

# Decision Notice 148/2019

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## Funding for Dalmellington and Onthank Family Summer Programme 2016

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**Applicant: the Applicant**

**Public authority: East Ayrshire Council**

**Case Ref: 201901128**





## Summary

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The Council was asked about a breakdown of costs regarding the 2016 Family Summer Programme in Dalmellington and Onthank. The Council told the requester it did not hold the information. The Commissioner investigated and accepted this.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held); 21(1) (Review by a Scottish public authority)

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

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1. On 22 March 2019, the Applicant made a request for information to East Ayrshire Council (the Council). He referred to the £70,000 given to Centrestage in March 2016 to develop a Family Summer Programme in Dalmellington and Onthank and asked, among other things, for the following:
  - (iii) a breakdown of costs as provided by Centrestage (materials, staffing costs etc.)
  - (iv) a breakdown of costs utilised in each designated area
  - (v) the costs of similar programmes for 2017 and 2018, if any
2. The Council responded on 26 April 2019, notifying the Applicant that it did not hold information for requests (iii) and (iv) and explaining that a similar programme was not run in 2017 and 2018..
3. On 28 April 2019, the Applicant wrote to the Council requesting a review of its response to requests (iii), (iv) and (v) on the basis that it had failed to provide a detailed response.
4. The Council notified the Applicant of the outcome of its review on 4 June 2019. The Council provided the Applicant with some additional explanation, but maintained that it did not hold information falling within the scope of requests (iii) and (iv).
5. On 2 July 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 he was dissatisfied with the outcome of the Council's review because he did not accept that the Council did not hold information falling within the scope of requests (iii) and (iv). The Applicant also expressed dissatisfaction that the Council had failed to respond to his request and request for review within 20 working days.

## Investigation

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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 5 July 2019, the Council 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 Council was invited to comment on this application and to answer specific questions regarding its claim that the information was not held.

## Commissioner's analysis and findings

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9. 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.

### Information held by the Council

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. These qualifications do not apply in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
12. The Commissioner's remit is to investigate and reach a determination on information held by a Scottish public authority, including whether any relevant information is held. He cannot comment on what an authority ought to hold, but he can consider whether an authority took adequate, proportionate steps to establish what information, if any, it held and which fell within the scope of a request.
13. The standard of proof in considering whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches and investigations 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.

### *The Council's submissions*

14. The Council explained that the funding for the Centrestage programme came from the Welfare Reform Fund, which is available to support people affected by welfare reform, poverty and disadvantage. In this context, at a Special Meeting on 10 March 2016, the Council agreed to commit funding to pilot a summer food programme based on the existing Centrestage dignified food programme that had already been running for 18 months in a number of communities across East and North Ayrshire.

15. The proposal was to develop the dignified food model through a new summer holiday programme pilot with Centrestage as a key partner at that time. The objective of the pilot was to build on their model and to address the issue around holiday hunger for children entitled to free school meals who may go without during the holidays, and the pilot was to trial the feasibility of how this could work.
16. Following the Special Meeting, senior council officers met with Centrestage to discuss and agree the scope of the works. This involved Centrestage outlining their proposal and explanation of the costs that would be involved to staff two locations, Onthank and Dalmellington, providing additional equipment, transport costs and food. The Council noted that the programme run over the summer in 2016 was a partnership project and involved in-house council staff as well as Centrestage working on the set up and delivery of the service.
17. The Council explained that its Chief Finance Officer accompanied the senior manager to the meeting with Centrestage. This initial meeting with Centrestage involved a verbal presentation and paper copies of an outline document, which contained a financial breakdown of the component parts, were handed out to the two senior officers who attended the meeting. It submitted that the original proposal from Centrestage was higher and costs were reduced to bring the allocation to Centrestage down to the agreed £70,000. The Council contended that its officers did scrutinise the breakdown of the costs before authorising the payment of £70,000.
18. The Council stated that it does not hold the initial outline document containing the breakdown of costs as the focus moved to agreeing and signing the formal agreement document for the agreed figure of £70,000. The Council submitted that, during the project, the joint working arrangement allowed daily verification that staffing levels, etc. were in attendance at each venue and an outcome report was also provided by Centrestage regarding numbers that attended the programme.
19. The Council explained that, once the formal agreement document with Centrestage was signed and agreed, paper copies of the financial breakdown, provided at the earlier meeting, were destroyed. The two senior officers have since checked their file records but they could not find a copy of the paper which contained the financial breakdown. In addition, the Council has reviewed paper notes of the meeting and they do not detail any of the cost breakdown. The Council submitted that it has also searched email records to check whether an electronic copy was sent to the senior officers, but no records were located.

#### *Commissioner's conclusions*

20. The Applicant believes that the Council should have retained a copy of the breakdown of costs, in terms of accountability and transparency, in order to ensure proper scrutiny of the costs took place before the funds were approved. However, the Commissioner notes that the Council's Chief Finance Officer attended the verbal presentation by Centrestage and had the opportunity to review the breakdown of costs before the Council agreed to pay Centrestage the reduced fee of £70,000.
21. Having taken account of the explanations and submissions provided by the Council, the Commissioner accepts that, on the balance of probabilities, the Council does not hold any information falling within the scope of requests (iii) and (iv). As noted above, the initial costs submitted by Centrestage were higher, but the Council agreed reduced costs of £70,000 and this formed the basis of its final agreement with Centrestage. It is the Council's view that, once scrutiny of the costs had taken place and the agreement was signed for £70,000, retaining the breakdown of costs was no longer required.

22. As noted above, the Commissioner cannot comment on what information the Council should hold; he can only consider whether or not the information was held at the time the Council received the Applicant's information request.
23. The Council has searched the paper and electronic files of the two senior officers who attended the original meeting with Centrestage, where the paper breakdown of costs was provided, and it has been unable to locate the information. The Commissioner considers these focused searches to be reasonable and proportionate.
24. Overall, the Commissioner is satisfied that the Council has taken all proportionate steps to identify whether or not it holds information falling within the scope of the Applicant's information request, and he finds that the Council was correct to give the Applicant notice under section 17(1) of FOISA, that it did not hold the information.

## **Timescales**

25. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
26. As the Council has acknowledged, it failed to respond to the Applicant's request for information within the required timescale, so the Commissioner must find that in this respect it failed to comply with section 10(1) of FOISA.
27. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to qualifications which are not relevant in this case.
28. It is a matter of fact that the Council failed to respond to the Applicant's review requirement within the required timescale, so the Commissioner must find that in this respect it failed to comply with section 21(1) of FOISA.
29. In its submissions to the Commissioner, the Council expressed regret that its responses to the Applicant breached the timescales set out in section 10(1) and 21(1) of FOISA. It explained that this was due, in part, to staff being on leave during the period. The Council stressed that its failings in this case were an anomaly and that it has apologised to the Applicant.

## **Decision**

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The Commissioner finds that East Ayrshire Council (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 finds that by correctly notifying the Applicant that it did not hold the information he had asked for in requests (iii) and (iv), the Council complied with Part 1.

However, by failing to respond to the Applicant's initial request and request for review within 20 working days, the Council failed to comply with section 10(1) and 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.

## **Appeal**

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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**

**2 October 2019**

## Appendix 1: Relevant statutory provisions

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### 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.

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- (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.

...

#### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
  - (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

#### 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.

...

## **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.

...

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