

Decision Notice



Decision 245/2013 Eighteen And Under and Dundee City Council

Eighteen And Under

Reference No: 201301880

Decision Date: 1 November 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

On 28 June 2012, Eighteen And Under asked Dundee City Council (the Council) for all information it held about the charity. The Council refused to comply with the request on the basis that it was a repeated request. On 25 June 2013, the Commissioner issued a decision, finding that the request was not a repeat request and requiring an alternative response.

The Council provided information in compliance with the Commissioner's decision on 2 August 2013, but Eighteen And Under remained dissatisfied with the amount of information disclosed and applied to the Commissioner for a further decision on 13 August 2013. Following an investigation, while finding an initial failure to identify and locate all the requested information, the Commissioner was satisfied that the Council had taken reasonable steps to establish that no further information was held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 28 June 2012, Eighteen And Under wrote to the Council requesting the following information:
...all information held by Dundee City Council (including but not limited to notes, memos, minutes of meetings, reviews, reports, internal and external correspondence) in relation to Eighteen And Under...
2. The Council did not respond to this request and Eighteen And Under requested a review.
3. After some delay and an application to the Commissioner, the Council responded to Eighteen And Under's requirement for review. In this response, the Council stated that, as Eighteen And Under had made a similar request on 29 May 2009, it was treating this current request as seeking all information from that date.



4. Following a further application from Eighteen And Under, the Commissioner issued *Decision 119/2013*¹. This required the Council to respond to Eighteen And Under's request for information, insofar as it related to information held prior to 29 May 2009, otherwise than under section 14(2) (repeated request) of FOISA.
5. The Council complied with the Commissioner's decision on 2 August 2013, supplying Eighteen And Under with information.
6. On 13 August 2013, Eighteen And Under wrote to the Commissioner, stating that they were 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.
7. The application was validated by the Commissioner and allocated to an investigating officer.

Investigation

8. On 2 September 2013, the investigating officer contacted the Council, 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 information falling within the scope of the request.
9. Eighteen And Under applied to the Commissioner on the basis that they believed the Council held further information which had not been provided to them.
10. During the investigation, the Council identified further information falling within the scope of the request and supplied this to Eighteen And Under. Eighteen And Under continued to believe that the Council held further relevant information.

Commissioner's analysis and findings

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

Information held by the Council

12. 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. This is subject to certain qualifying provisions which do not apply here. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2013/201202475.aspx>



13. As indicated above, the Council discovered further relevant information during this investigation. Consequently, the Commissioner must conclude that the Council (in responding to *Decision 119/2013*) failed to take adequate steps to identify and locate the information Eighteen And Under had requested. As a consequence, the Council failed to deal with the request in accordance with section 1(1) of FOISA.
14. The Commissioner must also consider whether she is satisfied that the Council held no further information falling within the scope of the request. To support their contention that further information was held by the Council, Eighteen And Under highlighted specific extracts from the information disclosed. These are considered in turn below.

Minutes of meetings

15. Eighteen And Under specifically sought a minute from a meeting held on 23 January 2009, which they argued had been taken by a specified Council official and circulated within the Council.
16. The Council submitted that no minutes had been kept, but did identify two documents created following the meeting. These were supplied to Eighteen And Under during the investigation. The Council stated that it was not its normal practice to take formal minutes of every meeting which was held. The Council stated that the named individual had left its employment, but information which had been in his possession had been passed to another individual, who was included in the searches conducted by the Council.
17. The Commissioner was supplied with evidence of the searches conducted by the Council to locate the minute in question, including those conducted during this investigation, which focused on identifying minutes created and circulated by the named individual. On review of these searches and the explanations provided by the Council, she is satisfied that the Council took reasonable steps to conclude that it did not hold any minute of the meeting in question. In reaching this conclusion, the Commissioner has taken into consideration the age of the information sought, the explanations provided and the fact that the named individual is no longer an employee of the Council.

Details of concerns received by the Council and the Council's actions arising from these

18. Eighteen And Under stated that a letter they had received dated 30 December 2008 referred to "concerns" received by the Council. Eighteen And Under assumed these concerns must be recorded by the Council, given their nature.
19. Eighteen And Under also referred to the content of a letter they had received which stated that the Council was carrying out an investigation into the "complaint and concerns" and "a comprehensive review" of Eighteen And Under's "structure, policies and practice". Eighteen and Under argued that, given the seriousness of the matters under consideration, the investigation and review could not have been done by telephone and must be recorded. They also stated that the letter in question referred to "the Social Work Department's view" of their organisation and the fact that these concerns would be shared with a list of named partners, which again they assumed would be recorded.



20. The Council understood that the “concerns” were expressed verbally. It also highlighted that any relevant information would be more than five years old and that its concerns regarding Eighteen And Under had been expressed to them a number of times.
21. The Council stated that, given the dissatisfaction apparent from Eighteen And Under’s application to the Commissioner, it had provided them with a letter enclosing its findings in relation to the organisation and also various other material (all of which it stated had been provided to them already) outlining why the Council had dealt with Eighteen And Under in the way it had.
22. The Commissioner was supplied with evidence of the searches the Council conducted to identify and locate information falling within the scope of this request, including those conducted during this investigation. The Commissioner has taken these into account and the explanations provided by the Council alongside consideration of the extent of information which has already been provided to Eighteen And Under. She is satisfied that the Council has taken all reasonable steps to attempt to identify any additional information falling within the scope of this request.

Conclusion

23. Following disclosure of the limited information identified during this investigation, the Commissioner is satisfied that the Council has taken adequate steps to identify, locate and provide all the information falling within the scope of Eighteen And Under’s request. In reaching this conclusion, she considered the evidence of the extent of the searches conducted by the Council, the age of the information in question, the explanations provided by the Council as to why it did not hold certain information and the extent to which information has already been provided.

Other issues

24. The Commissioner is disappointed that it has taken her intervention on three occasions for the Council to respond appropriately to this request and to take adequate steps to identify and locate all the information falling within the scope of the request.



DECISION

The Commissioner finds that Dundee City Council partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Eighteen And Under. In failing initially to take adequate steps to identify and locate the information requested by Eighteen And Under, the Council did not deal with the request in accordance with section 1(1) of FOISA.

Given the steps taken by the Council to identify and locate the relevant information during the investigation, the Commissioner is satisfied it has now taken adequate steps to identify all information falling within the scope of this request. Consequently, the Commissioner does not require the Council to take any action.

Appeal

Should either Eighteen And Under or Dundee 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
1 November 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.
...
- (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.
...