

Decision Notice

Decision 073/2016: Mr Alastair Tibbitt and Aberdeen City Council

“Prevent” duty guidance and related information

Reference No: 201501854

Decision Date: 24 March 2016



Scottish Information
Commissioner

Summary

On 30 August 2015, Mr Tibbitt asked Aberdeen City Council (the Council) for information relating to the “Prevent” duty guidance for Scotland.

The Council informed Mr Tibbitt that it did not have any information to disclose to him.

The Commissioner investigated and found that, in respect of the matters raised in the application, the Council had properly responded to Mr Tibbitt’s request for information in accordance with Part 1 of FOISA.

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 30 August 2015, Mr Tibbitt made a request for information to the Council. The request concerned the “Prevent” duty guidance for Scotland¹. This guidance provides advice for specified Scottish authorities on their duties under the Counter-Terrorism and Security Act 2015².
2. The information requested was as follows:
 - (i) *Please supply me with a copy of the Emerging and Residual Threat Local Profile (ERTLP) that covers the local authority area. If the full ERTLP document is not held, I understand a summary document will have been provided. Please supply me with this summary document in addition to the full document if possible.*
 - (ii) *Please supply me with all training materials distributed to Council staff in support of the local authority obligation to ensure front line staff are aware of PREVENT and of “available programmes to deal with any individual who is vulnerable to being drawn into terrorism”.*
 - (iii) *Please confirm how many staff have received these training materials in the last 36 months.*
 - (iv) *Please confirm how many individuals have been referred by Council staff into the Prevent Professional Concerns process as described in the above guidance in the last 36 months.*

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445978/3799_Revised_Prevent_Duty_Guidance_Scotland_V2.pdf

² <http://www.legislation.gov.uk/ukpga/2015/6/contents/enacted>

- (v) *Please supply all monitoring and/or evaluation reports provided to the local Multi-Agency CONTEST [Counter-Terrorism Strategy] group, or the Scottish Government in the last 36 months.*
- (vi) *Please supply a copy of the Council's current CONTEST and/or PREVENT action plan, and any previous plans.*

Mr Tibbitt also requested other information which is not the subject of this decision notice.

3. The Council did not respond. On 29 September 2015, Mr Tibbitt wrote to the Council, requiring a review in respect of its failure to respond.
4. The Council notified Mr Tibbitt of the outcome of its review on 2 October 2015. The Council informed Mr Tibbitt that it did not hold any information falling within the scope of parts (i), (v) and (vi) of the request. In relation to part (ii) of the request, the Council informed Mr Tibbitt that its training materials were currently being developed. The Council's answer to each of parts (iii) and (iv) of the request was "none".
5. On 11 October 2015, Mr Tibbitt wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Tibbitt stated he was dissatisfied with the outcome of the Council's review because he believed the information was held by the Council.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Tibbitt made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 4 November 2015, the Council was notified in writing that Mr Tibbitt had made a valid application. The case was then allocated to an investigating officer.
8. 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 answer specific questions. The Council was asked to explain the searches and enquiries it had undertaken in order to locate any information falling within the scope of Mr Tibbitt's request, and also to clarify aspects of its response.

Commissioner's analysis and findings

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

Did the Council hold any relevant information?

10. The Council's position was either that no information was held, or that the appropriate answer to parts of the request was "none".
11. In Mr Tibbitt's view, the information was held by the Council, but it preferred not to disclose it. He indicated that other Councils had admitted they held similar information. He also argued that the "Prevent" guidance suggested the Council would, at least, have been provided with a summary of the ERTLTP.

Part (i) of the request

12. In its submissions to the Commissioner, the Council stated that it did not hold the ERTLP document and had not been provided with a summary. The Council confirmed which officers it had consulted before reaching this conclusion.
13. The investigating officer subsequently contacted Police Scotland in order to clarify the process by which ERTLP documents had been supplied to local authorities in Scotland. Police Scotland explained that a senior Police Officer had attended each Council in person to deliver the document. One copy was handed personally to the Chief Executive of the Council, who signed for it. A further copy was retained and taken away by Police Scotland.
14. The investigating officer contacted the Council again and asked it to carry out further enquiries to establish whether it held the ERTLP, taking into account the information supplied by Police Scotland concerning delivery.
15. In response, the Council confirmed that the ERTLP had been hand delivered to its Chief Executive by Police Scotland on 28 May 2015. The Chief Executive destroyed the information immediately after the meeting with Police Scotland, on the same day. The Council stated there was no record of destruction, but the Chief Executive and another senior officer who was present both confirmed that destruction had taken place. The Council provided the investigating officer with emails from both members of staff confirming their position.
16. The Commissioner has considered the Council's explanation of why it does not hold the ERTLP document. Whilst she considers it may have been prudent for the Council to have kept a record of the destruction of information, she accepts that the information was not held by the Council at the time it received Mr Tibbitt's request.

Parts (ii) and (iii) of the request

17. The Council stated that it had not distributed any training materials to its staff. It explained that training materials for staff were being developed at the time it received Mr Tibbitt's request. The Council explained that it had run an initial awareness event for managers with Police Scotland, but no training materials had been distributed at that event.
18. The Commissioner notes that the "Prevent" duty guidance was relatively recent at the time of Mr Tibbitt's request, having only been issued in March 2015. In that context, the Commissioner accepts the Council's position that it was still developing its training materials in August 2015, at the time it received Mr Tibbitt's request.
19. Given that the Commissioner accepts that no training materials had been developed at the time of Mr Tibbitt's request, she also accepts that no staff had received any training materials at the time of the request.
20. In his application to the Commissioner, Mr Tibbitt expressed dissatisfaction that the Council had admitted providing some training to its staff, but had not disclosed how many staff received the training. However, the Commissioner notes that Mr Tibbitt did not request the number of staff who had received training, only the number who had received training materials.
21. The Commissioner has considered the Council's submissions and its explanation of why it does not have any relevant information falling within the scope of these parts of the request to disclose. In the circumstances, the Commissioner accepts that the Council did not have

any information falling within the scope of parts (ii) and (iii) of the request to disclose to Mr Tibbitt at the time it received his request: in other words, it did not hold the information.

Parts (iv) to (vi) of the request (inclusive)

22. In its response to Mr Tibbitt's requirement for review, the Council explained that no individuals had been referred into the Professional Concerns Process (part (iv) of the request). The Council also stated that it did not hold any information falling within the scope of parts (v) and (vi) of the request.
23. The Council explained that it had contacted the most relevant officers with responsibility for the Council's duties under "Prevent" to ascertain whether any relevant information was held. It identified these officers. These officers confirmed that the Council did not hold any monitoring or evaluation reports, or have a CONTEST or "Prevent" action plan. They also confirmed that no individuals had been referred, with supporting explanations in respect of all of these points
24. Again, the Commissioner notes that the "Prevent" duty guidance was relatively recent at the time of Mr Tibbitt's request. In the circumstances, the Commissioner accepts the Council's explanation that information was not held.
25. The Commissioner has carefully considered the Council's submissions and explanations relating to these parts of the request. Having done so, she accepts that Council did not have any relevant information falling within the scope of parts (iv) to (vi) of the request to disclose to Mr Tibbitt at the time it received his request: it did not hold this information.

Conclusion

26. The Commissioner has concluded that, at the time it received his request, the Council did not hold any relevant information to disclose to Mr Tibbitt. This is stated in, or implicit from, its response to Mr Tibbitt's request and was confirmed in the Council's submissions to the Commissioner.
27. The Commissioner notes that the Council's response to parts (iii) and (iv) of the request was "none". While this was helpful to the applicant in that it answered his questions, and that the answer "none" implied no information was held, the Commissioner is critical of the Council for not explaining this to the applicant and so making its position clear in terms of FOISA. The same principle applies to the Council's response to part (ii), that training materials were being developed.
28. Where a Scottish public authority does not hold information which would otherwise be captured by a request, section 17(1) obliges it to give the applicant a notice confirming that fact. It is not required to cite section 17(1) in such notice, but it is required to state that it does not hold the information. The Commissioner finds that the Council failed to do this in respect of parts (ii), (iii) and (iv) of Mr Tibbitt's request and therefore failed to comply with section 17(1) of FOISA. However, given that the Commissioner is satisfied that the Council did not have any relevant information to disclose to Mr Tibbitt, she does not require the Council to take any action in respect of this failure, in response to Mr Tibbitt's application.

Decision

The Commissioner finds that, in respect of the matters specified in the application, Aberdeen City Council partly complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Tibbitt. To the extent that it confirmed that no information was held, it complied with Part 1. Where (in respect of parts (ii), (iii) and (iv) of the request) it failed to confirm that it did not hold the requested information, it failed to comply with section 17(1) of FOISA.

Appeal

Should either Mr Tibbitt 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.

Rosemary Agnew
Scottish Information Commissioner

24 March 2016

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

...

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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