

Decision Notice

Decision 101/2016: Mr Stephen Williams and North Lanarkshire Council

Contact Details of Manager of Children's Leaving Service

Reference No: 201600154

Decision Date: 4 May 2016



Scottish Information
Commissioner

Summary

On 30 November 2015, Mr Williams asked North Lanarkshire Council (the Council) for contact details for manager(s) responsible for children leaving care.

The Council disclosed some information, but gave an incomplete response in relation to email addresses. Following a review, Mr Williams was dissatisfied with the Council's response and applied to the Commissioner. While the Commissioner was investigating this case, the Council apologised and disclosed a direct email address.

The Commissioner found that the Council did not properly address all the elements of Mr William's request. As the Council took appropriate action during the investigation, she did not require any further action.

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 November 2015, Mr Williams made a request for information to the Council. He asked two questions, referred to here as parts 1 and 2 of his request:

Part 1 "Can I have the name and contact details including email for the manager directly responsible for the Children's Leaving Care Service."

Part 2 "Can I also have the same details for the post responsible for the service at third tier if different."

2. The Council responded on 18 December 2015 by releasing some information (a job title, with a postal address and telephone number), but withholding the name and direct email address under section 38(1)(b) of FOISA, on the grounds it was personal data and disclosure would be contrary to the data protection principles.

3. On 18 December 2015, Mr Williams wrote to the Council requesting a review of its decision. He did not agree that the exemption was correctly applied to the name and email address in this case. He also questioned whether part 2 of the request had been answered.

4. The Council notified Mr Williams of the outcome of its review on 21 January 2016. For part 1 of the request, it ceased to rely upon section 38(1)(b) of FOISA and released more information to him. For part 2, it explained why it did not hold the information described by Mr Williams.

5. On 22 January 2016, Mr Williams wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Williams stated he was dissatisfied with the outcome of the Council's review because he remained unclear what information was held and whether his request had been fully addressed. In particular, he

questioned whether part 1 of the request was addressed fully by the provision of a generic email address. Mr Williams also complained about the Council's original response and the time taken to respond to his requirement for review.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Williams 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 12 February 2016, the Council was notified in writing that Mr Williams had made a valid application. The case was 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, with a view to clarifying whether any information continued to be withheld from Mr Williams.
9. On 15 March 2016, the Council emailed Mr Williams clarifying a direct address and apologising for any inconvenience the omission of detail in its responses to date might have caused. It also commented on other aspects of its responses, including why it had not been able to issue a review response until the last day permitted under FOISA.

Commissioner's analysis and findings

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

Part 1

11. In his application, Mr Williams complained that the Council had wrongly applied section 38(1)(b) of FOISA to this element of his request.
12. In its review response, the Council informed Mr Williams it no longer wished to rely upon this exemption and it provided Mr Williams with the name of the Manager, Children and Families Service. It also gave an email address for this service, although not the manager's own direct email address.
13. The investigating officer explained to the Council during the investigation that Mr Williams was expecting the direct email address for the manager to be given (instead of the generic one). The Council emailed Mr Williams (on 15 March 2016) to apologise for any misunderstanding over what was required, and to provide the direct email address for the manager.
14. The Council did not purport to withhold any information on review and there is nothing in its review outcome to suggest that was attempting to do anything other than provide a response to this part of the request. The issue for the Commissioner is whether it achieved this.
15. It is clear that Mr Williams now has the name of the manager, together with her direct email address (as distinct from a generic one). He believes it is clear that this was the information he was seeking from the outset. He also believes the Council understood this, applying

section 38(1)(b) of FOISA initially on the basis that he was seeking specific personal contact details.

16. In all the circumstances, it does appear reasonable to conclude that Mr Williams was seeking a specific personal email address for the manager in question and that this should have been apparent to the Council. The provision of a generic email address appears to have been a genuine attempt to provide useful information, but (in failing to provide the address – as it later accepted it could do – or explain why this could not be done) the Council failed to address part 1 of the request fully in accordance with section 1(1) of FOISA.

Part 2

17. Under section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
18. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect. In this case, the Council notified Mr Williams in its review outcome that it did not hold the information he had asked for, with an explanation.
19. In its submissions to the Commissioner, the Council explained it did not hold information for this element of Mr Williams's request. As the named manager had responsibility for children leaving care service, and as her post sat at third tier, the Council considered it had provided all the information it held. It provided an explanation of the relevant staffing structure.
20. The Commissioner has considered all the relevant submissions and is satisfied in the circumstances that the Council held no further information to answer part 2 of the request. It would, however, have been helpful if the review outcome had been clearer in explaining that the person identified in response to part 1 of the request was the relevant third tier manager.

Timescales and other matters

21. In his application, Mr Williams complained that the Council took too long to respond to his requirement for review, given that the request was straightforward. The Commissioner notes that the Council's email to Mr Williams during the investigation (15 March 2016) stated that its response was the earliest date on which it was able to respond. The Council's response was issued on the twentieth working day, in other words within the timescale specified by section 21(1) of FOISA. Section 21(1) also requires that the authority shall respond "promptly". Having considered all relevant submissions, and bearing in mind that the requirement for review was received just before the beginning of the Christmas holiday period, the Commissioner does not consider herself to be in a position to conclude that the response was other than prompt.
22. Mr Williams also complained that the Council "may have knowingly concealed or blocked access to the information requested". This appears to be founded on Mr Williams' belief that the review outcome was disingenuous in providing a generic email address, given that its earlier response was focused on not providing personal contact details. This is considered above. The Council may have failed to address part 1 of the request fully in carrying out its review, but the Commissioner accepts that this was a genuine (if perhaps misguided) attempt to resolve the matter. The motivations claimed by Mr Williams relate to the commission of a criminal offence under section 65 of FOISA, and the Commissioner is not satisfied in the

circumstances that there was any intent of that kind in the Council's handling on his requirement for review.

Decision

The Commissioner finds that North Lanarkshire Council partly complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Williams.

In failing to provide a specific personal email address in response to part 1 of the request, the Council failed to comply fully with section 1(1) of FOISA. Given that this was addressed during the investigation, the Commissioner does not require the Council to take any action in response to this failure.

Appeal

Should either Mr Williams or North Lanarkshire 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

4 May 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
(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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