

Decision Notice



Decision 054/2013 Mr M and Aberdeen City Council

Programme information

Reference No: 201202516
Decision Date: 26 March 2013

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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



Summary

On 25 July 2012, Mr M asked Aberdeen City Council (the Council) to provide him with information relating to a specific offender programme. The Council failed to respond, but following a review provided certain information to Mr M and stated that it did not hold certain other information. Following an investigation, the Commissioner found that the Council had provided Mr M with all of the relevant information it held.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 25 July 2012, Mr M wrote to the Council. In relation to the Community Sex Offenders Groupwork Programme (CSOGP), he requested the following information:
 - a. the year of programme design
 - b. who the programme was for
 - c. the intended outcomes
 - d. how the programme would achieve those outcomes
 - e. what changes had been made to the programme since accreditation
 - f. the reason for the changes
 - g. evidence to support the changes
 - h. the programme designer(s)/author(s)
 - i. independent evaluation and outcome data
 - j. theory manual



- k. selection/exclusion criteria.
2. Mr M did not receive a response to this request and, on 31 August 2012, wrote to the Council requesting a review on the basis that it had failed to respond. The Council's failure to respond to the request was dealt with in *Decision 170/2012 Mr M and Aberdeen City Council*.
 3. The Council responded to Mr M's requirement for review on 28 September 2012. It provided some information in response to part b. of his request. In response to the remaining parts, it notified Mr M that it held no relevant information. The Council advised Mr M that the information was held by Aberdeenshire Council and provided contact details.
 4. On 3 December 2012, Mr M 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.
 5. The application was validated by establishing that Mr M made a request for information to a Scottish public authority and 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

6. On 30 January 2013, the investigating officer notified the Council in writing that an application had been received from Mr M. The Council was 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 the steps it had taken to identify and locate the information requested.
7. In his application to the Commissioner, Mr M disputed that the Council held no further information falling within the scope his request. He believed it was required to have a full working knowledge of the programme, which in his view was delivered by Aberdeenshire Council on behalf of Aberdeen City Council.
8. The Council responded on 20 February 2013, providing submissions in support of its position that it did not hold any further information.
9. The relevant submissions received from both the Council and Mr M will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr M and the Council and 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. This is subject to certain qualifying provisions set out in section 1(6) of FOISA, which allow Scottish public authorities to withhold information or charge a fee for it. These qualifications do not apply here. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
12. The Commissioner notes the submissions provided by Mr M, in which he provides reasons why he considers the Council should hold further detailed information and argues that the Council has a duty to hold information about a programme being delivered on its behalf.
13. The Council submitted that it had responded adequately to all parts of Mr M's request, explaining that Aberdeenshire Council delivered the CSOGP, on behalf of the Northern Criminal Justice Authority. (Both the Council and Aberdeenshire Council work in partnership through this authority, to deliver services for offenders.) The Council acknowledged that Mr M was entitled to believe it *should* also hold the information he was seeking, but reiterated that it did not hold the information.
14. Given the nature of the questions, the Council did not believe any further searches to be necessary to confirm that it did not hold the information. For the reasons set out above, there was no reason why it should hold the information. Only one team within the Council had responsibility for any of the relevant services and the request had been allocated to the manager of that team to deal with. That officer was of the appropriate level of seniority and knowledge in relation to the services delivered by the team and any relevant information it held.
15. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Council interpreted each part of Mr M's request reasonably and took adequate, proportionate steps to establish what information it held falling within the scope of the request. In reaching this conclusion, she accepts Mr M might believe the Council should hold such information: on the other hand, she accepts that the Council has no business need for the information.
16. The Commissioner is therefore satisfied that the Council was correct to give Mr M notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of parts a., and c. to k. inclusive, of his request. In providing the information it did in response to part b. of the request, she is satisfied that it dealt with the request in accordance with section 1(1) of FOISA.



DECISION

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

Appeal

Should either Mr M or Aberdeen City 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.

Margaret Keyse
Head of Enforcement
26 March 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish the Council 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 the Council 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.
- ...