

Decision Notice

Decision 072/2019: Ms W and North Lanarkshire Council

Copy of Complaint Review Report

Reference No: 201900080
Decision Date: 9 May 2019



Scottish Information
Commissioner

Summary

The Council was asked for a copy of a management review of complaint handling. The Council maintained that no report was produced following the review. 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) (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 23 October 2018, Ms W made a request for information to North Lanarkshire Council (the Council). She referred to a management review into the handling of complaints which had concluded in December 2017. She understood that a report had been produced and asked for a copy of the report.
2. The Council responded on 20 November 2018. It told Ms W that there was no report and gave her a notice under section 17(1) of FOISA (Information not held).
3. On 29 November 2018, Ms W wrote to the Council requesting a review of its decision. She did not believe the report did not exist and commented that she had part of a report/document written by the reviewer which indicated it was part of a larger document. Ms W also considered that, after several months of work, it was nonsensical to believe that the reviewer would not have produced a report/document.
4. The Council notified Ms W of the outcome of its review on 19 December 2018. It was satisfied that no such report existed (only the letters containing the outcomes already provided to Ms W) and therefore upheld the findings of the original response.
5. On 14 January 2019, Ms W wrote to the Commissioner. Ms W applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms W stated she was dissatisfied with the outcome of the Council's review because:
 - (i) she did not consider it reasonable to believe that the results of a three month review would be delivered orally and
 - (ii) the part document labelled "conclusion" she was given suggested this was part of a larger document.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Ms W 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 18 January 2019, the Council was notified in writing that Ms W 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, the Council was asked to provide details of searches and enquiries carried out with a view to identifying and locating any relevant information held and to explain how the results of the review were communicated.

Commissioner's analysis and findings

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

Is relevant information held by the Council?

10. 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.
11. The information to be given is that held by the authority at the time the request is received, as defined by 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.
12. Ms W informed the Commissioner that she considered the report existed as the Council official had provided her with a document headed "conclusion" which referenced other documents. This document was provided to the investigating officer.
13. The Council told the Commissioner that they are not aware of a document linked to the "conclusion" document (which was not signed or dated) provided by Ms W and that it only became aware of it through the submission of the FOI request. The Council acknowledged that it would be reasonable to conclude that this forms part of a larger document but, as it lacks any heading, footnote, date or identifying author they were unable to identify document it had been part of. The Council speculated that it may have been part of a document used by the lead official to organise her work and provide feedback.
14. The Council explained that the lead official conducting the review retired in July 2018 and would have been the person best suited to confirm the existence or status of the requested report. All paperwork was passed to colleagues prior to her departure and was incorporated into the file held regarding the management of the original complaint. No other documents were passed on at the point of departure.
15. Searches were conducted of manual and electronic records alongside emails sent and received. Managers and staff involved with regard to the complaint and the review confirmed they held no information in scope of the request.
16. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will

consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why it does not hold the information.

17. The Commissioner accepts that the Council has provided sufficient evidence to show that it does not hold a copy of a report relating to the review meeting. The Council provided details of the searches conducted which involved the people involved who were present at the meeting, and clearly explained where any report with regard to this review would have been located if held. Due to the nature of this case, any relevant information would be likely to be easily identifiable or locatable by being part of the specific complaint and subsequent review.
18. The Council said it would appear that the Council official provided Ms W with part of a document she had prepared. However, no trace of a document that this “part” was created for has been identified from the information held regarding this case.
19. It is perhaps surprising that the Council commissioned a review of the way complaints were handled but that all discussions of the outcome of the review were provided verbally. The Commissioner can understand why Ms W would consider that to be impractical and unsatisfactory. However, he notes that the Council itself has flagged issues with the procedures and has stated that changes will be made to procedures in future.
20. Given the submissions and responses received from the Council, the Commissioner is satisfied, on the balance of probabilities, that the Council took adequate, proportionate steps to establish what information was held in this case and as such, does not hold a report constituting the information requested by Ms W. The Council was therefore correct to give her notice, in terms of section 17(1) of FOISA, that it did not hold the information requested.

Decision

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

Appeal

Should either Ms W or North Lanarkshire 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

9 May 2019

Appendix 1: 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.

...

- (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.

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info