

Decision Notice

Decision 104/2016: Mr Alastair Tibbitt and Moray Council

“Prevent” duty guidance training materials

Reference No: 201501860

Decision Date: 05 May 2016



Scottish Information
Commissioner

Summary

On 30 August 2015, Mr Tibbitt asked Moray Council (the Council) for information relating to the “Prevent” duty guidance for Scotland.

The Council informed Mr Tibbitt initially that the information was exempt from disclosure in terms of section 30(c) of FOISA. Following a review, it informed him that the information was exempt under section 31(1) of FOISA. During the investigation, the Council submitted that it did not hold this information.

The Commissioner investigated and found that the Council did not hold the information. She found that the Council should have given Mr Tibbitt due notice of this.

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 August 2015, Mr Tibbitt made a request for information to the Council. The request concerned the “Prevent” duty guidance for Scotland¹. This guidance provides advice for specified Scottish authorities on their duties under the Counter-Terrorism and Security Act 2015².
2. The information requested was as follows:
 - 2 *Please supply me with all training materials distributed to Council staff in support of the local authority obligation to ensure front line staff are aware of “Prevent” and of “available programmes to deal with any individual who is vulnerable to being drawn into terrorism”.*

Mr Tibbitt also requested other information which is not the subject of this Decision Notice.

3. The Council responded on 9 September 2015. It informed Mr Tibbitt that the information was exempt from disclosure in terms of section 30(c) of FOISA. The Council stated that disclosure of the information would be likely cause substantial prejudice to the effective conduct of public affairs.
4. On 10 September 2015, Mr Tibbitt wrote to the Council requesting a review of its decision. In Mr Tibbitt’s view, there was a considerable public interest in disclosure of the information.

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445978/3799_Revised_Prevent_Duty_Guidance_Scotland_V2.pdf

² <http://www.legislation.gov.uk/ukpga/2015/6/contents/enacted>

5. The Council notified Mr Tibbitt of the outcome of its review on 8 October 2015. The Council now informed Mr Tibbitt that it considered the information to be exempt from disclosure in terms of section 31(1) of FOISA. This was on the basis that exemption from disclosure was required for the purposes of safeguarding national security.
6. On 11 October 2015, Mr Tibbitt wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Tibbitt stated he was dissatisfied with the outcome of the Council's review. He did not consider a blanket application of the exemption was appropriate and believed redacted materials could be disclosed in order to mitigate the Council's concerns. He also argued that there was a public interest in understanding how public bodies were implementing the Prevent guidance.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Tibbitt 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 30 October 2015, the Council was notified in writing that Mr Tibbitt had made a valid application. The Council was asked to send the Commissioner the information withheld from him.
9. The Council subsequently provided information, indicating that it comprised training materials falling within the scope of part 2 of Mr Tibbitt's request. The case was allocated to an investigating officer.
10. 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, to see if it could justify its reliance on any provisions of FOISA it considered applicable to the information requested.
11. Following further correspondence with the investigating officer, the Council amended its position. It stated that it did not, in fact, hold any information falling within the scope of part 2 of Mr Tibbitt's request.

Commissioner's analysis and findings

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

Section 17 of FOISA – Notice that information is not held

13. The Council amended its position during the investigation and stated that it did not hold any information falling within the scope of part 2 of Mr Tibbitt's request.
14. The Council stated that training on the "Prevent" duty guidance had been delivered to Council staff by Police Scotland. However, no training materials were actually distributed to staff by Police Scotland. The Council explained that it had contacted relevant officers within the Council, who had confirmed that the training was delivered orally by Police Scotland and that no training materials were distributed or held.

15. The Council stated that the information it had provided to the Commissioner previously and which it had indicated comprised training materials, were more appropriately classified as “supporting documents”. The Council reiterated its position that it did not hold any training materials.
16. The Commissioner has considered the Council’s submissions and its explanation of why it did not hold any information falling within the scope of this part of the request. Having done so, she is satisfied that, by the end of the investigation, the Council had made reasonable, proportionate enquiries to establish whether it held any relevant information. She accepts that any information falling within the scope of part 2 of the request would have been identified as a result of these enquiries. The Commissioner accepts that the information previously supplied to her by the Council does not comprise training materials falling within the scope of part 2 of the request.
17. The Commissioner is therefore satisfied, on the balance of probabilities, that the Council did not (on receiving the request) hold the information sought in part 2 of the request
18. However, the Commissioner must find that, by failing to give notice that it did not hold the information requested in part 2, the Council failed to comply with Part 1 (and, in particular, section 1(1)) of FOISA in responding to Mr Tibbitt’s request.

The Commissioner’s observations on the handling of the request

19. The Commissioner is concerned by the Council’s handling of this request.
20. It is unsatisfactory that the Council applied exemptions to information that it later admitted was not held. Establishing whether information is held and that it is covered by the scope of an information request is fundamental to responding to a request. It was poor practice by the Council to fail to do this: not only when responding to the initial request, but again when responding to a review request.
21. The Commissioner’s concern extends to the Council’s handling of the matter during her investigation. She is concerned that the Council provided information to her during the investigation, stating clearly that it was information which fell within scope when it subsequently transpired that it did not, in fact, comprise training materials distributed to staff.
22. The Commissioner would urge the Council to reflect on these points with a view to ensuring that it has in place robust procedures that ensure accurate responses and information are provided to requesters (and the Commissioner) in future.

Decision

The Commissioner finds that Moray Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Tibbitt. The Commissioner finds that by failing to give notice in terms of section 17(1) of FOISA that it did not hold the information, the Council failed to comply with Part 1 (and in particular section 1(1)) of FOISA. The Commissioner accepts that the Council did not hold this information.

Appeal

Should either Mr Tibbitt or Moray 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.

Rosemary Agnew
Scottish Information Commissioner

05 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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