

Decision Notice

Decision 102/2016: Mr Stephen Williams and Perth and Kinross Council

Contact details, Manager of Children's Leaving Service

Reference No: 201600073
Decision Date: 4 May 2016



Scottish Information
Commissioner

Summary

On 1 December 2015, Mr Williams asked Perth and Kinross Council (the Council) for contact details for manager(s) for children leaving care.

The Council disclosed some information, but withheld other information under section 30(c) of FOISA, as it thought its disclosure would substantially prejudice the effective conduct of public affairs. Mr Williams then located the withheld information on the Council's website.

During the investigation, the Council continued to withhold the information, but relied upon a different exemption to do so. It acknowledged that the information in question was in the public domain. The Council argued that the information was otherwise accessible to Mr Williams and therefore exempt under section 25(1) of FOISA.

The Commissioner investigated and found that the Council was correct in its application of section 25(1) of FOISA to the information available online (which met Mr Williams' request). However, she had some concerns about the Council's handling of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible)

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 1 December 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 to the service at third tier if different."

2. The Council responded 6 January 2016, seeking clarification of what Mr Williams meant by "children leaving care". It gave two possible interpretations. Mr Williams provided clarification (also dated 6 January 2016).

3. On 7 January 2016, the Council responded by releasing the names of two managers, with generic email addresses and other contact details, but withholding their direct email addresses (i.e. email addresses containing their names). It cited the exemption under section 30(c) of FOISA (Prejudice to effective conduct of public affairs), explaining its reasoning.

4. Mr Williams wrote to the Council, requesting a review of its decision, on 7 January 2016. He saw no reason to withhold the specific contact details and thought the Council had failed to follow all the tests required for this exemption. He queried whether the Council had assessed the extent to which the information was otherwise available.

5. The Council notified Mr Williams of the outcome of its review on 11 January 2016, upholding its original response. It gave a further explanation of its reasoning.
6. On 12 January 2016, Mr Williams wrote to the Commissioner. Mr Williams 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 disagreed with the application of the exemption. He noted that contact information for the individuals in question was available on the Council's website.

Investigation

7. 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.
8. On 3 February 2016, the Council was notified in writing that Mr Williams had made a valid application. The case was allocated to an investigating officer.
9. 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, seeking to clarify whether it was continuing to withhold information and (if so) on what basis. In this connection, the investigating officer drew the Council's attention to the fact that Mr Williams had identified the withheld information online.
10. The Council withdrew its reliance on section 30(c) of FOISA to withhold any further information and indicated that it now relied upon section 25(1) of FOISA, given that it acknowledged the information was publicly available.

Commissioner's analysis and findings

11. 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.

Section 25(1) of FOISA – Information otherwise accessible

12. Under section 25(1) of FOISA, information which a requester can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.
13. In his application, Mr Williams explained he had located the withheld information in Committee papers on the Council's website. The Council agreed that this information was online and that it should have applied the exemption in section 25(1). In other words, it was continuing to withhold it as it was otherwise accessible by Mr Williams.
14. During the investigation, Mr Williams criticised the Council's late application of this exemption, having failed to do so until after his appeal. He also thought the information was not easy to find by a member of the public: it was information which happened to be in a committee report – which he was able to locate with information disclosed by the Council – rather than information the Council published routinely.

15. The Commissioner is satisfied that the information in question was accessible online at the time the Council received Mr Williams' request. As a matter of fact, it was reasonably obtainable by him. The Commissioner must conclude that the Council was entitled to withhold the information under section 25(1) of FOISA.
16. There are, however, other issues relating to the Council's handling of the request, which the Commissioner will consider below.

Other comments

17. The Council's handling of Mr Williams' request was poor on this occasion. It is clear the Council overlooked relevant information which was already published on its website and more diligence was needed in this area.
18. As the Commissioner has indicated in the past, genuine access to information otherwise accessible frequently requires some form of guidance from a Scottish public authority, in line with its duty under section 15 of FOISA, as to where the information may be obtained. This appears to have been the case here: had the Council applied section 25(1) in responding to Mr Williams, it is likely that it should have accompanied this with such guidance, to ensure it was complying with section 15(1). This is something it should bear in mind in future.
19. Better handling of this case by the Council could well have avoided the need for Mr Williams to apply to the Commissioner.

Decision

The Commissioner finds that Perth and Kinross Council generally complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Williams. It was entitled to withhold the requested information under section 25(1) of FOISA.

Appeal

Should either Mr Williams or the 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.

...

(6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

(a) the provision does not confer absolute exemption; and

...

(2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

(a) section 25;

...

25 Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

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