



Decision 044/2005 –Mrs Greta Young and Aberdeen City Council

Request for information about consultation with carers over the implementation of the Mental Health (Care and Treatment) (Scotland) Act 2003

**Applicant: Mrs Greta Young
Authority: Aberdeen City Council
Case No: 200501389
Decision Date: 01 November 2005**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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Decision 044/2005 –Mrs Greta Young and Aberdeen City Council

Request for number of carers from Manic Depressive Fellowship and the Cornhill Project in Aberdeen who were consulted about the local implementation of the Mental Health (Care and Treatment) (Scotland) Act 2003 – information not held.

Facts

Mrs Young asked Aberdeen City Council how many carers from the Manic Depressive Fellowship (MDF) and how many carers from the Cornhill Project had been consulted and involved in decision making regarding the implementation of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act). Mrs Young was concerned that carers were not being involved in the establishment of Joint Local Implementation Plan groups or in the plans to implement the Act locally.

Aberdeen City Council replied that the specific information she had requested was not gathered and was therefore not held by the Council.

Outcome

The Scottish Information Commissioner accepted that Aberdeen City Council had provided sufficient evidence to support its claim that the specific information sought by Mrs Young was not held.

Appeal

Should either Mrs Young or Aberdeen City Council wish to appeal against my decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.



Background

1. On 9 December 2004, before the Freedom of Information (Scotland) Act 2002 (FOISA) came into force, Mrs Young contacted Aberdeen City Council by email to ask how many carers from the Manic Depressive Fellowship (MDF) and how many carers from the Cornhill project had been consulted and involved in decision making regarding the implementation of the 2003 Act. Mrs Young was concerned that carers were not being involved in the establishment of Joint Local Implementation Plan groups or in the plans to implement the 2003 Act locally.
2. On 4 January 2005 Mrs Young contacted the Council again stating that she had had no response to her enquiry and asking for it to be treated under FOISA.
3. The Council replied on 7 January 2005, confirming that her request would now be treated according to FOISA.
4. On 17 January 2005 the Council's FOI team sent an email to Mrs Young in which she was informed that:
 - there was no specific representative from MDF on the Joint Local Plan Implementation Group
 - a development worker from the Cornhill project was a member of the Group and represents carers from that project
 - everyone on the Group was responsible for consulting as widely with carers as they could, but when individuals reported back to the group they rarely specified the numbers of carers consulted.
5. Mrs Young was also advised that minutes of the meetings of the Joint Local Plan Implementation Group were available on request.
6. On 8 February 2005 Mrs Young received a second reply, this time from a Council officer who seems to have been unaware that the FOI team had already replied. Her email did not provide the exact information that Mrs Young had asked for, but supplied additional information about the way in which carers were represented in the planning groups.
7. Mrs Young requested a review of the Council's response on 9 February 2005. Her request was based on the second reply, dated 8 February 2005, but this was not picked up by the Council's Review Panel who carried out a review of the reply she had received dated 17 January 2005. The Council has since commented that the end result would not have been different had the Review Panel considered the reply sent on 8 February 2005 instead of the reply from 17 January 2005.
8. The Review Panel upheld the view that the Council held no information that would allow officers to respond to Mrs Young's request.



9. Mrs Young appealed to me for a decision on 8 May 2005 and the case was allocated to an investigating officer.

The Investigation

10. Mrs Young's appeal was validated by establishing that she had made her request to a Scottish Public Authority and had appealed me only after requesting the authority to review its response to her request.
11. A letter was sent to the Council on 31 May 2005, asking how the Council had established whether any information was held in relation to Mrs Young's request, and how the response to her request had been reviewed. The Council commented on these issues in its reply of 14 June 2005, which is discussed below in paragraphs 14 to 19.
12. The Council was also asked whether the information sought by Mrs Young might be found within the minutes of the Joint Local Plan Implementation Group, which it had brought to her attention in its reply to her request.
13. The Council replied that, by offering to provide the minutes of this group, it had not intended to imply that the minutes would provide any further information about consultation with representatives from the Manic Depression Fellowship or the Cornhill Project.

The Commissioner's Analysis and Findings

14. From the replies sent to Mrs Young and from the Council's submissions to me, it appears that only one officer within the Council was in a position to establish whether or not the Council holds the information asked for by Mrs Young. This officer was the only Council employee to be a member of the Joint Local Plan Implementation Group, and acted as its chairperson and minute keeper. It was considered that she was the only person within the Council who had access to the minutes of the Joint Local Plan Implementation Group.
15. In January 2005, this officer was on leave for three weeks, and the Council turned to a staff member of NHS Grampian who was also a member of the Joint Local Plan Implementation Group for advice on whether the information might be available. The advice received was that the statistical information requested by Mrs Young was not collected by the Joint Local Plan Implementation Group and therefore would not be available, but that other information such as minutes of meetings might prove helpful.



16. I accept that Aberdeen City Council took prompt steps to establish whether or not the information sought by Mrs Young was likely to have been collected. However, I am concerned that the Council's reliance on the knowledge of one officer meant that, in her absence, it was unable to establish whether or not it held the information within the timescales set down by FOISA.
17. The Council was unable to provide me with information explaining how the officer involved with the Joint Local Plan Implementation Group had been able to demonstrate to the Review Panel that the information requested by Mrs Young was not held, beyond confirming that the officer had been interviewed by the Review Panel. The officer concerned has since left the Council's employment.
18. I would recommend that the Council considers whether its records management systems and enquiries procedures might be amended to better enable it to respond to information requests under section 1(1) of FOISA within the timescales required, should key staff with specialist knowledge be absent.
19. Regarding the responses received by Mrs Young, I accept that the Council was dealing with one of the first queries to be answered under FOISA and that procedures may not have been as streamlined as the Council would have wished. The Council has acknowledged that the response Mrs Young received should have been phrased differently, and that it would have been appropriate to issue an "Information Not Held" notice. I accept that the Council has taken the steps required to ensure that, where appropriate, applicants are now issued with a refusal notice which complies with section 17 of FOISA.

Decision

I find that Aberdeen City Council did not comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002. The reply issued to her request for information did not comply with section 17 of FOISA by failing to provide her with details of the authority's procedure for dealing with complaints about the handling of requests for information or her rights to request a review from the authority and ultimately to appeal to me.

I accept that Aberdeen City Council has taken remedial steps in relation to this matter and I do not require any further action from the Council.

I find that Aberdeen City Council does not hold the information requested by Mrs Young, and complied fully with section 15 of FOISA in providing her with advice and assistance relating to her request.

Kevin Dunion
Scottish Information Commissioner
01 November 2005
