the *Employee Code of Conduct*. It supplied a link to the latter policy.
5. Mr Dale responded on 27 June 2013. He explained that, for risk assessments, his request was for both employer and social worker. Mr Dale stated that this should encompass any and all areas of social work. He explained that his request for information in respect of exploitative behaviour could be reasonably interpreted as referring to unfair actions which might result in a benefit. Mr Dale stated that the Council’s Social Services knew the information requested was specifically mentioned in their code of practice for employers and social workers, especially the phrase “exploitative behaviour”, which was used in their code of practice more than once.
6. The Council contacted Mr Dale on 26 July 2013 and apologised that it had failed to respond to his information request within the statutory 20 working days. The Council informed Mr Dale that he was entitled to request a review.
7. On 27 July 2013, Mr Dale wrote to the Council requesting a review of its decision. In particular, Mr Dale drew the Council’s attention to its failure to respond to his request within the statutory timescale.



8. The Council notified Mr Dale of the outcome of its review on 31 July 2013. It apologised for its failure to respond to his information request within the timescale. The Council supplied policies and procedures in relation to risk assessments specific to Social Care and Wellbeing. It provided a link to the Supporting and Protecting Adults from Harm policy. The Council also explained that the relevant risk management procedures for adult protection could be found on the Aberdeenshire Council website, and provided a link to this. In response to the request for policies on exploitative behaviour, the Council supplied its Anti-Bribery policy.
9. Regarding the request for a breakdown of complaints, the Council explained that there were a wide variety of occupations within its Social Care and Wellbeing Service and that information specifically about complaints against Social Workers had not routinely been collected. It stated that there were 447 statutory complaints received in the last four financial years. The Council explained that, in order to fulfill Mr Dale's request, it would require a member of staff interrogating all 447 complaint files. It would take at least 15 minutes per file to identify and note the information requested. This would take a total of 111.75 hours at £15 per hour, giving a total cost of £1,676.25. Therefore, the Council refused to provide this information in terms of section 12 (Excessive cost of compliance) of FOISA.
10. In terms of its duty to advise and assist, the Council explained that its Social Care and Wellbeing service routinely reported on statutory complaints. The Council provided links to the relevant reports for each year covered by Mr Dale's request.
11. Mr Dale wrote to the Council on 1 August 2013 and commented that the information supplied on risk assessment and complaints appeared to be a full disclosure as far as possible (though some supplied information appeared to be out of date). However, for policies relating to exploitative behaviour, Mr Dale was not satisfied that the Anti-Bribery policy applied. He explained that the Scottish Social Service Council (which regulates the Social Services workforce in Scotland) had produced codes of practice for employers and social workers. These, he explained, required written policies and procedures for exploitative behaviour.
12. Mr Dale asked that the Council now supply him with the information he had identified on exploitative behaviour. He also stated that the Council's review made no mention of why the request was not dealt with within the required time limits.
13. The Council responded to Mr Dale on 1 August 2013 and indicated that it already had conducted a review.
14. On 2 August 2013, Mr Dale wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
15. The application was validated by establishing that Mr Dale 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. The case was then allocated to an investigating officer.



Investigation

16. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application of 2 August 2013 (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to address Mr Dale's areas of dissatisfaction (as expressed in his application to the Commissioner – see below).
17. Mr Dale's application to the Commissioner expressed dissatisfaction with how the Council had dealt with his request regarding exploitative behaviour and in particular:
 - Failure to supply the requested information, even with clarification
 - No declaration whether the Council held the information or not
 - No consideration of the public interest test
 - He did not accept that a review actually took place in the very brief period between his requirement for review and the authority's response. If it did, he questioned its adequacy (noting, in particular, the absence of any statement of reasons for its decision)
 - Misinterpreting his requirement for review: he believed a requirement for review on failure to respond within 20 working days could be followed by a further requirement challenging the adequacy of what was provided.
18. On 6 August 2013, the Council wrote to Mr Dale again. It provided information on policy in relation to exploitative behaviour and service users. In this connection, it now treated Mr Dale's email of 1 August 2013 as a new request.
19. Mr Dale replied to the Council on 6 August 2013, explaining why he did not consider the Council's response of that date to address his request in relation to exploitative behaviour. The Council acknowledged this email and stated that it would conduct a review.
20. The Council communicated the outcome of this second review to Mr Dale on 4 September 2013. It supplied a copy of its *Local Operational Procedure for the Conduct of Adult Protection Initial Inquiries and Full Investigations*, which had not been accessible through the link supplied on 4 August 2013. The Council's review panel "accepted that there did not appear to be a specific policy and procedures in regard to exploitative behaviour, however this sat within Adult Protection procedures".
21. Having received the Council's review outcome of 4 September 2013, Mr Dale accepted that the Council did not hold the information he had requested. He acknowledged that the issue of whether the Council *should* hold such information was a separate matter.
22. Mr Dale still expressed his dissatisfaction with the Council's review of 31 July 2013: he remained dissatisfied that the Council had not complied within the timescale and he questioned whether a proper review had been carried out.



Commissioner's analysis and findings

23. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr Dale and the Council. She is satisfied that no matter of relevance has been overlooked.

Compliance with timescales

24. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to qualifications which are not relevant here.
25. Section 1(3) of FOISA provides that a Scottish public authority is not obliged to respond to an information request if it requires further information in order to identify and locate the information an applicant has requested, and has told the applicant so (specifying what further information is needed). However, a public authority is only entitled to seek such clarification if the requirement for further information is reasonable.
26. Mr Dale has not asked the Commissioner to consider the Council's use of section 1(3) to clarify his requests, though his earlier correspondence with the Council indicated that he did not think such clarification was needed.
27. The Council made two requests for clarification, on 24 and 26 June 2013. Mr Dale provided the second items of clarification (which related in part to the request on exploitative behaviour) on 27 June 2013.
28. The Council responded to the request on 31 July 2013, following Mr Dale's requirement for review of 27 July 2013. Consequently, it did not respond to the request within the 20 working days required by section 10(1) of FOISA. The Commissioner notes the Council's apology in this connection.

The Council's review

29. The Commissioner is satisfied that Mr Dale's email of 27 July 2013, in which he drew the Council's attention to the fact that he had not received a response to his requests, constituted a requirement for review for the purposes of section 20(3) of FOISA. The Council has not disputed this. The email expresses clear dissatisfaction with the Council's lack of response and expects the Council to review this.
30. The Council was invited, in terms of section 49(3)(a) of FOISA, to comment.
31. The Council responded that where it received a requirement for review on the basis that no response had been provided, the review was not considered by its review panel. In this connection, it referred to its own corporate FOI procedures, and also to paragraph 5.5 of the Section 60 Code):



In such circumstances, the authority may consider it appropriate for the original case-handler to continue dealing with the request and issue the review response rather than appointing separate reviewer to start the case afresh.

32. Mr Dale also submitted that the review was not to the expected standard, in particular in the absence of any statement of the reasons for its decision.
33. The Council responded that it had complied with FOISA by issuing a response in terms of section 21(4)(c) of FOISA (see Appendix below).
34. The primary responsibility on review, where no response has been provided to the initial request, is to ensure that one is provided. Having considered all relevant submissions, the Commissioner is satisfied that the Council did this, in accordance with the relevant requirements of section 21(4) and the Section 60 Code.
35. Mr Dale also appears to have expected the Council to provide reasons for its failure to respond within the required timescale. While this may have been helpful, the Commissioner does not consider it to be a requirement of either FOISA or the Section 60 Code: in acknowledging its initial failure to respond, the Council provided adequate reasons for what it had done by way of a review, in accordance with section 21(5)
36. Finally, Mr Dale commented that he expected to be able to seek a further review on the substantive response provided by the Council. The Commissioner does not agree: while the Council did this, in effect, following Mr Dale's application to the Commissioner, the substantive response provided by the Council on 31 July 2013 enabled Mr Dale to apply to the Commissioner on any aspect of the request with which he remained dissatisfied.

Action required by the Council

37. This decision notice has identified a breach of Part 1 of FOISA by the Council in responding to Mr Dale's requests for information. The Commissioner must now decide what action, if any, she should require of the Council in respect of that breach.
38. In September 2012, the Commissioner carried out an assessment of the Council's practice in relation to its obligations under FOISA and the associated Codes of Practice, publishing her report (with recommendations intended to improve practice in certain areas) on 13 August 2013².
39. Certain of the Commissioner's recommendations to the Council in her assessment report are relevant to the breach of Part 1 of FOISA she has identified in this case: compliance with timescales. An action plan (see Appendix 1 of the assessment report) has been agreed with the Council with a view to implementing the report's recommendations and further action may be taken by the Commissioner if the agreed actions are not taken. The action plan is due for submission to the Commissioner in February 2014.

² <http://www.itspublicknowledge.info/uploadedfiles/AssessmentReportAberdeenCityCouncil2012.pdf>



40. As the Commissioner has stated previously, in decision notices and otherwise, she takes very seriously the breach of the statutory timescales by public authorities in responding to information requests. However, in the light of the preceding paragraph, the Commissioner does not consider it necessary to require the Council to take specific further action in response to the breach of Part 1 of FOISA identified in this decision.

DECISION

The Commissioner finds that Aberdeen City Council (the Council) generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Dale.

By failing to respond to Mr Dale's requests for information within the timescale laid down by section 10(1) of FOISA, the Council failed to comply with Part 1. Given that the Council subsequently responded to Mr Dale's requirement for review, in accordance with Part 1, the Commissioner does not require it to take any action in respect of this failure, in response to Mr Dale's application.

Appeal

Should either Mr Dale or Aberdeen City 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
2 October 2013



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.

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

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

...

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.

...



- (3) A requirement for review must-
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify-
 - (i) the request for information to which the requirement for review relates; and
 - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).
- (4) For the purposes of paragraph (a) of subsection (3) (and without prejudice to the generality of that paragraph), a requirement for review is treated as made in writing where the text of the requirement is as mentioned in paragraphs (a) to (c) of section 8(2).

...

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.
- ...
- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

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Mr Nigel Dale
and Aberdeen City Council

