

Decision Notice

Decision 195/2018: Mr H and Glasgow City Council

NASSO Information

Reference No: 201801544

Decision Date: 3 December 2018



Scottish Information
Commissioner

Summary

The Council was asked about the National Accommodation Strategy for Sex Offenders, in particular about a specific Significant Case Review and the Council's MAPPA Report 2013/2014. The Council responded, advising that it did not hold the information requested.

Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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 1 May 2018, Mr H made a request for information to Glasgow City Council (the Council). The request was in two parts:
 - a) Mr H referred to a specific Significant Case Review (SCR), and asked the Council for the measures that had been taken to address two recommendations within that SCR.
 - b) Mr H also referred to the Council's Multi-agency Public Protection Arrangements (MAPPA) Report 2013/2014, which recommended that the Council undertake an audit and where it was agreed that a questionnaire would be sent to Registered Social Landlords (RSLs). Mr H asked the Council to confirm:
 - i) why the audit did not take place?,
 - ii) why the questionnaire was not sent to the RSLs?, and
 - iii) what had been done to examine housing allocations procedures and the information exchange to satisfy the recommendations in the specified SCR?
2. The Council responded on 31 May 2018. In relation to part a) of the request, the Council advised that NASSO had introduced "Block Profiling" in response to recommendations 2 and 3 of the specified SCR, explaining what this was and that it was being piloted at that time. In relation to part b) of the request, the Council stated that it did not hold any information.
3. On 20 July 2018, Mr H wrote to the Council, requesting a review of its decision on the basis that the response provided did not satisfy the recommendations in the SCR. For part b) of the request, he refused to accept that no information was held.
4. The Council notified Mr H of the outcome of its review on 17 August 2018. The Council responded to the effect that it did not hold any information falling within the scope of either part of Mr H's request. It advised that the information on "Block Profiling" had been given under its duty to provide advice and assistance.

5. On 14 September 2018, Mr H wrote to the Commissioner. Mr H applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr H stated he was dissatisfied with the outcome of the Council's review because he did not accept that the Council did not hold the information requested.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr H 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 4 October 2018, the Council was notified in writing that Mr H had made a valid application. The case was 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, in particular to explain the steps it had taken to identify and locate the information requested.
9. The Council responded, providing submissions in support of its position that it did not hold information falling within the scope of Mr H's request.

Commissioner's analysis and findings

10. 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 Mr H and the Council. He is satisfied that no matter of relevance has been overlooked.

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. The Commissioner notes the submissions provided by Mr H, in which he provides reasons why he considers the Council should hold the requested information. In particular, Mr H commented that it was not credible that the Council failed to carry out its own proposed actions but had no record as to why this was the case.
14. In its submissions to the Commissioner, the Council advised the Commissioner it did not make any decisions relative to the SCR, as the Council was part of a wider group of authorities with joint responsibility for MAPPa and NASSO (which forms part of MAPPa).
15. It submitted that while representatives from the Council attend various meetings to discuss arrangements for exercising this joint responsibility, it was not correct to say that "the Council itself has made decisions relative to this SCR [and] failed to carry out its own proposed actions", as Mr H had indicated in his application to the Commissioner. It stated that any

decisions made are taken by the wider group, and proposed actions were taken by the relevant group members.

16. The Council confirmed the searches and enquiries it undertook to ascertain whether it held any information falling within the scope of Mr H's request, detailing the places searched and the key words used. These included searches of relevant electronic and paper records, and consultation with relevant staff. The Council provided supporting evidence confirming the outcomes of its searches. The conclusion of the searches and enquiries was that no information was held which would allow it to answer the points raised in Mr H's request for information.
17. While the Council confirmed it did not hold any information falling within the scope of the request, it advised that during the investigation it had located further information which might be of assistance to Mr H. It confirmed that this related information, which the Commissioner accepts did not fall within the scope of the request, was provided to Mr H during the investigation.
18. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted Mr H's request reasonably and took adequate, proportionate steps to establish whether it held any information falling within the scope each part of Mr H's request. In reaching this conclusion, he acknowledges that all of the recommendation to which the request refers were made to groups wider than simply the Council.
19. As mentioned above, the Commissioner can only consider whether information is actually held by the Council, not what information it should hold or what an applicant believes it should hold.
20. In all of the circumstances, therefore, the Commissioner accepts, on the balance of probabilities, that the Council does not (and did not, at the time it received the request from Mr H) hold any information falling within the scope of parts a) or b) of the request.
21. The Commissioner is satisfied, therefore, that the Council was entitled to inform Mr H, under section 17(1) of FOISA, that it did not hold the information requested.

Decision

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

Appeal

Should either Mr H or Glasgow City 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 December 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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