

Decision Notice 089/2020

Outside groups and lesson plans

Applicant: The Applicant

Public authority: Clackmannanshire Council

Case Ref: 201901157



Scottish Information
Commissioner

Summary

The Council was asked for a range of information regarding outside groups that had spoken to or given inputs on identified topics in the school. It provided explanatory responses and stated that it did not hold the requested information.

The Commissioner investigated and was satisfied that the Council did not hold the requested information, but found that it had failed to provide the Applicant with adequate advice and assistance and her appeal rights.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1)(b) (Notice that information is not held); 19 (Content of certain notices); 21(10) (Review by Scottish public authority)

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 19 March 2019, the Applicant made a request for information to Clackmannanshire Council (the Council). She made the request directly to a school. She requested:
 - details about outside groups who had recently spoken to a year group, including Personal and Social Education (PSE) lesson plans and details of input from Forth Valley Rape Crisis Centre and LGBT Youth Scotland – including plans/details of the lunchtime focus group facilitated by the Forth Valley Rape Crisis Centre (Part 1).
 - the dates and names of any outside groups or speakers who had given inputs to all year groups in the school over the last three years about Prevention of Sexual Violence, Sexual Health relationships/consent, Anti-bullying or LGBT issues (Part 2).
2. The school responded on 18 April 2019. It provided a general response and stated that the requested information was not recorded centrally within the school and so it was unable to provide the information. The school directed her to contact the Council.
3. On 7 May 2019, the Applicant wrote to the Council requesting a review of its decision on the basis that the requested information should be held and, to assist, narrowed her request to a particular class. The Applicant also highlighted that she had initially tried to obtain this information directly from the Council, but had been directed to contact the school.
4. The Council notified the Applicant of the outcome of its review on 20 May 2019, stating that this information could not be collated by the school or the Council and providing weblinks to the Scottish Government's Health and Wellbeing Curriculum and NHS Forth Valley's Health Promotion web pages.
5. On 24 July 2019, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Council's review because she:

- (i) had not been provided with the information requested
- (ii) had not been advised of her appeal rights
- (iii) was dissatisfied with the handling of her request and the level of advice and assistance.

Investigation

- 6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
- 7. On 30 July 2019, the Council was notified in writing that the Applicant 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 to answer specific questions. These related to the information it held. The Council responded on 23 September 2019.
- 9. The Council was asked to provide further explanation of the searches it had conducted to identify the requested information. It did so on 15 October 2019.
- 10. The Applicant was provided with a summary of the investigation findings, and asked if she had any further comments she would like to submit as to why she considered that further information was held by the Council besides the explanations that had been provided. The Applicant provided further detailed explanation as to why she considered the Council still held further information and copies of information that she considered fell within scope of the request. The Applicant's comments will be considered below.
- 11. On 4 November 2019, the Council provided the Applicant with a further response to the request.
- 12. On 6 January 2020, the Council was asked to conduct searches of the email system its teachers use to correspond. In response, the Council confirmed that only limited information was held that fell within scope of the request; it noted that the Applicant already had a copy of this information.

Commissioner's analysis and findings

- 13. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

Section 17 – Notice that information is not held

- 14. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable here. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the Applicant a notice in writing to that effect.

15. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not require a public authority to create recorded information in order to respond to a request, or to provide information which is not held in a recorded form (e.g. about a person's intentions or opinions).
16. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) actually held by the public authority.

The Council's submissions

Part 1 of the request

17. The Council stated that there are no specific records held in relation to lesson plans or inputs and, therefore, section 17 of FOISA (Information not held) was considered to apply. The Council explained that lesson plans are not prescriptive as teachers have autonomy in what is included in their lessons: they draw from a variety of resources to deliver their lessons, but the actual lesson needs to be fluid in order to include pupil engagement.
18. On 4 November 2019, the Council provided a further response to the Applicant and stated that the school went on to explain that the Pupil Support Team body may look to engage a partner to assist the delivery of a topic/issue however this is solely dependent on their availability and the team remains in a position to deliver the entitlements regardless.

Part 2 of the request

19. The Council stated that there is no recorded information held by the Council in relation to dates and names of outside groups or speakers, so section 17 of FOISA applied. According to the Council, partnership working within the school in question over many years has allowed relationships to flourish and develop and facilitates one to one conversations either over the phone or face to face. In summary, the Council stated that no formal invitations are issued.

Further submissions from the Council

20. The Council was asked detailed questions about how lesson plans are recorded and was asked to explain how outside visits are arranged, monitored and recorded within the school.
21. The Council explained that there is no set format for lesson plans or compulsion on teachers to keep a record of lesson plans. These plans are, by their nature, fluid so that teachers can respond to input from their pupils. Ideas around the topics and how these might be presented to pupils would be considered the teacher's own private work.
22. The Council confirmed that the teachers had checked their records for information about outside speakers and confirmed no information was held.
23. The Council stated that, as the speakers are from organisations which work in partnership with the Council and schools, there is no formal mechanism for inviting speakers. Such visits would, for instance, be agreed by phone or face to face. The lesson would not be reliant on

a speaker attending as the teacher would still deliver the lesson and no single person would contact the groups.

24. The groups themselves would be responsible for ensuring that speakers coming into schools are vetted and, as talks are supplementary to the planned lessons, other staff and parents are not notified. The pupil support team who deliver the lessons do not make a note of any discussions in relation to the content of lessons.
25. The Council explained that sign-in sheets are held for a short period of time. As they are only required for fire evacuation purposes, they would not be retained for the period in question.
26. The Council confirmed that all relevant staff had been asked to search their records for the requested information, but no information was held.
27. The Council explained that its teachers use GLOW which is a national system¹ for the education sector and includes email functionality which is accessible via a unique id and logon. As it is a national system, the Council stated that its IT department could not search the system.
28. During this investigation, the Commissioner asked the Council to ask the relevant individuals to conduct searches of the GLOW system. After the searches had been carried out, the Council told the Commissioner that no further information was held.
29. Other searches carried out during the investigation identified copies of two documents and noted that this information had been provided to the Applicant as part of her ongoing correspondence with the school and external organisations. The Council explained that it received this information following the date of the information request, as it had contacted the relevant organisation for information which was provided and then forwarded onto the Applicant – it was not held by the Council at the time of the request.

The Commissioner's findings

30. The Commissioner considers that the Applicant had a reasonable expectation that the requested information would have been created or would have existed, but the investigation has not identified the specific information sought.
31. The Commissioner's decision is on the basis of the actual information requested. He has taken a reasonable interpretation of the request, allowing for the fact that the Applicant would have been unlikely to know exactly how information is recorded by the Council or the policies and procedures it has in place.
32. The Council provided copies of two documents during the investigation, which were also held by the Applicant. The Council explained that some of this information had been provided by an outside organisation upon request and given to the Applicant.
33. Having considered the submissions from the Council, the Commissioner has found that the Council did not carry out adequate, proportionate searches for any relevant information when it responded to the Applicant's request.
34. However, from considering the explanatory information provided to the Applicant by the Council, its responses to questions during the investigation and the searches undertaken during the course of the investigation, the Commissioner is satisfied by the end of the

¹ www.glowconnect.org.uk

investigation that the Council has taken adequate, proportionate steps to establish whether it held any of the requested information falling within the scope of the request. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities, that the Council does not hold the requested information.

35. Therefore, the Commissioner is satisfied that the Council did not hold the requested information in line with section 17(1) of FOISA.

Handling of request

Appeal rights

36. The Commissioner notes that the Council's response to the Applicant's request and requirement for review did not contain particulars about her rights of review or application to the Commissioner and of appeal to the Court of Session, as required by sections 19 and 21(10) of FOISA. This appears to have been because the request was not initially treated as an information request and because the request (and request for review) was sent to the school and not to the Council's FOI office. (For the purposes of FOISA, both the school and the Council are the same body. It should not have made any difference whether the request (or request for review) was sent to the school or to the FOI office.)
37. The Commissioner has issued guidance on the content of notices² which sets out what information authorities must include both in the response to a request for information and in response to a request for a review.
38. Given that the Applicant submitted a review, and was able to submit a valid application, the Commissioner does not require the Council to take any action in response to these failures, in response to the Applicant's application. However, he has noted the Council's handling of the request in his case management system.

Advice and assistance

39. The Applicant was also dissatisfied with the handling of her request and the lack of advice and assistance provided. The Commissioner notes that the school advised the Applicant to contact the Council and the Council advised her to contact the school.
40. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
41. In response to this request, the Council indicated that "that there are a range of inputs, including from partners and external organisations" but that neither the school nor the Council are in a position to collate this information in the format requested.
42. Although the Council was willing to provide assistance to the Applicant on the matter which led to her request, it did not provide advice or assistance in terms of responding to this request for information. The Commissioner notes that the Applicant, in attempting to assist the Council, narrowed the scope of her request to a particular year group – this was not addressed in the review by the Council.
43. In the circumstance, the Commissioner finds that the Council failed to comply with its duty under section 15(1) of FOISA to provide the Applicant with adequate advice and assistance in relation to her request. It should have provided some assistance, even if it were simply to

² http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Contentofnotices/Content_of_notices.aspx

explain why it did not hold the information to allow the Applicant to modify her request accordingly, if required.

44. As further explanations were provided during the investigation, as set out above, the Commissioner does not require any action in respect of this failure.

Decision

The Commissioner finds that Clackmannanshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner found that, although poorly handled, the Council correctly notified the Applicant that it did not hold any information falling within scope of the request in line with section 17(1) of FOISA.

However, by failing to provide the Applicant with details of her appeal rights in terms of section 19 and 21(10) of FOISA, and by failing to provide reasonable advice and assistance in terms of section 15 of FOISA, the Council failed to comply with Part 1 of FOISA.

The Commissioner does not require the Council to take any action in respect of these failures in response to the Applicant's application.

Appeal

Should either the Applicant 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

22 July 2020

Appendix 1: 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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

17 Notice that information is not held

- (1) Where-

....

- (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.

...

19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

...

21 Review by Scottish public authority

...

(10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.

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