

Decision Notice 140/2021

Joint/multi agency meeting

Applicant: The Applicant

**Public authority: Social Care and Social Work Improvement
Scotland**

Case Ref: 202100294



Scottish Information
Commissioner

Summary

The Care Inspectorate was asked for information about a joint/multi agency meeting held on Wednesday 22 January 2014.

The Care Inspectorate initially considered the request as repeated, but in its review response it also stated that it did not hold the information.

The Commissioner investigated and found that the Care Inspectorate did not hold the requested information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General compliance); 17(1) (Information 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 30 April 2020, the Applicant made a request for information to Social Care and Social Work Improvement Scotland (the Care Inspectorate). The Applicant requested copies of the agenda, minutes, details of actions, attendees, any material shared, etc, at a joint/multi agency meeting held on 22 January 2014 relating to the Hamilton School, and the Hamilton School Nursery, Aberdeen.
2. The Care Inspectorate responded on 7 July 2020. It referred to previous requests from the Applicant in 2016 and 2017, in which she had asked for all information held in relation to the Hamilton School/Primary during the years 2012 to the present time. The Care Inspectorate stated that all correspondence that could be shared with the Applicant had been disclosed. The Care Inspectorate considered that the request was repeated, and issued a section 14(2) (Vexatious or repeated requests) notice to the Applicant.
3. On 7 August 2020, the Applicant wrote to the Care Inspectorate requesting a review of its decision on the basis that she did not consider the request to be a repeat. The Applicant argued that the request was different, that the Care Inspectorate had failed to take account of the period of time between requests and had failed to state whether the information requested about the meeting existed.
4. The Care Inspectorate notified the Applicant of the outcome of its review on 7 September 2020. It responded to each of the six points raised by the Applicant in her request for review. It stated that, although there was a reference to a meeting having taken place on 22 January 2014 in an email dated 27 January 2014 disclosed to the Applicant, the Care Inspectorate did not hold minutes or any other records relating to this meeting. The Care Inspectorate therefore notified the Applicant that the information requested was not held in terms of section 17 of FOISA. The Care Inspectorate also upheld its previous response, that it did consider the request repeated, in line with section 14(2) of FOISA.
5. On 4 March 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the

Care Inspectorate's review because she considered the information was held, and the request was not repeated.

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 11 March 2021, the Care Inspectorate was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Care Inspectorate was invited to comment on this application and to answer specific questions. These related to the searches undertaken for the requested information and why the Care Inspectorate was satisfied that the requested information was not held.
9. The Care Inspectorate responded to the questions raised and provided copies of some of its previous responses to the Applicant to support its submissions. The Care Inspectorate was asked for, and also provided copies of, its responses to the Applicant in 2016 and 2019.

Commissioner's analysis and findings

10. 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 Care Inspectorate. He is satisfied that no matter of relevance has been overlooked.
11. The Care Inspectorate has sought to rely on section 17(1) of FOISA, but also maintained its reliance on section 14(2) to the extent that the information, should it be held, would have been captured by the previous requests from the Applicant. The Commissioner will consider section 17(1) in the first instance.

Section 17 – Information not held

12. 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. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.

The Care Inspectorate's submissions

Background

13. The Hamilton School and Nursery was cancelled voluntarily on 24 February 2014. The Applicant had submitted a number of information requests and subject access requests to the Care Inspectorate on this topic. The Care Inspectorate stated that it had not created any further regulatory information regarding this service beyond the point of cancellation, as the service no longer exists as an entity.

Is the requested information held?

14. The Care Inspectorate provided a copy of a document, containing 36 pages of emails regarding the Hamilton School, which was disclosed in redacted form to the Applicant on 4 May 2016.
15. Within the disclosed information, there is an email dated 27 January 2014 which refers to a joint agency meeting on 22 January 2014.
16. The Care Inspectorate submitted that it does not investigate child protection matters and does not chair these meetings; instead, these serious matters are referred to the local authority and the police to investigate further. It stated that there are no records held relating to the meeting other than in the email supplied. It stated that the multi-agency meeting was agreed at short notice with the other authorities and followed a number of complaints received by the Care Inspectorate that day raising concerns about child safety. All complaints information has been previously shared with the Applicant within this timeframe.

Searches

17. The Care Inspectorate explained that, each time a new request is received relating to meetings, it checks previous searches, its database and information previously gathered and supplied.
18. In relation to the request under consideration, the Care Inspectorate explained that it had received the first request from the Applicant on 4 May 2016. The Applicant had requested "all information that is held by your organisation in relation to aforementioned school during the years of 2012 to the present time." The request delineated further the eight types of information sought.
19. The Care Inspectorate explained that, in 2016, the relevant locations for the requested information searched were two databases used for storing electronic service information. Some information was stored in hard copy files at an offsite facility. Staff were also asked to search their mailboxes.
20. The Care Inspectorate provided a list of actions taken by its staff in May 2016 to obtain the requested information and submitted that, as a result of a related request from the Applicant in 2018, records were searched again.
21. The Care Inspectorate provided a screen shot of its records about the school, and noted that there were no meetings mentioned around the given timescale within their electronic recording system.
22. When responding to the 2016 request, the Care Inspectorate explained that it identified and printed the information falling in scope of the request. The request exceeded the £600 threshold but the Care Inspectorate decided to disclose the information over an extended period of time.
23. The Care Inspectorate submitted that an electronic search, using the parameters *Hamilton School* and *Multi Agency Meeting* before 2015 produced 115 results. However, the only document to come up within the 115 documents of any relevance is the document already shared with the Applicant, that being the minute for a multi-agency meeting dated 30 January 2014.
24. In its submissions, the Care Inspectorate confirmed that the information requested was not held and does not exist within Care Inspectorate systems, as it was not the lead agency in this situation.

The Commissioner's findings

25. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining whether a Scottish public authority holds information, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
26. The Commissioner has considered the emails disclosed to the Applicant in 2016, noting the reference within the emails to a meeting on 22 January 2014. He has also taken into account the searches conducted by the Care Inspectorate in response to the 2016 request and subsequent requests by the Applicant for information about the Hamilton School. He notes that the school was closed in February 2014 and that the Care Inspectorate was not the lead agency in this matter.
27. In light of the submissions received, the Commissioner has no reason to doubt that the Care Inspectorate has not identified and provided the information it holds about the school to the Applicant. He accepts that, in light of the explanations provided, and the searches conducted, that the specific information requested about a meeting on 22 January 2014, is not held by the Care Inspectorate. Therefore, the Commissioner finds that the Care Inspectorate complied with Part 1 of FOISA in notifying the Applicant that no information was held under section 17(1) of FOISA in responding to her request.
28. As the Commissioner is satisfied that the information requested by the Applicant is not held by the Care Inspectorate, he will not go onto consider whether the request was a repeat request.

Decision

The Commissioner finds that Social Care and Social Work Improvement Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Care Inspectorate 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

27 September 2021

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.

...

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