

Decision Notice



Decision 142/2008 Mr James Ward and South Lanarkshire Council

Information concerning the Alexander Anderson Centre

Reference No: 200801179
Decision Date: 17 November 2008

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Summary

Mr James Ward requested from South Lanarkshire Council (the Council) copies of correspondence and communications between the Council, North Lanarkshire Council and Capability Scotland regarding the Alexander Anderson Day Centre (the Centre) and copies of emails, letters and minutes of meetings that the Council held in connection with the Centre. The Council responded by providing some information to Mr Ward and advising him that it did not hold any further information. Following a review, Mr Ward remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Ward's request for information in accordance with Part 1 of FOISA by stating that, in terms of section 17(1) of FOISA, it did not hold the information requested

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 17(1) (Notice that information is not held)

Background

1. On 11 April 2008, Mr Ward wrote to the Council requesting the file held by the Council in respect of the Alexander Anderson Day Centre (the Centre) in Wishaw.
2. The Council responded on 17 April 2008. The Council advised Mr Ward that it did not hold the information that he had requested. It noted that it did not operate the Centre, which is located in North Lanarkshire.
3. Following a further discussion between Mr Ward and a Council Officer, the nature of the request was clarified and the Council wrote to Mr Ward again on 23 April 2008 confirming that the information being sought was general communications and correspondence between the Council, North Lanarkshire Council and Capability Scotland (including emails, letters and minutes of meetings) in connection with the Centre.
4. On 14 May 2008, the Council wrote to Mr Ward and provided a letter and a briefing which were relevant to his request.



5. On 16 May 2008, Mr Ward again wrote to the Council providing further clarification on his request. He stated that his request was for documents held by the Council in respect of the closing of the Centre.
6. On 12 June 2008, Mr Ward wrote to the Council requesting a review of its decision. Mr Ward indicated that he did not consider he had received a response to his request for information from the Council.
7. The Council notified Mr Ward of the outcome of its review on 10 July 2008. The Council advised Mr Ward that it had carried out further searches and, as a result, had identified some additional relevant information. This information (a minute of a meeting and emails regarding this minute) was provided to Mr Ward. The Council apologised for its failure to provide all relevant information in its initial response, but went on to state that it did not have any further information. The Council also advised Mr Ward that it did not hold a file on the Centre.
8. On 6 August 2008, Mr Ward wrote to the Commissioner, stating that he was 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.
9. The application was validated by establishing that Mr Ward had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

10. On 10 September 2008, the Council was notified in writing that an application had been received from Mr Ward. The Council was also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the Council was asked to explain what steps and specific searches it had undertaken to in order to establish that no further information requested by Mr Ward was held by it.
11. The Council responded on 2 October 2008 providing its comments and outlining the steps that it had taken to establish that no further information was held.
12. In response to further questions from the investigating officer, the Council subsequently provided additional background information with respect to its role concerning the Centre and its participation in discussions about it.



Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr Ward and the Council and is satisfied that no matter of relevance has been overlooked.

Whether the information requested by Mr Ward is held by the Council

14. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give an applicant notice in writing that the information is not held.
15. In its letter of 10 July 2008, the Council advised Mr Ward that it did not hold any further information beyond that which had already provided to him.
16. In order to determine whether the Council was correct to advise Mr Ward that it does not hold the requested information, the Commissioner must establish whether the Council holds (or held at the time of Mr Ward's request) information which would address his request.
17. In his submissions to the Commissioner, Mr Ward indicated that he believed the Council would hold documentation relating to meetings which had been held about the Centre and concerning new referrals to the Centre.
18. In its submissions to the Commissioner, the Council explained that its involvement with the Centre is currently on three levels:
- Care management of individual service users by local office Social Work staff.
 - Financial management of the individual placements purchased from Capability Scotland by Council Finance staff.
 - Reprovisioning of day services for South Lanarkshire service users being processed by day service managers.
19. The Council has also provided the Commissioner with details of the nature and extent of both manual and electronic searches it had undertaken, including keywords. The Council explained that it has undertaken searches of individual Officers' files as well as central records. The Council has also consulted with Officers across various services and undertaken a search of emails across the system network.



20. The Council explained that its current Adult Services Manager has consulted with both the former Adult Services Manager, who covered this service two years ago, and the Council's Fieldwork Manager. The Council stated that the former Adult Services Manager has no recollection of attending any meetings concerning the closure of the Centre. The Council also stated that the Fieldwork Manager recalls attending a meeting with Capability Scotland around the end of 2005. However, this meeting concerned the modernisation of services generally and there was no mention of any proposal to close the Centre. The Council stated that it does not hold a minute of this meeting. The Council explained that it has rechecked all of the Capability Scotland files in its central filing system and can find no records of meetings or discussions relating to the Centre.
21. The Council also explained that it can find no evidence that records of any such meetings or discussions may have been held but subsequently destroyed.
22. The Council explained that, having checked and analysed all of its appropriate records, no additional information was found which covered Mr Ward's request.
23. Having considered the Council's submissions on this point and its explanation of the steps taken in order to ascertain that all relevant information has been supplied to Mr Ward and, consequently, that it does not hold the information which is the subject of this decision, the Commissioner is satisfied that the information is not held by the Council. The Commissioner is satisfied that the Council has taken all reasonable steps to establish whether any further information is available. The Commissioner has therefore concluded that the Council was correct in informing Mr Ward that it was unable to supply the information in question.
24. The Commissioner is therefore satisfied that the Council has complied fully with the provisions of FOISA in dealing with Mr Ward's request.

DECISION

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

The Commissioner is satisfied that the Council does not hold the information requested by Mr Ward and that it was therefore justified in giving him a notice in terms of section 17(1) of FOISA in response to his request.



Appeal

Should either Mr Ward or the Council wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Investigations
17 November 2008



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.

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.