

Decision Notice 088/2020

Support for women and girls: Gender based violence

Applicant: The Applicant

Public authority: Clackmannanshire Council

Case Ref: 201900808



Scottish Information
Commissioner

Summary

The Council was asked for a range of information regarding the support available to women and girls concerning gender based violence. The Council disclosed some information and stated that it did not hold further information.

The Commissioner was satisfied that, by the end of his investigation, the Council had carried out appropriate searches and had disclosed all the relevant information it held.

The Commissioner found that the Council failed to comply with section 15(1) of FOISA by failing to provide adequate advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement), 15(1) (Duty to provide advice and assistance); 17(1) (Notice that the information is not held)

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 2 November 2018, the Applicant made a request for information to Clackmannanshire Council (the Council) for a range of information. She asked:
 - for details of the support that Council provide for the women and girls who experience gender based violence and abuse both in general terms across all sectors and in schools (part 1)
 - for guidance available to teaching staff within schools in Clackmannanshire regarding tackling sexual harassment of pupils and required actions to take when notified of sexual crimes involving a pupil (part 5)
 - how often Sexual Violence Prevention inputs are delivered to pupils within secondary schools in Clackmannanshire and who delivers them (part 7)
2. The Council responded on 4 December 2018. It provided explanatory responses to the request and a list of links to relevant webpages.
3. On the same day, the Applicant emailed the Council requesting a review of its decision. She did not consider that the response fully addressed her request: the responses were vague and did not provide copies of the documents and guidance that she was seeking.
4. The Council notified the Applicant of the outcome of its review on 7 January 2019. It provided further explanatory responses. In response to part 1, the Council stated that her request did not seek “specific guidance or documentation” and therefore the Council had provided a general overview. In relation to part 5, the Council stated that all staff are given opportunities to undertake training in safeguarding and promote welfare of children, and young people through Child Protection Training. The Council also advised, at the time of this

response, that it was working on a positive behaviour policy and guidance which were due to be published in due course and, therefore, section 27(1) (Information intended for future publication) of FOISA applied. In response to part 7, the Council recognised that its initial response did not fully address the Applicant's request and provided further explanations of the Council's ongoing programmes and school curriculum.

5. On 24 July 2019, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant considered that she had not been provided with the information requested and was dissatisfied with the handling of her request.

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. On 30 July 2019, the Council was notified in writing that the Applicant had made a valid application.
8. On 15 August 2019, the Council provided an updated response to the Applicant, including the provision of information (Violence against Woman Strategy and Positive Behaviour guidance) it had withheld in the review response in line with section 27(1) of FOISA. The Council confirmed that it was no longer withholding any information relating to these requests.
9. The case was then allocated to an investigator.
10. 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 the information it held about support to women and girls. The Council responded on 23 September 2019.
11. The Council was asked to provide further explanation of the searches it had conducted, in locating and providing the information requested. It did so on 15 October 2019.
12. The Applicant was provided with a summary of the investigation findings, and asked if she had any further comments she would like to submit as to why she considered that further information was held by the Council besides that already disclosed. The Applicant provided further detailed explanation as to why she considered the Council still held further information. The Applicant's comments will be considered below.

Commissioner's analysis and findings

13. 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.

The Applicant's submissions

14. The Applicant stated that she had not been provided with the information requested, specifically copies of guidance documents, which she argued formed part of her request. She was also dissatisfied with the handling of her request and the level of advice and assistance provided.

15. In response to part 1, the Applicant expected to receive policy and guidance documents and details of how to access this support in response to her request. During the investigation, she explained that she expected to receive documentation which showed how this support was delivered in schools.
16. In response to part 5, the Applicant expected to receive details of the guidance that was available to teaching staff. In response to part 7, the Applicant argued the Council had not answered her request.
17. During the investigation, the Applicant provided copies of documents that supported her view that the Council held the information she was seeking. She made reference to the Conduct of relationships, sexual health and parenthood education in schools¹, which states in paragraph 55:
.....It is good practice for schools to regularly seek the views of parents and carers about key aspects of the curriculum, such as RSHP [Relationships, Sexual Health and Parenthood] education.... All parents and carers should be given the opportunity in advance to view key teaching materials and to ask questions about any aspect of the programme as evidence suggests....
18. The Applicant also provided an extract of the school curriculum, which states that children will be taught about sexual health and relationships.
19. Later in the investigation, the Applicant provided details of the Scottish Government's published update on the Equally Safe Plan, which states that² "100% of local authorities have guidance available about the services available to support women and children affected by [violence]."

The Council's submissions

Part 1: Support for women and girls

20. The Council submitted that its original response to the Applicant referred to documents which underpin the work the Council is doing in this area. With regard to documentation which evidenced how this topic is raised directly in schools, the Council sought to rely on section 17 of FOISA (Information not held).
21. The Council stated that the Applicant had requested "details of" the support provided, highlighting that she had not made a request for any specific guidance or documentation. In responding to this request, the Council referred to its strategic priorities and the Children Services Plan and had provided the relevant weblinks to the Applicant. The Council also referred to the third sector partners that it works with to deliver those priorities.
22. The Council's responses provided details as to what it was doing in general terms to support women and girls. It provided details of the programmes it was involved in and the strategies it had in place; one example was a five day training programme which was delivered to staff working with children, young people and their families across a range of partner organisations. This was rolled out in August 2018.
23. The Council also provided a list of partnerships it was a member of and details of the third sector partners it works with.

¹ <https://www.gov.scot/publications/conduct-relationships-sexual-health-parenthood-education-schools/>

² <https://www.gov.scot/publications/equally-safe-year-2-update-report/pages/4/>

24. In its later submissions, the Council explained that its original response referred to documents which underpinned the work the Council is carrying out in relation to promoting the wellbeing of women and girls and ensuring that the Council meets its strategic outcome “Women and girls will be confident and aspirational, and achieve their full potential” as detailed in its Local Outcomes Improvement Plan.
25. During the investigation, the Council recognised that the Applicant was looking, in particular, for evidence of how these topics are raised in schools. It explained that schools raise awareness of these issues through a variety of methods, such as posters, leaflets, assemblies and guidance talks. As the school will not actually produce the posters or leaflets, but distribute as and when received by their third sector partners, the source documents themselves are not held by the Council.
26. In providing details of the searches it had conducted, the Council explained that it uses leaflets produced by partner organisations and, having searched its own website, only links to partner organisations were identified. These weblinks had been provided to the Applicant.
27. With specific reference to the material made available in schools, the Council explained that the materials (leaflets, posters, etc.) are provided by third party organisations and consequently the information is not held. The Commissioner notes that the Council did not address this element of the Applicant’s request in its responses to her.

Part 5 – guidance to teaching staff regarding sexual harassment and sexual crimes

28. The Council’s responses to the Applicant provided high level information about Council-wide programmes.
29. As part of its response, the Council stated that its partners from organisations such as Rape Crisis and Clackmannanshire Women's Aid provide both guidance and a range of professional learning opportunities including bespoke inputs, seminars and workshops, raising awareness of gender based violence for both senior pupils and staff. These opportunities are signposted via its professional learning and communication networks with schools.
30. In its review response, the Council commented that the Applicant had asked about guidance that is available to teaching staff. The Council said that its response should have expanded on the fact Clackmannanshire ensures that all staff are given opportunities to undertake training in safeguarding and promoting the welfare of children, and young people at different competences, knowledge and skills, through Child Protection Training. The Council also noted that it is currently working on a positive behaviour policy and guidance which was due to be published. This document was provided to the Applicant on 15 August 2019.
31. During the investigation, the Council explained to the Applicant that the Council noted that there is no specific written guidance or procedures in relation to dealing with these situations.
32. In further submissions from the Council, it explained that staff guidance is available on the Council’s website, but having searched its website, there was no specific guidance on the matter of interest. It noted that Gender Based Violence is mentioned in the recently published guidance about Anti-Bullying³. The Council submitted that it does distinguish between bullying and other types of harm and noted that there are laws to protect children and young people from this very serious type of behaviour.

³ <https://www.clacks.gov.uk/site/documents/education/antibullyingpolicy/>

33. During the investigation, the Applicant provided links to the Council's website, where, she argued, further information was held, which fell within the scope of this request. The Applicant provided copies of two guidance documents and a report from Education Services that she stated contained references both the guidance and details of staff training.
34. The Council was asked to comment on the information provided. It submitted that the documentation was not identified in its searches as it did not contain any references to sexual harassment or sexual crimes. The Council explained that the Applicant's request was specific about these behaviours and searches were carried on their website and intranet site with this in mind. Furthermore, the Council explained that the guidance identified was about child protection and the section of under-age sexual activity does not automatically criminalise such behaviour.
35. The Council explained that the documents identified concerned all aspects of child protection, but the request was specific about guidance the schools should have in relation to sexual harassment and sex crimes. Although not provided to the Applicant in response to the request, the Council explained that it provided the Applicant with various sources that teachers have access to and can utilise in relation to teaching about sexual relationships.
36. The Council provided details of the general material and training that is available, despite not being specific to the sexual crimes or harassment in schools. However, the Commissioner notes that the Council's responses to the Applicant are not clear that the specific information sought by this part of her request is not held.

Part 7 – sexual violence prevention delivered to pupils

37. In its submissions to the Commissioner, the Council submitted that no information was held that fell within the scope of this request. The Council stated that topics such as this are part of the curriculum and involve working with third party organisations.
38. The Council stated that schools may engage with a range of partnerships or programmes to raise awareness and inform young people of sexual violence and prevention. These may include:
 - the NHS Forth Valley Social Influencing Framework/Project, which provides an evidence based prevention and early intervention programme to reduce multiple risk behaviours and promote health and wellbeing.
 - "Crush," a drama workshop delivered by Baldy Bane Theatre Company empowering young people to build healthy relationships in the future and to better support those affected by domestic abuse
39. The Council stated that all its secondary schools support a range of local and national awareness days such as 16 days of Action, National Child Sexual Exploitation Day to raise awareness and highlight issues for young people and provided links to a range of reports.
40. In its review response, the Council noted that the Applicant had asked how often and who delivers the Sexual Violence Prevention Outputs. The Council explained that this is an ongoing programme delivered throughout a pupil's school career. The lessons are built into every pupil's timetable and delivered by school staff although on occasions, where appropriate, an outside speaker may be invited to speak on a topic or range of topics.
41. In its submissions during the investigation, the Council explained further that all Personal and Social Education (PSE) lessons are delivered by members of the Pupil Support Team. There is no set format for lesson plans or compulsion on teachers to keep a record of lesson

plans. These plans are by their nature fluid so that teachers can respond to input from their pupils. Ideas around the topics and how these might be presented to pupils would be considered the teacher's own private work: thoughts and ideas.

42. With regard to information recorded about outside speakers within their records, teachers were asked to check their records and confirmed that they did not hold any information in relation to outside speakers other than that already provided to the Applicant.
43. In a further response to the Applicant during the investigation, the Council stated that it did not hold the requested information and referred to the review response, which noted that such topics are part of the curriculum and involve working with third sector partners.

The Commissioner's findings

44. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why the information is not held, and any reason offered by the requester to explain why information is likely to be held. While it may be relevant as part of this exercise to explore what information should be held, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) held by the public authority.
45. Having investigated the application thoroughly and having engaged in correspondence with the Applicant, the Commissioner understands that, due to particular circumstances, the Applicant expected the Council to hold specific guidance documents so that the relevant parties would know how to deal with such a situation.
46. The Commissioner considers that the Applicant may have had a reasonable expectation that the documentation she requested would have been created or would exist, but the investigation has not identified the specific information sought.
47. The Commissioner's decision is on the basis of the actual information requested. He has taken a reasonable interpretation of the request, allowing for the fact that the Applicant would have been unlikely to know exactly how information is recorded by the Council or the policies and procedures it has in place.
48. The Commissioner has considered the terms of the Applicant's request, and concludes it is of a more general nature than perhaps the Applicant intended. He has considered the range of information disclosed by the Council and concludes that in terms of the request as phrased the Council has provided the Applicant with the information it holds and falls within scope of the request.
49. In reaching a decision, the Commissioner has taken account of the Applicant's references to Government initiatives that guidance will be provided and that parents will be involved in such discussions. It could be seen that such information would lead to a conclusion that specific information is held by all local authorities.
50. However, from considering the information provided to the Applicant by the Council and the submissions from both parties, the Commissioner is satisfied that the Council has now taken adequate, proportionate steps to establish whether it held any further information falling within the scope of the request. Taking all of the above into consideration, the Commissioner

is satisfied, on the balance of probabilities, that the Council does not hold any further information falling within the scope of the Applicant's request than it has already provided.

Handling of request

51. From the submissions from both parties, it appears that there is a difference between how the Council has interpreted this request and what the Applicant expected to receive in response. The Council handled this as a generic request for an overview of the details of the support provided. The Commissioner is satisfied that this was a reasonable interpretation of this request, but, at review, the Applicant made clear that she expected to receive documents and guidance.
52. The Commissioner also notes that the Council failed to make clear in response to the Applicant that no standalone documentation was held that fell within the specific terms of part 5 of her request and that it had not addressed one element of part 1 of the request.
53. Section 15 of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
54. In all the circumstances of this case, the Commissioner would have expected the Council to have been clear in its responses to the requester at review. The Commissioner notes that the Applicant was clear in her request for review that she considered the Council's response to be vague and failed to provide copies of the details, document and guidance. The Commissioner notes that the Applicant requested a point of contact to discuss the content of her review. In failing to provide clear response to these requests, the Council failed to provide sufficient advice and assistance to allow full understanding of its position at review stage.
55. In doing so, the Commissioner concludes that the Council failed to comply with its duty under section 15 of FOISA to provide advice and assistance to the Applicant.

Decision

The Commissioner finds that 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 was satisfied, by the end of the investigation, that the Council had identified and disclosed all the information falling within scope of the request.

However, by failing to provide clear responses, the Council failed in its duty to provide adequate advice and assistance in terms of section 15(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

22 July 2020

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.

...

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.

...

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.

...

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