

Decision Notice 031/2021

Consultation process on pupil leadership structure

The Applicant

Public authority: Clackmannanshire Council

Case Ref: 202001156



Scottish Information
Commissioner

Summary

The Council was asked for information about a school consultation on pupil leadership structure. It provided some information and told the Applicant that it did not hold any further information.

The Commissioner was satisfied that the Council held no further information, but found that it had failed to provide the Applicant with adequate advice and assistance and to notify her of her appeal rights.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 15(1) (Duty to provide advice and assistance); 17(1) and (2) (Notice that information is not held); 19(b) (Content of certain notices); 21(10) (Review by Scottish public authority)

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 8 October 2019, the Applicant made a request for information to Clackmannanshire Council (the Council). She asked for information about a consultation that was to have been carried out by Alva Academy regarding a review of its pupil leadership structure. Specifically, the Applicant asked “...could you therefore inform me [of] details of the consultation, who has been consulted and when this happened.”
2. The Council responded on 23 October 2019. It refused to comply with the request on the basis that it was vexatious under section 14(1) of FOISA.
3. On the same day, the Applicant asked the Council to review its response as she did not believe the request to be vexatious.
4. The Council issued a review outcome on 6 November 2019. It notified the Applicant, in line with section 21(8) of FOISA, that it was not required to carry out a review as it had deemed the original request as vexatious.
5. On 6 November 2019, the Applicant applied to the Commissioner for a decision and on 12 June 2020 the Commissioner’s decision found that the request was not vexatious and instructed the Council to issue a revised review response to the Applicant.¹
6. On 7 July 2020, the Council issued its revised review response. The Council provided the Applicant with the results of the pupil consultation which took place in March 2019. The Council explained that:

Senior pupils approached [school staff] with proposals to change the structure of the senior captaincy team. They presented their proposals to senior pupils at assemblies in March 2019 and the poll was taken shortly after.
7. On 31 August and 21 September 2020, the Applicant emailed the Council to state she required clarification as to whether the Parent Council had been involved in the consultation

¹ [Decision 060/2020](#)

process and asked why their involvement had been omitted from the Council's revised review outcome.

8. On 21 September 2020, the Council responded that the subject was discussed as an item at a Parent Council (Friends of Alva Academy) meeting. The Council provided the Applicant with a copy of the minutes from the meeting of March 2019.
9. On the same day, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Council's review because:
 - (i) She had been informed in an email dated 8 October 2019 from the school's Head Teacher that *the Parent Council were involved in the consultation as the representative body of the wider parent forum in the school, as is their role*. She also received another email saying there would be a wider consultation with parents, carers and teaching staff. She believed this to be confirmation that the Council had consulted both the pupils and the Parent Council, but felt that the Council had not provided any detailed information about either of these consultations. She stated that if it were the case that the Parent Council had not actually been involved in the consultation then she would like a statement from the Council saying so.
 - (ii) She had not been advised of her appeal rights in the revised review response.
 - (iii) She was unhappy with the Council's handling of her request and the level of advice and assistance the Council had provided her with.

Investigation

10. The application was accepted as valid. The Commissioner confirmed that the Applicant 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.
11. On 6 October 2020, the Council was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
12. 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. These related to the information it held and any steps it had undertaken to locate any relevant information. The Council was also asked by the investigating officer to carry out further searches to ensure no information had been accidentally overlooked.

Section 17 - Notice that information is not held

13. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable here. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the Applicant a notice in writing to that effect.
14. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any

reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) actually held by the public authority.

The Council's submissions

15. The Council stated that there had been no wider consultation with parents other than the Parent Council's involvement in a Parent Council/Friends of Alva Academy meeting, the minutes of which the Council had provided to the Applicant.
16. The Council submitted that it had explained to the Applicant that the pupils undertook both the presentation of their proposals, and the consultation, and that the Applicant had been provided with the results of the consultation which contained the questions that were asked and the responses received for each choice.
17. The Council stated it had advised the Applicant that there had been no consultation carried out with staff. The Council explained that this was a pupil led initiative regarding a pupil team/group working on and leading pupil issues and leadership roles.
18. The Council submitted that there were no emails held between the Head Teacher and the teaching staff or the Head Teacher and the Parent Council regarding the matter.
19. It was the Council's position that all information it held about the consultation process was contained in the meeting minutes and the consultation outcome which had already been provided to the Applicant.

Commissioner's analysis and findings

20. 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 the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

Is any further information held by the Council?

21. The Commissioner notes that the Applicant believes the Council holds further information on the consultation process. In her application to him, she submitted that the school had previously stated *parents, carers and teaching staff* would be consulted, but that it was not clear to her from the Council's responses whether or not these other groups were ever consulted. She stated that, while the Council did confirm that both the pupils and the Parent Council were consulted, they had not provided her with any detailed information about either of those consultations.
22. The Commissioner understands that the Applicant believed wider consultations had taken place, and indeed that may have been the original intention of the school. However, the investigation has shown that the consultation that *did* eventually take place was narrower in scope than the Applicant had expected. The Council can only provide the information that it holds and, given that the consultation was limited to the Parent Council and the pupils, it is highly unlikely that any further information will be held in respect of a consultation with parents/carers or teachers.
23. Considering the explanation provided to the Applicant by the Council, and its responses to questions during the investigation, the Commissioner is satisfied that by the end of the

investigation the Council had taken adequate, proportionate steps to establish whether it held any of the requested information falling within the scope of the request.

24. All the information which was held had been provided to the Applicant. The information may not be as detailed as the Applicant may have expected it to be, but an authority can only provide the information it holds at the time of a request.
25. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities, that the Council does not hold any further information.
26. Therefore, the Commissioner is satisfied that the Council were correct in its application of section 17(1) of FOISA.

Appeal rights

27. The Commissioner notes that, while the Council's response to the Applicant's initial review requirement of 23 October 2019 contained particulars about her rights of review (and application to the Commissioner and of appeal to the Court of Session, as required by sections 19 and 21(10) of FOISA), its revised review response issued on 7 July 2020 did not contain this information.
28. The Commissioner has issued guidance on the content of notices² which sets out what information authorities must include both in the response to a request for information and in response to a request for a review.
29. Given that the Applicant submitted a review, and was able to submit a valid application, the Commissioner does not require the Council to take any action in respect of this failure, in response to the Applicant's application. However, he has noted the Council's handling of the request in line with his intervention procedures.

Advice and assistance

30. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
31. The Applicant was dissatisfied with the advice and assistance provided during the request process. For example, she submitted that she had been led to believe that the Council may have held other information (in addition to that already disclosed to her) and that this subsequently appeared to not be the case.
32. The Applicant highlighted an extract from the Council's submissions in respect of her previous application to the Commissioner (resulting in *Decision 060/2020*) in which the Council submitted "*For this particular FOI she [the Applicant] is aware that no formal consultation was undertaken, and we could have just confirmed that the information was not held.*"
33. The Applicant submitted that this was new information to her, as it had never been confirmed to her by the Council that the information was not held. The Applicant argued that if this had been made clear to her at the beginning of the process then it may not have been necessary for her to lodge her application in the first place.

² http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Contentofnotices/Content_of_notices.aspx

34. The Commissioner agrees that the Council should have made it clear to the Applicant during its correspondence with her that it held no further information.
35. In the circumstances, the Commissioner finds that the Council failed to comply with its duty under section 15(1) of FOISA to provide the Applicant with adequate advice and assistance in relation to her request.
36. The Commissioner does not require the Council to take any action in respect of this failure, given the further explanation set out in this decision.

Decision

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

The Commissioner finds that by applying section 17(1) of FOISA, and stating that no further information was held, the Council complied with Part 1.

However, he also finds that the Council failed to provide the Applicant with adequate advice and assistance and failed to notify her of her appeal rights. This was, respectively, a breach of section 15(1) and section 21(10) of FOISA.

The Commissioner does not require the Council to take any action in respect of these failures, in response to the Applicant's application.

Appeal

Should either the Applicant 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

10 March 2021

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.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

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.

- (2) Subsection (1) is subject to section 19.

...

19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

...

- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

...

21 Review by Scottish public authority

...

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.

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