

Decision Notice

Decision 093/2018: Ms Liz Sneddon and East Dunbartonshire Council

Health and Social Care Partnership Board Minute

Reference No: 201800050

Decision Date: 3 July 2018



Scottish Information
Commissioner

Summary

The Council was asked about the management of new posts, in the light of the minutes of a June 2017 Health & Social Care Partnership Board meeting. The Council told the requester it did not hold information capable of answering the request, and explained why.

The Commissioner investigated and was satisfied that the Council did not hold the information requested.

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 6 July 2017, Ms Sneddon made a request for information to East Dunbartonshire Council (the Council). She referred in her request to the minutes of a meeting of the Health & Social Care Partnership Board Minute held on 22 June 2017, which stated that Local Area Coordinator's posts would not be currently recruited. The information she requested was:
 - (i) *where these posts were hosted before and under which line of management, i.e. department*
 - (ii) *the rationale as to why the posts are being moved, in detail, and the line of management under which they will be supervised when they are eventually recruited*
2. The Council responded on 12 July 2017, informing Ms Sneddon it did not hold all the information she sought. It explained that the final structure for Older People had not been concluded and remained open to change, but was intended to be published by the end of 2017.
3. On 18 July 2017, Ms Sneddon wrote to the Council, requesting a review of its decision on the basis that she did not consider her request had been fully addressed.
4. The Council notified Ms Sneddon of the outcome of its review on 27 September 2017, providing further explanations of its rationale (with links to documents available online).
5. On 7 January 2018, Ms Sneddon wrote to the Commissioner's office. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Sneddon stated he was dissatisfied with the outcome of the Council's review because she was not satisfied with the Council's response: she expected the Council to provide (in hard copy) the strategic document to which it referred in its correspondence, as she could not access the internet version (for reasons she explained). Ms Sneddon also queried the Council's handling of the request in terms of its own procedures.

6. Regarding the procedures followed (i.e. a data protection query) raised by Ms Sneddon in her application, the investigating officer advised Ms Sneddon (8 February 2018) to obtain advice from the UK Information Commissioner (ICO) regarding those concerns: the ICO enforces data protection legislation for the whole of the UK. As this matter does not come under the Scottish Information Commissioner's remit, he cannot consider it in this decision. He notes from her contact with this office that Ms Sneddon's focus remains with obtaining the information caught by her request.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Ms Sneddon 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.
8. On 14 February 2018, the Council was notified in writing that Ms Sneddon had made a valid application.
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. In particular, the Council was asked to provide details of searches and enquiries carried out with a view to identifying and locating any relevant information held.

Commissioner's analysis and findings

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

Is relevant information held by the Council?

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
13. In its submissions (21 March 2018), the Council acknowledged there were some issues in the handling of this request. In particular, it acknowledged that it had not addressed the specific questions asked or carried out appropriate searches.
14. The Council issued a further response to Ms Sneddon on 4 April 2018, addressing her questions individually, with some explanation of the context. While it this provided explanation, it did not appear to provide further recorded information.

Searches

15. The Council clarified that it had conducted checks with the officer (in Social Work) who would have produced a structure chart, if one had been created. That officer advised that as the

roles had not been written down into a structural chart, there was no relevant chart. Following that check, the Council did not conduct further searches.

16. The Council also stated that the structure would not be a secret if it did exist as it did not believe there was any reason to withhold such information, if held.
17. The Council further clarified that it had not as yet started the ratification or job evaluation processes which would be needed for the new posts. They were still simply proposed, and it did not know when the changes would take place.

Conclusions

18. Having considered carefully all relevant submissions and the terms of the request, the Commissioner is satisfied that the Council took adequate, proportionate steps in the circumstances of this case to establish what information it held which fell within the scope of the request. It is apparent that the posts in question are still in the process of development, which must have a considerable impact on what the Council can say in response to the questions asked.
19. The Council could perhaps have explained things more clearly in its earlier responses, and it appears likely that other matters concerning data protection have undermined the relationship between the parties here. However, given the way the original questions were framed, and the state of development of the posts in question (at the time the Council received the request and, it would appear, still), the Commissioner is satisfied that it was appropriate for the Council to respond to the effect that it did not hold the information sought.
20. The Commissioner would also suggest that it may be helpful, when making future requests, for Ms Sneddon to engage in dialogue with the Council, to ensure that she and the Council arrive at a shared understanding of what she is looking for. This would be consistent with the Council's duties under section 15 of FOISA, and the Commissioner trusts that the Council will take all reasonable steps to facilitate such dialogue.

Decision

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

Appeal

Should either Ms Sneddon 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

3 July 2018

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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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info