

Decision Notice 037/2022

Social worker details, Forth Valley MARAC data controllers and information sharing

Applicant: The Applicant

Public authority: Stirling Council

Case Ref: 202100319, 202100705, 202100884 and 202100885



Scottish Information
Commissioner

Summary

The Council was asked for information on 1) the grade of social worker grade in checking incoming police reports 2) grades/job roles for particular activities 3) participating data controller organisations in specified Forth Valley “MARAC” meetings and 4) Information Sharing Agreements.

The Commissioner investigated and found that the Council had generally complied with FOISA in responding to these requests, although the required timescales were not met in some cases.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(a) (Effect of exemptions); 10(1) (Time for compliance); 14(1) (Vexatious or repeated requests); s17(1) (Notice that information is not held); 21(1) and (8)(b) (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. This Decision notice covers four requests to Stirling Council (the Council) from the same Applicant. MARAC stands for Multi Agency Risk Assessment Conference and involves various agencies such as local authorities (social work) , police, health and other relevant agencies meeting together to discuss and manage risk to victims of domestic abuse.

Request 1 – Case 202100319

2. On 27 October 2020, the Applicant made a request for information comprising the social worker grade/level of management responsibility assigned the task of checking specified incoming Police Service of Scotland (Police Scotland) reports for accuracy “and then communicate to Police Scotland that a false police report is suspected.”
3. The Council responded on 24 November 2020, notifying the Applicant in terms of section 17(1) of FOISA that it did not hold the information described in request 1. It explained its position.
4. On 25 November 2020, the Applicant required the Council to review this response. He did not accept the Council’s position in relation to the request..

Request 2 – 202100705

5. On 27 January 2021, the Applicant made another request for information, seeking the Council grades/job roles of those involved in the Forth Valley MARAC.
6. The Applicant wrote to the Council on 28 February 2021, to complain that no substantive response had been provided to this request.

Request 3 – 202100884

7. On 8 April 2021, the Applicant made a further request for information, asking for the names of the participating data controller organisations present at the Forth Valley MARAC on 15 November 2018.

8. The Council responded on 7 May 2021. It withheld the information sought on the basis that it was third-party personal data which was exempt from disclosure in terms of section 38(1)(b) of FOISA.
9. On the same day as the response (above), the Applicant asked the Council to review the way it had applied section 38(1)(b), given that the information stipulated in this request pertained to organisations rather than individuals.

Request 4 – 202100885

10. On 20 December 2021, the Applicant made a request for information seeking the recorded date(s) of Information Sharing Agreements (ISA) with the Police Service of Scotland (Police Scotland) and relating to the sharing of sensitive personal data.
11. The Applicant wrote to the Council on 22 January 2021, seeking a substantive response to his request which he had submitted to the Council by email on 20 December 2021.

Reviews

12. For requests 1 and 4, the Council notified the Applicant of the outcome of both reviews (on 8 March 2021 and 1 July 2021 respectively), in each case upholding the original decision that the information was not held, with further explanations including reasons for the delay in relation to request 4.
13. For requests 2 and 3, the Council notified the Applicant of the outcome of its reviews on 26 April and 29 June 2021 respectively, upholding both its original decisions, with further explanations. The Council also apologised for the delays in responding to request 2 on 26 April.

Applications

14. On 10 March (request 1) , 7 June (request 2) and 21 July 2021 (requests 3 and 4), the Applicant wrote to the Commissioner, applying for a decision in each case in terms of section 47(1) of FOISA. He did not accept the Council's position, on review, in respect of any of the requests.

Investigation

15. The four applications were all accepted as valid. The Commissioner confirmed that the Applicant made four requests for information to a Scottish public authority and that he had asked the authority in each case to review its response to the request before applying to him for a decision.
16. The Council was notified in writing (15 March, 14 June, 21 July and 28 July 2021) that the Applicant had made four valid applications. The Council was asked to send the Commissioner the information withheld from the Applicant in respect of requests 2 and 3. The Council provided the information and the cases were allocated to an investigating officer.
17. 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 all four applications and to answer specific questions. For requests 1 and 4, these related to searches and how the Council established that it did not hold the information sought. Further

questions related to the withheld information in requests 2 and 3, specifically on the Council's approach to personal data under the provisions of section 38(1)(b).

Commissioner's analysis and findings

18. 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 - requests 1 and 4

19. 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.
20. 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.
21. 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

22. In his submissions, the Applicant set out why he did not accept the Council's reasons for stating it did not hold the information sought.

Submissions from the Council – request 1

23. Referring to its review outcome of 8 March 2021, the Council confirmed that it did not hold the information in question. It explained that responsibility for accuracy (and rectification, where appropriate) of the kind of information referred to in the request lay with Police Scotland as the data controller. Therefore, the Council would not hold information on responsibility for checking reports, as described in request 1.

Submissions from the Council – request 4

24. The Council referred to its review for request 4 (1 July 2021) in which it informed the Applicant that the information sought was not held.
25. The Council also submitted supporting evidence of any checks undertaken, confirming the resources checked, by whom and the outcomes – in this case, that no information capable of addressing the Applicant's request was located during these searches.

The Commissioner's findings

26. The Applicant has set out his submissions on what (and how) the Council should record information for the topics concerned 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).
27. The Commissioner has considered all of the submissions and the explanations already provided to the Applicant.
28. In the circumstances, the Commissioner is satisfied, on the balance of probabilities, that the Council does not (and did not, on receipt of the request) hold the information described in requests 1 and 4, and was entitled to give notice, under section 17(1) of FOISA, that the information was not held.

Requests 2 and 3

Submissions from the Applicant

29. Regarding both requests 2 and 3, the Applicant submitted that the Council's application of section 38(1)(b) was invalid. The Applicant was informed of the Council's change in position (below) but made no further comment.

The Council's submissions – section s14(1)

30. Following the commencement of the investigation, the Council stated that it now considered both request 2 and request 3 vexatious, in terms of section 14(1) of FOISA, rather than the information being withheld under section 38(1)(b).
31. The Council explained that it was now relying upon section 14(1) of FOISA as a result of additional evidence becoming available. The Council advised that this change in position should not be interpreted in any way as suggesting that it did not consider the withheld information to be third party personal data. Rather, following the outcome of the Commissioner's Decision 147/2021¹, the Council now considered it more appropriate to rely upon section 14(1) of FOISA here.
32. The Council submitted that the nature of these requests, the wider context in which they were made and the fact that they were intrinsically linked to cases considered in Decision 147/2021, where section 14(1) was upheld, meant it now believed these two requests within that same context were vexatious. The Council explained that the Applicant had submitted a large number of requests over a short period of time, which were considered individually by the Council. It had become clear over time, however, that some of these requests (including the two under consideration here) were demonstrably and intrinsically linked to a wider campaign or agenda by the Applicant.
33. The Council submitted that requests 2 and 3 here were part of "a wider cohort" of requests, not only linked but forming part of a pattern of behaviour to ascertain very specific information. The Council stated that these two requests were manifestly unreasonable and disproportionate, had the effect of harassing the Council were designed to cause it disruption or annoyance.

¹ [Decision 147/2021 \(itspublicknowledge.info\)](https://itspublicknowledge.info)

34. To support these arguments, the Council commented on the number of requests the Applicant submitted during the period from October 2020 to the present, using both FOISA and data protection legislation, in parallel with the Council's corporate complaints process. It provided a list of the requests in question, with other material containing examples of what it was referring to here. Given the sensitivities of the subject matter, the Commissioner cannot comment on the material in any greater detail.
35. The Council quantified the patterns of requesting by stating that this Applicant's requests alone, "at times, have accounted for 50 per cent of the total number of requests for information from the Council's Children and Families Social Work and Education services."
36. In addition, the Council stated that this evidence demonstrated the Applicant's persistent and, at times, relentless correspondence, often containing requests. It firmly believed these had the clear effect of harassing both the Council and individual Council officers, as well as demonstrating a clear determination to cause significant disruption. It stated this had placed a substantial burden on staff and services, particularly against the impact of the COVID-19 pandemic on Council services.
37. The harassing nature of the requests, the Council submitted, included – but was not limited to – what it called "the barrage of frenzied and often incoherent narrative within request correspondence often written in an aggressive tone that staff are exposed to on a regular basis." In support of this statement the Council referred to allegations appearing in a public website regularly used by this Applicant.
38. From both these submissions (above) and its reference to supporting evidence and previous submissions to the Commissioner, the Council believed it had clearly demonstrated that the Applicant's requests 2 and 3 were vexatious in terms of section 14(1) of FOISA.

The Commissioner's findings – request 2 and 3

39. The Commissioner has considered all the relevant submissions and supporting evidence from both the Applicant and the Council.
40. The Commissioner is mindful of his approach in Decision 147/2021 when forming his view here. He accepts that the volume, frequency, pattern and content of the Applicant's requests and related correspondence combine to make requests 2 and 3 (above) disproportionate: they clearly go well beyond what was required to simply elicit the actual information requested. The Commissioner agrees with the Council's arguments that there was no need here to adopt what seems a relentless approach.
41. There is also evidence here of the Applicant repeatedly revisiting both Council decisions and wider issues which had no prospect of being resolved by means of FOISA, via these requests. The Commissioner is satisfied that the two requests under consideration here, as in Decision 147/2021 to which the Council referred, do indeed fit into that wider pattern – they are not isolated requests designed to elicit discrete elements of information. In this context, the Commissioner accepts that a reasonable person would find these two requests were manifestly unreasonable and disproportionate. Regardless of the Applicant's intentions (and putting them aside here), it is clear that these two requests, when viewed against the backdrop of the Applicant's other requests and correspondence, have clearly had the effect of harassing the Council and its staff. For these reasons, the Commissioner is satisfied that they should properly be characterised as vexatious.

42. In all the circumstances, therefore, the Commissioner is satisfied the Council was entitled to refuse to comply with the request by virtue of section 14(1) of FOISA (and with the requirement for review by virtue of section 21(8)(b)).

Timescales

43. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
44. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
45. In regard to request 2, the Council accepted it had failed to provide a substantive response to the Applicant within the twenty working days required and apologised to the Applicant in its review decision (26 April 2021), which also exceeded the time period permitted (above). In regard to request 1, the Council accepted that it had failed to provide its review decision within the twenty working days provided.
46. It is a matter of fact that the Council failed to comply with the timescales (above) and the Commissioner finds that the Council failed to comply with sections 10(1) and 21(1) of FOISA. The Commissioner does not require the Council to take further action in relation to these failures but has noted them in his compliance database.

Decision

In respect of the matters raised by the Applicant in his applications, the Commissioner finds that Stirling Council partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by the Applicant. The Commissioner finds that the Council complied with Part 1 in the following respects:

- i) Requests 1 and 4 – in giving notice, in terms of section 17(1), to the effect that the information sought was not held, and
- ii) Requests 2 and 3 – in its application of section 14(1), to the effect that those requests were vexatious.

However, he decided the Council breached Part 1 when handling request 2 as it failed to meet statutory timescales for responding (section 10(1)) and when issuing its review decision (section 21(1)).

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.

Daren Fitzhenry
Scottish Information Commissioner

31 March 2022

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.
...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information....

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.
...

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.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-

...

- (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.

...

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