



Scottish Information
Commissioner
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Decision Notice 079/2025

Foster care policy

Authority: East Lothian Council
Case Ref: 202300537

Summary

The Applicant asked the Authority for information on historic policies regarding another adult taking foster children on holiday without social worker consent. The Authority informed the Applicant that it did not hold the information. The Commissioner investigated and found that the information was not held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 17(1)(Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 25 October 2022, the Applicant made a request for information to the Authority. He asked for information about the Authority's policies from 1988-90 relating to foster children; specifically, policies covering another adult taking foster children on holiday with the agreement of foster parents without speaking to social workers first. The same day he clarified that the information he was requesting related to whether foster parents were allowed to let strangers take foster children on holiday.
2. The Authority responded on 16 November 2022. It informed the Applicant that under section 17(1)(b) of FOISA it did not hold the information.

It explained that during the period in question, local government responsibility lay with Lothian Regional Council (LRC), and it advised the Applicant that he might wish to contact the City of Edinburgh Council (CEC).

3. On 14 January 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because CEC had now informed him that it did not hold the information.
4. The Authority notified the Applicant of the outcome of its review on 5 April 2023. It upheld its original decision and apologised for its late response to his requirement for review. The Authority also apologised for referring him to a separate organisation (suggesting it might hold the information) when that organisation had since notified the Applicant that it did not hold the information and had referred him back to the Authority.
5. On 28 April 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he did not believe that the information was not held.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 1 May 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
8. The Authority provided its comments and the case was allocated to an investigating officer.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 17(1) of FOISA – Notice that information is not held

10. In its review outcome, the Authority stated that it did not hold the information requested by the Applicant.
11. In considering whether a Scottish public authority holds the requested information in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances. He will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.
12. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) held by the public authority.

The Applicant's comments on section 17(1)

13. The Applicant submitted that he found it difficult to believe that the Authority did not hold the information he had requested.

The Authority's comments on section 17(1)

14. The Authority stated that it recognised the Applicant's understandable frustration with the outcome of his request. It submitted that it had undertaken detailed and extensive manual searches of its records (the majority of which were in paper format for the relevant period).
15. It explained that in addition to these targeted searches, over the past five years it had also undertaken thorough searches of all its records relating to social work and "looked after" children as part of its work to support the Scottish Child Abuse Inquiry. It further stated that the Inquiry had made several requests to it for information addressing historic policy and practice which required the Authority to map and search its policy and procedure documentation. Accordingly, the Authority was confident that there were no social work records which were now not under centralised control by the Authority's social work department and it had therefore concluded that the information was not held.
16. The Authority stated that it regretted that it could not be more forthcoming to the Applicant. Furthermore, it explained that a complicating factor was the fact that the transfer of records at the time of local government re-organisation was not clear-cut or consistent, meaning records generated by a single authority might be held by different local authorities today. The Authority stated that it had provided the Applicant with advice and assistance on this point and acknowledged that this historic situation caused frustration for those making requests for information.
17. The Authority also submitted that historic recordkeeping across Scottish local authorities (including by the Authority itself) was sparse and inconsistent and argued that this was evidenced by the fact that the state of record-keeping within children's services in Scotland was a key driver for the enactment of the Public Records (Scotland) Act 2011 and associated improvements to recordkeeping made by public authorities.
18. The Authority acknowledged that there was perhaps an understandable expectation by members of the public, who were used to today's legal frameworks, that historically records were generated and managed to similar standards. However, it argued that actual historic recordkeeping practice in Scottish local authorities varied widely, in many cases without any formal policies or procedures governing the creation, management and destruction of records.
19. During the investigation the Authority provided further detail about how records were kept, catalogued and archived and how it carried out searches in relation to the request. It explained that staff in Records and Children's Services carried out research of the Authority's records when the Scottish Child Abuse Inquiry was first established in 2015. It submitted that those staff had a good knowledge of what information was held both within the archive and within children's service records.
20. The Authority further submitted that before government re-organisation in 1996, social work functions [for the geographical area now falling within its area] were administered by LRC. It explained that following the establishment of its successor authorities, a number of records from the LRC period were retained by CEC.

21. The Authority reiterated that before receiving the Applicant's request, extensive work had already been undertaken to identify records relating to fostering. However, children's services and archives and records staff repeated searches in order to respond to his request. A manager also contacted relevant officers of CEC in an effort to identify any historical records that might be held by either authority in relation to the Applicant's request.
22. The Authority provided further submissions about the previous work it carried out to search for and identify records relating to fostering. The Authority stated that in 2019, it received a statutory request for information regarding fostering from the Scottish Child Abuse Inquiry under section 21 of the Inquiries Act 2005. The Inquiry required the Authority to prepare detailed submissions, and the Authority accordingly carried out extensive searches of all records held in order to identify any and all which related to fostering over the period in scope (1930-2020). This included the identification and submission to the Inquiry of policy and procedure records relating to fostering.
23. In addition to electronic records, searches carried out (for the Inquiry) included any and all paper records sent to the Authority's Records Centre and external storage provider Oasis, records held in the historical Archives collections and any paper records remaining in Authority offices (which were not held for the time period in scope of the Applicant's request). The Authority explained that records held in the Records Centre/Oasis were indexed according to department and description, which would provide the primary finding aid for identifying relevant records. It stated that records in the historical archives were described in line with archival cataloguing conventions.
24. The Authority submitted that specific staff within Children's Services and Archives & Records were closely involved in these records searches and the preparation of the Authority's submissions to the Inquiry and so held thorough and reliable personal knowledge of the records held in relation to fostering and whether they included anything of relevance to the Applicant's request. It specified that records scoped for the inquiry included not just client files but also more general policies, procedures and any other record of the Council's functions and activities over time.
25. In addition, the Authority stated that it recognised its failings with regard to its historic records and archives management, as indeed had been the case with most Scottish local authorities. It argued that its policies, procedures and practices in relation to recordkeeping had since significantly improved, albeit that further work remained to be done.
26. The Authority submitted that it regretted that it did not hold the information requested by the Applicant and that it had been unable to achieve the desired outcome, and it recognised that its historic record-keeping fell short of today's standards. However, it also submitted that it was confident that it had exhausted all avenues of enquiry and that the information requested, if it ever existed, had not survived.

The Commissioner's view about the exemption

27. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate, proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the request.
28. The Commissioner acknowledges the importance of the information request to the Applicant.

However, given the nature and age of the information requested and the detailed explanations of the historical context and the various measures to catalogue records and search for information in relation to this particular request which have been provided by the Authority, the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the Applicant's request.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Authority 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.

Jennifer Ross
Deputy Head of Enforcement

28 March 2025