

Decision Notice



Decision 201/2012 Ms A and Stirling Council

Guidance relating to travel expenses

Reference No: 201200524

Decision Date: 6 December 2012

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Ms A asked Stirling Council (the Council) for the guidelines used to calculate her son's entitlement to travel expenses. The Council provided Ms A with some information. Following a review, Ms A remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Council had partially complied with Part 1 of FOISA, but had failed to provide reasonable advice and assistance to Ms A and had failed to respond to the request for review in time.

Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. Ms A's son had previously attended a respite centre, but after some time it was decided that he would move to a residential placement (also referred to as a tenancy). Whilst her son was attending the respite centre, Ms A was able to claim expenses for him to transfer between home and the respite centre. Once he moved to a tenancy, a Council officer emailed Ms A on 3 October 2011 and advised her that:

“... there is a difference between transport to and from respite placements and travel to a tenancy. The guidelines for transport mean that we would be prepared to fund expenses up to 5th September [2011] but after that date we would only be able to fund one return visit a month”.

2. Ms A wrote to the Council the same day, requesting a copy of the guidelines referred to by the Council officer.



3. The Council did not respond to this request. On 8 November 2011, Ms A contacted the Council again and repeated her request, adding that she was also seeking a copy of the “Quality Impact Assessment” used in formulating the guidelines she had requested.
4. The Council responded on 2 December 2011. It provided Ms A with a copy of its report ‘National eligibility criteria and waiting times for the personal and nursing care of older people and local framework’ (“the framework report”), noting that it made reference to transport arrangements.
5. On 13 December 2011, Ms A wrote to the Council requesting a review of its decision. Ms A acknowledged that there was a small reference to transport within the documents provided, but commented there was no information explaining why travel expenses differed for transport to and from a respite placement and travel to a tenancy. In addition, Ms A noted that the guidance did not explain why her son was only entitled to one funded return trip a month.
6. The Council notified Ms A of the outcome of its review on 24 February 2012. The Council apologised for failing to respond to her request within 20 working days (as provided for in section 21(1) of FOISA). The Council noted that it had provided Ms A with a copy of the framework report in response to her initial request, but it acknowledged that it had not provided her with a copy of new guidance from the Scottish Government¹ (which it presumed was what she was seeking) and so it also provided her with a copy of this document. The Council provided some explanatory information about the two documents it had given to her, and provided a copy of the Council’s Assessment and Eligibility Framework.
7. The Council gave Ms A notice (in terms of section 17(1) of FOISA) that it did not hold the Quality Impact Assessment she had requested.
8. On 13 March 2012, Ms A wrote to the Commissioner, stating that she 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 Ms A 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.

¹ National Criteria and Waiting Times for the Personal and Nursing Care of Older People.



Investigation

10. On 5 April 2012, the Council was notified in writing that an application had been received from Ms A, and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and answers to specific questions. The Council was asked to explain why it considered that the information it had disclosed to Ms A met the terms of her request. It was also asked whether it held any other information that might fall within the scope of Ms A's request. The investigating officer noted that the Council appeared to have misinterpreted Ms A's request, as the documents provided to Ms A did not appear to provide any explanation as to why her son's funding for travel expenses was restricted to one return visit a month.
11. The Council provided the Commissioner with additional documents and further explanation of its position during the investigation.
12. The relevant submissions received from both the Council and Ms A will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered the information disclosed to Ms A along with the submissions made to her by both Ms A and the Council, and is satisfied that no matter of relevance has been overlooked.

Scope of the request / information provided

14. In this case, the key issue is whether the information provided to Ms A adequately fulfilled the terms of her request. As previously noted, a Council officer had advised Ms A that the "guidelines for transport" meant that her son could only receive travel expenses for one return trip a month to his tenancy. Ms A advised the Council that she was seeking a copy of these guidelines, along with the Quality Impact Assessment used in their formulation.
15. Particularly when read in relation to her request for review, Ms A's request could reasonably be interpreted as a request for information that would help her understand the Council's decision regarding her son's travel reimbursement. It is the Commissioner's view that Ms A used the term "guidelines" in her request because that was the term the Council had used in its email to her.

Submissions from the Council

16. The Council has consulted with staff in its Social Services Assessment Care Management Team and has concluded that it does not hold any additional documents or information in relation to Ms A's request, other than the framework report provided to her.



17. The Council submitted that Ms A's request for information was unequivocal, as she had asked for a specific document, and this document had been provided. Furthermore, the Council argued that, even if Ms A had not made clear what document she was seeking, it would still have been appropriate for the Council to have provided her with a copy of the framework, as it was relevant to her son's assessment and fell within the scope of her request.
18. The Council referred the Commissioner to appendix 2 of the framework (paragraph 10), where it states that;

"Transport to and from day care or other services will only be provided where there are no other means of transport available. The decision about provision is based upon the person's ability to use public transport. Where Disability Living Allowance – DLA - (Mobility Component, including someone accessing the Motorability Car Scheme) is payable there is an assumption that this will be used for transport to and from services".

The Council acknowledges that, contrary to the explanation given to Ms A in an email, this statement does not provide for a different outcome dependent on the nature of the service attended (i.e. day or other services, such as respite or tenancy), but instead makes it clear that the same assessment decision will be made regardless of the type of service. The Council explained that when Ms A's son's respite placement came to an end and he took up a tenancy, he was assessed as an adult and as such was not entitled to have any travel expenses reimbursed. As Ms A's son received DLA at the highest level, it was not obliged to provide any further support for travel expenses. However, since Ms A's son would only be based at his tenancy for 305 days per year rather than 365, it was agreed that he would be reimbursed for one trip home per month

Submissions from Ms A

19. Ms A noted that, while she had asked the Council for a copy of the guidelines it had used to determine the travel expenses to which her son was entitled, it had provided her with a framework that related to services for older people. Ms A also submitted that she was not given any clear information as to why the reimbursement of travel expenses differed between travel to and from the respite centre, and to and from a tenancy.

Commissioner's view

20. The Commissioner notes that while the framework report provided to Ms A focuses mainly on older people (indeed, its title suggests it applies exclusively to that social group), paragraph 3.11 of the document states that the framework is generic and the Council applies it across *all* care groups to ensure equity of access and consistent risk management. In the circumstances, the Commissioner is satisfied that the framework report provides policy information relevant to Ms A's son and his entitlement to care services and associated travel expenses. Given the title of the document, and the lack of explanation provided by the Council, the Commissioner considers it is understandable that Ms A would query its relevance to the care provision of young adults.



21. The Commissioner notes that the framework report does not appear to contain the “guidelines” to which a Council official had made reference in an email to Ms A. The framework contains no information to explain why Ms A’s son was only entitled to one funded return trip a month, nor does it contain any explanation as to why travel reimbursement differs between travel to and from respite or a tenancy. The Council has not provided Ms A with any other recorded information which would explain the decision on her son’s travel expenses, but neither has it advised her that such information is not held.
22. The Commissioner notes that, in its review outcome, the Council officer commented:

“Whilst I am satisfied that I have now provided you with the information which you have requested, I appreciate that this information may not contain the information that you are seeking. This is because it does not provide any particular information on what types or amounts of travel expenses may or may not be reimbursed”.

The Council officer then advised Ms A to contact the Social Services Complaints Officer if she wanted to discuss the substance of her concerns further.
23. It is the Commissioner’s view that the Council has demonstrated, by its choice of words, that it understood that the review outcome it provided to Ms A did not fully satisfy her request. The Council did not advise Ms A that the previous advice she had been given (that there was a difference between travel to and from respite and travel to and from a tenancy) was incorrect, nor did it offer any explanation as to why, in her son’s case, the Council had determined that he was only entitled to funding for one return trip a month.
24. It is clear to the Commissioner (from reading the Council’s correspondence both to herself and to Ms A) that the Council recognised that the information it provided was of limited assistance to Ms A. The Commissioner considers that the Council should have taken steps to explain to Ms A why the framework report was relevant to her son’s care and to explain to her what other information was or was not available to help her understand the decision on her son’s travel expenses. Ms A’s request stemmed from the content of an email sent to her by a Council officer, and if the content of that email was incorrect or misleading in any way about the information held by the Council, the Council should have addressed this in its response to Ms A’s information request.
25. Section 15(1) of FOISA requires a Scottish public authority to provide reasonable advice and assistance to a person requesting information. The Commissioner finds that the Council failed to provide such advice and assistance to Ms A, in responding to her request and request for review.



Information not held

26. The second part of Ms A's request was for the "Quality Impact Assessment" used in formulating the guidelines she had requested. The Council's initial response (2 December 2011) had included the term "Equality Impact Assessment" in its heading, but had made no further reference to either a "Quality Impact Assessment" or an "Equality Impact Assessment", and neither was provided. In its review response (24 February 2012), the Council advised Ms A that it did not hold a "Quality Impact Assessment".
27. During the investigation, the Council confirmed that it had understood Ms A's request to relate to a "Quality Impact Assessment" despite the mistake in the subject heading of its response. It advised that the internal email seeking information from the client service also correctly referred to the request as "guidelines for transport and quality impact assessment".
28. The Council advised the Commissioner that it does not prepare Quality Impact Assessments, and has no policy requiring such an assessment to be prepared when drawing up guidelines such as those referred to in Ms A's request. The Council's intranet site had been searched during the investigation, and no other reference to Quality Impact Assessments apart from Ms A's information request had been found. The request had also been discussed with officers in the Social Services Assessment Care Management Team, who knew of no such document.
29. On the basis of this submission, the Commissioner accepts that the Council did not hold any information covered by the second part of Ms A's request, and gave her written notice of this as required by section 17(1) of FOISA.

Timescales

30. Ms A also expressed dissatisfaction that the Council took longer than 20 working days to respond to her request for review.
31. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
32. As the Council acknowledged in its review response, it did not provide a response to Ms A's requirement for review within the requisite 20 working days. Consequently, the Commissioner finds that the Council failed to comply with section 21(1) of FOISA. Given that it responded on 24 February 2012, the Commissioner does not now require the Council to take any action in respect of this failure.



DECISION

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

The Commissioner finds that the Council complied with section 1(1) of FOISA by providing some information covered by Ms A's request, and correctly gave notice that other information she had asked for was not held, in accordance with section 17(1) of FOISA.

However, the Commissioner finds that the Council breached Part 1 by failing to provide Ms A with reasonable advice and assistance under section 15(1) of FOISA and by failing to respond to her requirement for review within the timescales laid down by section 21(1) of FOISA

Given that Ms A has since received a response to her request for review, the Commissioner does not require the Council to take any action in response to this failure.

Appeal

Should either Ms A or Stirling 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 Enforcement
6 December 2012



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.

...

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-
- (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.

...



21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...