

# Decision Notice 026/2022

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## **DASH Risk Checklist and MARAC Meeting data controllers**

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**Applicant: The Applicant**

**Public authority: Falkirk Council**

**Case Ref: 202100728 and 202100808**



Scottish Information  
Commissioner

## Summary

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The Council was asked (1) for specified information including a DASH risk checklist and (2) names of Data Controllers recorded by it for a specified Multi-Agency Risk Assessment Conference (MARAC). The Council explained to the Applicant in both cases why it did not hold the exact information sought.

Following an investigation, the Commissioner was satisfied that the specified information was not held.

## Relevant statutory provisions

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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

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1. It may be helpful to explain that this Decision notice considers two related requests from the same Applicant, both of which were appealed to the Commissioner. The first request was in three parts but the Applicant is satisfied with the response to the first part as some information was provided. As that part need not be covered in this Decision, only the remaining two parts of the first request are of concern here, together with the second request.

### **Request 1 – Case ref 202100728 (two parts remaining)**

2. On 23 April 2021 the Applicant made a three-part request for information to Falkirk Council (the Council). The subject matter was a Domestic Abuse, Stalking and Harassment and Honour Based Violence (DASH) Risk Checklist, which the Applicant stated was used by Women's Aid Groups across Scotland and at Multi-Agency Risk Assessment Conference (MARAC) meetings. The information requested was:
  - a. The recorded Falkirk Council database (or other recorded location) where completed DASH Risk Checklist documents, sourced from other Data Controllers, are stored.
  - b. The recorded Falkirk Council database (or other recorded location) where the information/data sourced from completed DASH Checklist documents is stored (e.g. Children & Families social work, Criminal Justice social work).

### **Request 2 – Case 202100808**

3. On 24 May 2021, the Applicant submitted a further request to the Council asking who the data controllers were, as recorded by the Council, at a specified MARAC meeting. He clarified that he wanted both the names of the participating Data Controller organisation along with their Data Protection Registration Number (registered with the ICO [UK Information Commissioner] where available).
4. The Council responded to request 1 on 24 May 2021 and request 2 on 4 June 2021. In each case, the Council gave notification under section 17(1) of FOISA to the effect that none of the information was held (with explanations).

5. On the same dates that these responses were issued by the Council (24 May and 4 June 2021) the Applicant wrote to the Council, requesting that it review each decision. For request 1, this concerned solely parts (2) and (3), as indicated above. In both cases, the Applicant explained why he believed information was recorded and asked the Council to check again what was held.
6. The Council notified the Applicant of the outcomes of both reviews (10 and 30 June 2021). In each case, the Council upheld its original responses and gave more explanation to the Applicant, setting out why it did not consider it held the information sought in each request.
7. On 11 June 2021 and 5 July 2021, the Applicant wrote to the Commissioner about requests 1 and 2 (above), applying for a decision in both cases in terms of section 47(1) of FOISA. For both, he was still dissatisfied with the Council's reviews and he explained why he believed information would be held, given his understanding the subject matter.

## Investigation

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8. Both applications were accepted as valid. The Commissioner confirmed that the Applicant made two requests for information to a Scottish public authority and asked the authority to review both its responses to those requests before applying to him for a decision.
9. On 13 July 2021 and 15 July 2021, the Council was notified in writing that the Applicant had made two valid applications. The case was allocated to an investigating officer.
10. 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 primarily to the searches conducted by the Council and how it had verified what information, if any, it held.

## Commissioner's analysis and findings

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

### Whether information was held

12. 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.
13. 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 the information an applicant believes an 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 this effect.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance 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 reasons 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 as to what information the authority *should* hold, ultimately the Commissioner's role is to determine what information *is actually held* by the public authority (or was, at the time the request was received).

#### *Submissions from the Applicant*

15. In his submissions, the Applicant set out why he believed the Council was not providing all the relevant information it held. He identified examples of where he believed relevant information should be held for the first request and also reasons why the Council should need to hold information falling within the scope of the second.

#### *Submissions from the Council*

16. The Council explained the background to both requests, with evidence of searches conducted.

#### Request 1

17. The Council explained how it had checked for any information meeting the terms of the relevant parts of this request, including details of additional checks undertaken during this investigation. It also clarified points relating to its systems and information sharing practices in response to points made by the Applicant.

#### Request 2

18. The Council explained that it was up to the Chair to keep a list of attendees for MARAC meetings. It also stated that the Council did not record who is in attendance at a MARAC. The Council went into detail on both the history of request and the advice it had given within responses on the subject of the MARAC, setting out why there was no need to record or hold the information in question.

#### *The Commissioner's findings*

19. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, 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 the information is not held.
20. The Applicant clearly has views as to what information he believes the Council should record and in what form but, as mentioned previously, the Commissioner cannot reach a determination based on what information a public authority *should* hold: rather, the Commissioner's role is to determine what relevant information *is actually held* by the public authority (or was, at the time the request was received).
21. The Commissioner has considered all of the submissions and the information already provided to the Applicant.
22. In the circumstances, the Commissioner is satisfied, on the balance of probabilities, that the Council provided the Applicant with the information it held falling within the scope of his request, and holds nothing further. Although the Applicant believed specified information would exist and be recorded in a particular way, the Commissioner is satisfied that this was not the case.

## Decision

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The Commissioner finds that, in respect of the matters specified in the application, Falkirk Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

## Appeal

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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.



**Daren Fitzhenry**

**Scottish Information Commissioner**

**7 March 2022**

## Appendix 1: Relevant statutory provisions

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### 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.

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- (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.

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#### 17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
    - (if) 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](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**