

Decision Notice



Decision 209/2012 Mr H and Aberdeen City Council

Offender programmes

Reference No: 201201507

Decision Date: 14 December 2012

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr H requested from Aberdeen City Council (the Council) information relating to offender programmes and their accreditation. The Council responded by providing information to Mr H. Following an investigation, which resulted in the provision of further information to Mr H, the Commissioner found that the Council had failed to provide all the information covered by the terms of Mr H's request. That additional information having been provided, the Commissioner was satisfied that the Council had taken adequate steps to comply with Mr H's request and did not require the Council to take any further action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (General entitlement)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 9 February 2012, Mr H wrote to the Council requesting the following information:
 - (a) a hard copy list of all offence related and non-offence related programmes run by or on behalf of Aberdeen City Council Criminal Justice Service from 1 January 2007; and
 - (b) a hard copy list of all offence related and non-offence related programmes as at (a) above, which have held or currently hold accreditation by the Scottish Accreditation Panel for Offender Programmes (SAPOP), or Scottish Community Justice Accreditation Panel (SCJAP), to include when accreditation began and ended.
2. The Council responded on 9 March 2012. In relation to request (a), the Council provided a list of programmes, stating that other programmes were tailored to specific offenders' needs. In relation to request (b) it provided details of two programmes (which, it stated, had been accredited by SAPOP and SCJAP in 2004 and had ongoing accreditation), one being the Community Sex Offenders Groupwork Programme (CSOGP) and the other the Caledonian System.



3. On 19 March 2012, Mr H wrote to the Council requesting a review of its decision. In relation to request (b), Mr H sought clarification as to when the two programmes had been accredited. He informed the Council that he had been otherwise informed that the GSOGP had been accredited in 2005 for five years, and had since lapsed. He also sought details of the Caledonian System.
4. The Council acknowledged Mr H's request for review on 28 March 2012, informing him that it was treating his request for details of the Caledonian System as a new request under FOISA.
5. On 16 April 2012, the Council responded and apologised for the inaccuracy of the information provided in the original response. The Council explained that the CSOGP was due to go back before the accreditation panel to be reaccredited after five years. It advised that the programme was being evaluated before proceeding with reaccreditation, further explaining that in the interim the CSOGP was still a national programme, supported by the Scottish Government.
6. On 18 May 2012, Mr H wrote to the Commissioner, stating that he had not received a full response to his requirement for review (which the authority explained it was dealing with as a request for clarification): he was dissatisfied with that failure and applied to the Commissioner for a decision in terms of section 47(1) of FOISA. As a result of this application, the Commissioner issued *Decision 098/2012 Mr H and Aberdeen City Council*¹, which required the Council to carry out a review and notify Mr H of the outcome, in accordance with section 21 of FOISA.
7. The Council notified Mr H of the outcome of its review on 31 July 2012. The Council informed Mr H that it considered that the response of 9 March 2012, taken with the clarification of 16 April 2012, provided an adequate response to his original request.
8. On 6 August 2012, Mr H wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr H had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2012/201200998.asp>



Investigation

10. While Mr H's application to the Commissioner consisted of a number of complaints, the only matter which could be investigated (with a view to the Commissioner making a decision under section 49 of FOISA) was Mr H's submission that the Council had not provided him with all of the information it held falling within the scope of request (b), specifically the dates when the accreditations of the CSOGP and the Caledonian System began and ended.
11. On 4 September 2012, the investigating officer notified the Council in writing that an application had been received from Mr H, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain the steps it had taken to identify and locate the information Mr H had requested, including when the accreditation of the specific courses began and ended.
12. The Council responded on 26 September 2012, providing submissions. The Council apologised that its response of 16 April 2012 had not provided Mr H with a response regarding the Caledonian System, which had been inadvertently omitted. It also provided submissions to support its position that it did not hold any additional information.
13. The Council provided a further response to Mr H, providing the information it held regarding the accreditation of the two programmes.
14. The relevant submissions received from both the Council and Mr H will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr H and the Council and is satisfied that no matter of relevance has been overlooked.

Information held by the Council

16. 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, subject to certain restrictions which, by virtue of section 1(6), allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.



17. In his application to the Commissioner, Mr H stated that he believed the Council had not provided him with all of the information it held, specifically the dates when the CSOGP and Caledonian System accreditations began and ended.
18. The Council provided explanations as to the searches it had carried out in order to ascertain what information it held falling within the scope of the request. It acknowledged that it had accidentally omitted the information it held relative to the Caledonian System, but stated that this had been provided to Mr H in a separate response (this was, in any event, confirmed in the response provided during the investigation).
19. The Council advised that it did not hold any further information, in addition to that identified, located and provided to Mr H in response to his request and requirement for review, or during the investigation. The Commissioner has considered the Council's submissions and is satisfied that the searches carried out (by the close of the investigation) were adequate and appropriate in the circumstances.
20. The Commissioner is therefore satisfied that the Council does not (and did not, at the time it received the request) hold any further information falling within the scope of Mr H's request. Having considered the Council's submissions and the information located, the Commissioner does not consider it reasonable in the circumstances to expect that any further information would be held.
21. However, the Commissioner also finds that the Council failed to comply with Part 1 (and in particular section 1(1)) of FOISA, by failing to provide all of the relevant information it held when dealing with Mr H's request and his request for review. Given the subsequent provision of this information, she does not require the Council to take any action.

DECISION

The Commissioner finds that Aberdeen City Council (the Council) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr H. In particular, she finds that the Council failed to identify, locate and provide all of the information it held and which fell within the scope of Mr H's request.

Given that she is satisfied that (during the investigation) the Council provided Mr H with all relevant information it held, the Commissioner does not require the Council to take any action.



Appeal

Should either Mr H or Aberdeen City Council wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
14 December 2012



Appendix

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.
- ...