

Decision Notice 112/2021

Social worker grade with responsibility for checking incoming Police Scotland reports – failure to respond

Applicant: The Applicant

Public authority: Stirling Council

Case Ref: 202100041



Scottish Information
Commissioner

Summary

The Council was asked for the grade of Social Worker responsible for checking incoming Police Scotland reports from the interim Vulnerable Persons Database (iVPD) and the Domestic Abuse Liaison Officer (DALO) for accuracy, and reporting suspected false reports back to Police Scotland.

This decision finds that the Council failed to respond to the Applicant's requirement for review within the required 20 working days.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 21(1) (Review by Scottish public authority)

Coronavirus (Scotland) Act 2020, Schedule 6, Part 2, paragraph 6 (Commissioner's ability to take account of impact of coronavirus)

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 27 October 2020, the Applicant made an information request to Stirling Council (the Council) for the following information:
The Social Worker grade/level of management responsibility assigned the task of checking incoming Police Scotland reports (both from the iVPD and DALOs) for the accuracy of the information being recorded on the social work systems and then communicate to Police Scotland that a false police report is suspected.
2. The Council responded to the Applicant's information request on 24 November 2020, explaining that, in the situation covered by his information request, the Police are the data controller for information contained within a Police report and, if there is a dispute over the accuracy of this information, it is for the data subject to approach the Police directly. The Council noted that, if it received a request from Police Scotland to rectify one of the reports it had previously submitted, a replacement Police report would be submitted and the new report recorded on the Council's systems. The Council stated that it was satisfied that all/any Police Scotland reports it had received had been accurately copied over to its systems.
3. On 25 November 2020, the Applicant wrote to the Council, requiring a review of its decision as he considered the Council had misinterpreted the information he had requested. He asked that a response be provided to his request as it was written.
4. The Applicant did not receive a response to his requirement for review, although it was acknowledged on 1 December 2020.
5. On 10 January 2021, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. On 24 February 2021, the Council was notified in writing that an application had been received from the Applicant. It was invited to comment on the application, specifically its apparent failure to respond to the Applicant's requirement for review. If relevant, it was

invited to comment on why it considered the effects of the coronavirus impacted on its ability to respond to the Applicant's request in this case.

7. On 10 March 2021, the Council informed the Commissioner that it had, on 8 March 2021, issued a response to the Applicant's requirement for review. In that review outcome, the Council informed the Applicant, in line with section 17(1) of FOISA, that it did not hold the information covered by his request.
8. Submissions were also provided by the Council as to why it did not respond to the Applicant's requirement for review sooner. These submissions are considered in full below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of 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.
10. 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. This is subject to qualifications which are not relevant in this case.
11. As mentioned above, the Applicant was dissatisfied with the Council's failure to respond to his requirement for a review. Clearly, the Council did not respond within the required timescale.
12. In its submissions to the Commissioner, the Council explained that it was unable to provide a response to the Applicant's requirement for review within the statutory timescale as there were a number of key reasons, directly relating to the Covid-19 pandemic, that impacted on its ability to respond to the Applicant any sooner.
13. Because of the current coronavirus pandemic, the Scottish Ministers passed legislation on 6 April 2020 (Coronavirus (Scotland) Act 2020), amended on 26 May 2020 (Coronavirus (Scotland) No.2 Act 2020).
14. Under Schedule 6, Part 2, paragraph 6 of the Coronavirus (Scotland) Act 2020 (as amended), the Commissioner may decide that a Scottish public authority has not failed to comply with Part 1 of FOISA by reason of its failure to comply with the timescales in section 10(1) and/or section 21(1) (as appropriate), if the Commissioner is satisfied that the failure was due to the effect of coronavirus on the authority generally or its ability to carry out its functions (including any action it had to take to better utilise its resources to deal with the effects of the coronavirus).
15. The Commissioner would also have to be satisfied that the failure to comply in time was reasonable in the circumstances. In considering what is reasonable, the Commissioner must regard the public interest in section 1(1) of FOISA being complied with promptly as the primary consideration.

Submissions from the Council

16. In seeking to justify why it took longer than the statutory 20 working days to respond to the Applicant's requirement for review, the Council explained that there were a number of reasons, directly related to the Covid-19 pandemic, that impacted its ability to respond to the Applicant any earlier. In particular, the Council explained that it had to prioritise its limited resources in order to provide critical support to the most vulnerable within its communities. The Council noted that this applied to both specialist services, including social work, as well

as other key areas, all of which required significant input from a range of Council support functions. This prioritising had, the Council submitted, impacted on its ability to respond to this request for review in the required timescales, as did, the Council argued, staff absences as a consequence of Covid-19.

17. The Council also explained that, since the outset of the Covid-19 pandemic, it had experienced a growing and significant increase in the number of information requests it received, including subsequent requests for review. The Council maintained that this increase had added to the challenges mentioned already and had a significant impact on its ability to respond to some review requests as quickly as it would otherwise have done.
18. Additional resource had, the Council explained, been made available to support the functions of processing and responding to requests within the required timescales, thereby freeing up reviewing officers who had been having to undertake responses to requests at the time the Applicant's request was received.
19. The Council provided the Commissioner with details of the number of information requests and requirements for review it received over the same timescale as the request and requirement for review in this case, as well as the number of requirements for review which formed a backlog of work. Figures were also provided for the same time period in 2019. Examples of the subject matter covered by these requests and requirements for review were given to the Commissioner.
20. The Council submitted that the issues outlined above had a detrimental impact on the time taken to respond to the Applicant's requirement for review, in part because of the complex nature of the requirement (bearing in mind its potential relationship with other requests made by the Applicant) and the information being requested. This, the Council submitted, required significant input and understanding of specialist information related to the Children and Families Social Work service function. The Council explained that this service was at the heart of delivering critical mitigation measures to vulnerable individuals and families particularly impacted by the pandemic, and this was coupled with demands placed on other support functions, including the team responsible for processing and responding to requests and requirements for review (in view of the volume of requests being processed, including those from the Applicant).
21. When considering the public interest, the Council considered that the delivery of those critical services to mitigate the impact of the Covid-19 pandemic outweighed the public interest for those resources being diverted in order to respond to the review within the statutory timescale, particularly given the specialist nature of the information. The Council was of the view that to divert such resources away from providing critical services in response to the pandemic would not be in the wider public interest in this instance. It also considered the public interest to lie in ensuring that an accurate review outcome be provided, as opposed to the provision of a swift response with information which had not been appropriately scrutinised and/or deliberated upon.
22. In the Council's view, the public interest in diverting reviewing officers to deal with some of the large influx of first-stage FOISA requests outweighed the public interest in reviewing officers dealing solely with the Applicant's review, given the large influx of requests. This was, the Council submitted, because the Applicant's review was complex and required significant analysis from reviewing officers and others, and to focus all resources on this review, where the Applicant had already been provided with information, would have resulted in a number of first-stage FOISA requests not being responded to within the statutory deadline. The Council considered that, in this instance, the public interest in ensuring that as

many requests as possible were responded to on time outweighed the public interest in focusing solely on this particular review, particularly when many of the requests related to Covid-19 pandemic issues.

23. The Council noted that, in addition to other factors, such as staff absences and IT problems associated with remote working, it considered the public interest in staff being absent from work when ill from Covid-19, and in staff working remotely, outweighed the public interest in officers traveling to Council premises in order to process this review. This, the Council, argued, was because of the risks of contracting Covid-19 or spreading it to other individuals, and doing so would have been against Scottish Government guidelines.

Commissioner's conclusions

24. In considering the Council's handling and response to the Applicant's requirement for review in this case, the Commissioner would note that his conclusions in this case relate to the circumstances as they affected the Council's response to this particular requirement for review. The Commissioner's decision is not making any determination on any wider impact on the Council's ability to carry out its services or perform its functions.
25. Having fully considered the submissions from the Council, the Commissioner is unable to accept that the provisions of Schedule 6, Part 2, paragraph 6 of the Coronavirus (Scotland) Act 2020 (as amended) would be applicable in this case.
26. The Commissioner does not accept that the number and nature of requests and requirements for review (including those forming a backlog) which the Council was required to deal with when it received the Applicant's requirement for review was such that they should impose a significant burden on the Council's ability to respond on time. The Commissioner notes that extra resource was made available to the team concerned in September 2020 (before the Applicant submitted his requirement for review) to alleviate the pressure on review officers having to respond to information requests. If attention could not be given to reviews (as much a statutory right as the right to receive a response to the information request itself) following the allocation of this additional resource, it has to be questioned whether resources were being allocated prudently.
27. Having examined the timeline of the processing of the requirement for review in this case, it is evident that the main reason for delay appears to be the nature of the request, rather than the impact of the pandemic. Overall, the Commissioner has not been presented with anything to suggest that the admitted increase in the number of requests and requirements for review over the relevant period was either particularly substantial or particularly a consequence of the pandemic.
28. In addition, having considered the terms and subject matter of the requirement for review, the Commissioner does not accept that it was so specialised that it would have required the diversion of social work professionals significantly away from their core responsibilities. The Commissioner considers the Council's apparent ability to respond to the initial request within the statutory timescale to be indicative of this.
29. While the Commissioner appreciates that the Council took steps to ensure that information requests received under FOISA were responded to within the statutory timescale, there is nothing in FOISA which suggests that requirements for review should be given less priority. They are equally-time sensitive and subject to the statutory regime. In the circumstances, the Commissioner cannot agree that there was a greater public interest in responding to information requests than to requirements for review. As the Commissioner made clear in

*Decision 144/2020*¹, at all times public authorities need to find means of balancing competing statutory requirements.

30. For these reasons, the Commissioner finds that the Council failed to comply with section 21(1) of FOISA, by failing to provide a response to the Applicant's requirement for review within the required period of 20 working days.
31. Given that the Council responded to the Applicant's requirement for review on 8 March 2021, with an apology for the significant delay in responding, the Commissioner does not require it to take any action in relation to the above failure.

Decision

The Commissioner finds that Stirling Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2020 (FOISA) in dealing with the information request made by the Applicant. In particular, the Council failed to respond to the Applicant's requirement for review within the timescale laid down by section 21(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, given that a response was issued on 8 March 2021.

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

3 August 2021

¹ [Decision 144/2020 \(itspublicknowledge.info\)](https://itspublicknowledge.info)

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.

...

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.

...

Coronavirus (Scotland) Act 2020

Schedule 6 - Functioning of public bodies

Part 2 – Freedom of Information

6 Commissioner's ability to take account of impact of coronavirus

- (1) This paragraph applies in relation to an application made under section 47(1) (which is not excluded by section 48) in respect of which there is a failure of the Scottish public authority to comply with a relevant period.
- (2) Despite section 49(6), the Commissioner may decide that the Scottish public authority has not failed to comply with Part 1 by reason only of its failure to comply with a relevant period if the Commissioner is satisfied that the failure was –
 - (a) due to
 - (i) the effect of coronavirus on the authority generally or its ability to carry out its functions (including any action it had to take to better utilise its resources to deal with the effect of coronavirus), or
 - (ii) the authority operating under requirements of Part 2 of this schedule that were subsequently repealed before the end of the period during which Part 1 of this Act is in force.
 - (b) reasonable in all the circumstances.
- (2A) In considering whether the failure was reasonable in all the circumstances, the Commissioner must regard the public interest in section 1(1) being complied with promptly as the primary consideration.

- (3) For the purposes of this paragraph, “relevant period”, in relation to a request for information (or a subsequent requirement for review), means a period specified in section 10(1) or section 21(1), either as it has effect by virtue of paragraph 3 or otherwise.

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info