

Decision Notice 055/2020

Research for school reading resource

Applicant: The Applicant

Public authority: Stirling Council

Case Ref: 201902172



Scottish Information
Commissioner

Summary

The Council was asked for research about a school reading resource. The Council explained that the research was available online.

The Council failed to treat this request as a request for information subject to FOISA, but the Applicant was provided with a link to the published research during the investigation.

The Commissioner investigated and found that the Council had failed to comply with a number of requirements of FOISA in handling this request. As a new response was provided to the Applicant during the investigation, which provided a link to the information requested, the Commissioner does not require the Council to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 15(1) (Duty to provide advice and assistance); 16(1) and (6) (Refusal of request); 19 (Content of certain notices); 21(5), (9) and (10) (Review by Scottish public authority); 25(1) (Information otherwise accessible)

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 Stirling Council (the Council). The Applicant referred to PowerPoint slides supplied by a named school, and requested:
 - whether the initiative (Bug Club) was Stirling wide or specific to the school [part 1]
 - the number of laptops available across the school [part 2]
 - the evidence based research referred to in the slides [part 3]
2. The Council responded on 11 October 2019. In relation to parts 1 and 2, the Council provided some explanation on the initiative and explained that devices would be made available to children who did not have access to a laptop or alternative device. In relation to part 3, the Council provided the name of the company that had conducted the research and stated that the research was available online.
3. On 8 November 2019, the Applicant wrote to the Council requesting a review of its decision on the basis that she wished to know:
 - if the initiative was a Stirling Council initiative, or of only the school
 - the number of laptops available
 - if the school held the research.
4. The Council notified the Applicant of the outcome of its review on 8 November 2019. The Council explained that Bug Club was used in the school, as well as a number of others within

the authority, but was not a specific Stirling initiative. The Council also provided the number of devices available and confirmed that it held the research requested.

5. On 26 November 2019, the Applicant wrote to the Commissioner. 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. She was not satisfied with the manner in which her request had been handled and she stated that there were numerous pieces of research on the website that she had been directed to, but she had not been advised which report it was.

Investigation

6. 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.
7. 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 how it had responded to the Applicant's request.
8. On 31 December 2019, the Council wrote again to the Applicant. The Council acknowledged that it should have formalised the response in terms of FOISA when the exchanges continued between the school and the Applicant. The Council provided the Applicant with a direct link to the information requested. The Council also apologised for failing to:
 - inform the Applicant of the right to seek a review and to apply to the Commissioner;
 - provide information about where this research was otherwise accessible on line; and
 - cite the relevant exemption.
9. The Council said it would remind its staff of the obligations in terms of FOISA. The Council intended to clarify to staff on the interface between a service request, which can be dealt with as business-as-usual, and a request that should be dealt with in terms of FOISA. The Council confirmed to the Commissioner (and therefore to the Applicant) that this reminder of the obligations under FOISA had been provided to those who had responded to 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.

Section 1 – General entitlement

11. 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 the scope of the request and held by the authority at the time the request is received, subject to certain qualifications which are not applicable in this case.

Section 25 – information otherwise accessible

12. Under section 25(1) of FOISA, information which a requester can reasonably obtain, other than by requesting it under section 1(1) of FOISA, is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.
13. In her application, the Applicant explained that she could not locate the research she had requested on the website of the named company. The Council acknowledged that a copy of the research was not provided to the Applicant and she was instead provided with contact details for an officer within the Education Service of the Council. During the investigation, the Council apologised to the Applicant and gave the relevant link to the report. The Council acknowledged that it should have applied the exemption in section 25(1).
14. The Commissioner is satisfied that the information was accessible online at the time the Council received the Applicant's request. The information was information which the Applicant could have reasonably obtained other than by requesting it under section 1(1). However, the Council failed to tell the Applicant precisely where the information was otherwise available.
15. The Commissioner must conclude that the Council was entitled to rely on section 25(1) of FOISA in responding to this part of the Applicant's request. However, genuine access to information which is otherwise accessible frequently requires some form of guidance from a Scottish public authority, in line with its duty under section 15(1) (Duty to provide advice and assistance) of FOISA, as to where the information may be obtained. Failing to tell the Applicant precisely where the information was available was a breach of section 15(1) of FOISA. As the Council has now supplied the appropriate link, he does not require the Council to take any action in relation to this breach.

Technical breaches of FOISA – sections 16, 19 and 21

16. The Commissioner notes that, in responding to the Applicant's request and requirement for review, the Council made no reference to any provision of FOISA. The Council did not inform the Applicant of her rights to request a review or of her rights to apply to the Commissioner.
17. Section 16(1) of FOISA requires that, where an authority holds information which is subject to a request under section 1(1) of FOISA, and which it intends to withhold under any exemption, the authority must give the applicant notice in writing to the effect that the information is held, and specify which exemption it considers applies to the information (with reasons).
18. Section 16(6) of FOISA also makes it clear that a notice in terms of section 16(1) is subject to section 19 of FOISA, which requires the authority to include details of the right to seek a review and apply to the Commissioner.
19. Section 21(10) of FOISA states that a Scottish public authority's response to the Applicant (under section 21(5)) following a review carried out under section 21 must contain particulars about the rights of application to the Commissioner and of appeal to the Court of Session conferred by sections 47(1) and 56 respectively.

20. The Council acknowledged that a request for information, whether or not it makes direct reference to the legislation, should be dealt with in accordance with FOISA. The Council believed, however, that in some cases, particularly where requests for information are made directly to Council services, it can be difficult to determine whether these should be dealt with as a service enquiry, or as an information request. At times, what may initially appear to be a service enquiry, can, as it progresses, fall within the scope of FOISA. In such instances, the Council acknowledged that it should deal with these requests in accordance with FOISA.
21. The Council referred to guidance of the UK Information Commissioner (the ICO) to justify this view. The Council suggested that:

“...there is a fine line here and the approach to what can be treated as a routine enquiry for a public authority and a request for information in terms of FOISA is difficult to call.”
22. The Council was satisfied that it was appropriate for the school to deal with the initial request as a service enquiry. However, the Council did acknowledge that when the Applicant requested a copy of the research report - and was not provided with it - the matter should have been formalised and processed by the Council in terms of FOISA.
23. The Commissioner is satisfied that the Applicant's request of 8 October 2019 complies fully with the requirements of section 8 (Requesting information) and is therefore a valid information request in terms of FOISA.
24. The Commissioner finds that, by failing to inform the Applicant of her rights, the Council failed to comply with Part 1 of FOISA (in particular, sections 16(6), 19 and 21(10)).
25. The Commissioner has issued guidance on the content of notices¹ which details what information they should contain both in response to a request for information and in response to a request for review, which the Council and other authorities may find useful.

Decision

The Commissioner finds that Stirling Council (the Council) failed to comply fully 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 failed to comply with various requirements of FOISA in relation to giving notice, in particular sections 16(1) and (6), 19 and 21(10).

The Commissioner also finds that the Council failed to comply with section 15(1) of FOISA in responding to part 3 of the request.

Given the Applicant has now received a response from the Council explaining that the information is otherwise accessible to her and providing her with a link to that information, the Commissioner does not require any action in response to the Applicant's application.

¹ http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Contentofnotices/Content_of_notices.aspx

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

19 March 2020

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
...
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
...

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.
...

16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-
 - (a) discloses that it holds the information;

- (b) states that it so claims;
- (c) specifies the exemption in question; and
- (d) states (if not otherwise apparent) why the exemption applies.

...

- (6) Subsections (1), (4) and (5) are 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).

21 Review by Scottish public authority

...

- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (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.

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info