

Decision Notice 039/2022

**Data Controllers present at Forth Valley
Multi-Agency Risk Assessment Conference
(MARAC) held on 15 November 2018**

Applicant: The Applicant

Public authority: Clackmannanshire Council

Case Ref: 202100722



Scottish Information
Commissioner

Summary

The Council was asked for the Data Controller organisations (and Data Protection Registration numbers, if available) recorded as being present at the Forth Valley Multi-Agency Risk Assessment Conference (MARAC) held on 15 November 2018.

The Council informed the Applicant, under section 17 of FOISA, that no information was held.

The Commissioner investigated and found that the Council had partially breached FOISA in responding to the request: although he found that the Council was entitled to notify the Applicant that it did not hold the information, it failed to inform him of his right to seek a review.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) and (2) (Notice that information is not held); 19 (Content of certain notices)

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. It may be helpful to explain that a Multi-Agency Risk Assessment Conference or “MARAC” is a local meeting where statutory and non-statutory agencies meet to discuss individuals at high risk of serious harm or murder as a result of domestic abuse. ¹
2. On 8 April 2021, the Applicant made a request for information to Clackmannanshire Council (the Council). The information requested was: “who were all the Data Controllers recorded by [the Council] as being present at the Forth Valley (Falkirk, Stirling, Clackmannanshire) Multi-Agency Risk Assessment Conference (MARAC) that was held on Thursday 15 November 2018...?”, asking for the full names of the participating Data Controller organisations along with their Data Protection Registration Number (registered with the ICO) where available.
3. The Council responded on 27 April 2021, advising the Applicant that its Justice Service had had no dealings with the subject matter and that therefore this was a nil response. It did not advise the Applicant of his right to request a review and subsequently appeal to the Commissioner.
4. On 28 April 2021, the Applicant wrote to the Council, requesting a review of its decision on the basis that he was dissatisfied that the information requested was not provided and that a wider search than just Criminal Justice Social work was not conducted. He highlighted the other Council services that he was aware might attend such meetings from previous FOI responses he had had from the Council.
5. The Council notified the Applicant of the outcome of its review on 27 May 2021, confirming its original decision and applying section 17 of FOISA. It informed the Applicant that Police Scotland were responsible for chairing these meetings and issuing any records related to them. The Council notified the Applicant of his right to appeal to the Commissioner.

¹ [SafeLives' Marac overview Scotland.pdf](#)

6. On 9 June 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review because he did not agree that section 17(1) applied.

Investigation

7. 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.
8. On 1 July 2021, the Council was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
9. 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 its reasons for concluding that it did not hold the information requested by the Applicant.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all 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

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, 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.
12. 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.
13. 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

14. In his submissions the Applicant expressed his view that a robust Data Protection Impact Assessment (DPIA) should have been established prior to data sharing and that there should be a robust Appropriate Policy Document (APD) to cover data sharing between statutory and non-statutory Data Controllers that participated in the Forth Valley MARAC.

15. The Applicant submitted that, given the seniority of Council staff that could attend these meetings (e.g. Team Leaders), there should have been no excuse for not having the necessary Data Protection documentation in place prior to the sharing of data occurring. As such, he contested the application of section 17(1) of FOISA, and believed the Council must have had a record of the Data Controllers who participated in the Forth Valley MARAC.
16. The Applicant further submitted that the Council's response regarding Police Scotland's responsibility as Chair was not acceptable, as he considered each organisation was responsible for its own Data Protection compliance. He referred to *Decision 092/2019*.²

Submissions from the Council

17. The Council in its initial submissions explained that the focus of MARAC meetings is on the survivor of domestic abuse and that the Council attends these at the request of the Police MARAC co-ordinator. It stated that it does not take or retain any Minutes of these meetings, nor does it have any reason to keep a record of Data Controllers present at MARAC meetings.
18. Following further questions from the investigating officer, the Council clarified that MARAC meetings could be attended by representatives of several Council departments, such as Education, Criminal Justice, Housing and Social Work. It explained that the minimum amount of information is shared and that representatives from the Council do not record information from the meeting, other than on occasion on the survivor's case notes.
19. As part of its submissions, the Council provided copies of emails from representatives who attended these meetings from each of the departments named above, confirming that they do not take notes or retain records of attendees at these meetings.

The Commissioner's findings

20. As stated above, 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 authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
21. The Applicant clearly believes that, in order to comply with Data Protection legislation, the Council should hold the information he has requested.
22. As previously mentioned, the Commissioner's role is to determine what relevant information is actually held by the authority.
23. The Council staff who attend these meetings have clearly stated that they do not keep records of the meetings or a note of the attendees. In the circumstances, bearing in mind the importance of data minimisation, there would appear to be no reasonable expectation that case-specific information recorded by the Council following such meetings would include information of the kind sought by the Applicant here.
24. In the circumstances, the Commissioner is satisfied, on the balance of probabilities, that the Council did not hold the information falling within the scope of the Applicant's request and so it was correct to give the him notice, under section 17(1) of FOISA, that the information was not held.

² [Decision 092/2019 \(itspublicknowledge.info\)](https://itspublicknowledge.info)

Handling of the request – section 19

25. The Applicant, in his request to the Council for a review, questioned whether its initial response was a notice under section 17(1) that no information is held falling within the scope of his request.
26. The Council's initial response to the Applicant was brief, and stated that its Justice Service had "*no dealings with this subject matter via MARAC therefore this is a nil response*".
27. FOISA does not require the public authority to mention section 17 in its response to an applicant, it need only notify the applicant that it does not hold the information.
28. Although the Commissioner does not consider the Council's initial response to the Applicant's request was particularly clear, it would generally be understood that a nil response in this context would mean that it held no information.
29. Any notice given to an applicant under section 17(1) of FOISA that it does not hold the information requested is, under section 17(2), subject to section 19 of FOISA.
30. Section 19 of FOISA states that a refusal notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given under section 17(1)) must contain particulars-
 - a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
 - b) about the right of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).
31. The Commissioner notes that the Council's response to the Applicant failed to provide him with particulars about his rights of review or application to the Commissioner, as required by section 19. The Council did, however, inform the Applicant of his right to make an application to the Commissioner and of appeal to the Court of Session when responding to his request for review.
32. In its submissions, the Council apologised for the oversight in not providing the Applicant with his review rights when the response was issued.
33. The Commissioner has issued guidance on the content of notices³, which sets out what information authorities must include both in the response to a request for information and in response to a requirement for a review.
34. Given that the Applicant was able to seek a review, the Commissioner does not require the Council to take any action in response to these failures, in response to the Applicant's application. However, he has noted the Council's handling of the request in his case management system.

³ [Content of notices \(itspublicknowledge.info\)](https://itspublicknowledge.info)

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 the Council correctly notified the Applicant that it did not hold the information falling within the scope of his request, in line with section 17(1) of FOISA.

However, by failing to provide the Applicant with details of his rights to request a review and apply to the Commissioner for a decision, in terms of section 19 of FOISA, the Council failed to comply with Part 1 of FOISA.

The Commissioner does not require the Council to take any action in respect of this failure, 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

8 April 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.
- ...

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-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

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