



Scottish Information
Commissioner
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Decision Notice 112/2025

Social work referral

Authority: Fife Council
Case Ref: 202401270

Summary

The Applicant asked the Authority for information regarding social work referrals made for his late mother during a specified date range. The Authority initially withheld the information under various exemptions, but during the investigation it notified the Applicant that it did not hold the information.

As part of his investigation, the Commissioner considered what information the Authority actually held. He concluded that it did not hold the information requested by the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 9 April 2024, the Applicant made a request for information to the Authority. He asked for information from 1 January 2010 to 31 December 2017 in respect of his late mother's social work assessment. Specifically, he asked who made the initial social work referral, why the referral was made and when, and whether his late mother was deemed as lacking capacity at any point during those years.
2. The Authority responded on 15 May 2024, and notified the Applicant that it was withholding the information under sections 30(c) (Prejudice to the effective conduct of public affairs) and 36(2) (Confidentiality) of FOISA

3. On the same day, the Applicant wrote to the Authority requesting a review of its decision on the grounds that he did not agree that either of the exemptions applied to the withheld information. The Applicant stated that he already had a copy of the deceased's medical records.
4. The Authority notified the Applicant of the outcome of its review on 30 May 2024, fully upholding its original decision for the reasons set out in its original response.
5. On 23 September 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because it was continuing to withhold information from him under sections 30(c) and 36(2) of FOISA.

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 11 October 2024, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application.
8. The Authority was also asked to send the Commissioner the information withheld from the Applicant 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.

Authority's change of position

10. During the investigation, the Authority changed its positions. The Authority submitted that the information that it had originally identified as falling within the scope of the request, was in fact, not relevant. It explained that the request was seeking information between 2010 and 2017, whereas the information that was considered in its original response and review related to information recorded between 2020 and 2022.
11. The Authority submitted that further searches were carried out by its Information Management and Request Team and its Social Work Archive Team and both teams confirmed that no information was held for the specified time periods.
12. The Authority confirmed that it was now seeking to rely on section 17(1) of FOISA, because it did not hold any information that fell within the scope of the time periods specified in the original request. The Authority subsequently notified the Applicant of its updated position, and it provided the Commissioner with evidence in support of its reliance on section 17(1) of FOISA.

Does the Authority hold the information?

13. 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 qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
14. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4) of FOISA. 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 it to give the applicant notice in writing to that effect.
15. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
16. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. 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) actually held by the public authority.

The Applicant's comments

17. The Applicant did not accept that the Authority did not hold information falling within the scope of his request. He submitted that the Authority was deliberately withholding information in order to protect the named social worker who had compiled the care plan in 2021. The Applicant provided the Commissioner with a letter from the Authority which stated that his late mother's assessment (in 2021) was completed on an old software programme which pulled information through from contacts that the social worker was unable to change. He noted that the named contact person for his mother, included in this 2021 assessment, had passed away in 2012.
18. The Applicant argued that as this contact information was still accessible to the social worker in 2021 (via the old software programme) it indicated that information prior to 2012 had not been deleted but was still held by the Authority. The Applicant also argued that the inclusion of this individual's contact details meant that the Authority must have carried out a social work assessment of his mother before 2012, otherwise they would not have a record of the contact details of the individual who died in 2012.
19. The Applicant stressed that all he wanted to know was when his mother was assessed for social work involvement, why she was assessed and what was the service provided. He stated that he needed to know whether his mother had the capacity to make decisions on her own.

The Authority's comments

20. In its submissions, the Authority explained that once the Commissioner had notified it of the application, it became evident that the dates that were requested during the initial request and review outcome had not been considered. It noted that his late mother's file was small and the data that was held related to the requested information, therefore its original responses had focused on the content of the file

and not on the time period specified. The Authority submitted that as soon as this error was identified, it had notified the Commissioner and had subsequently contacted the Applicant to explain its change of position, and to apologise for its oversight.

21. The Authority described the steps it had taken when responding to the original request and requirement for review and it explained how it had identified that the information it held did not fall within the scope of the request.
22. The Authority explained that when requests were received for social work files, its process began with a search of the electronic system to identify if any case notes were held. Contact would then be made with a case worker or a member of social work staff if no worker is allocated. The Authority submitted that due to a change of system the Information Requests & Management Team (IRMT) were unable to download profile notes from the system directly therefore a request was sent to its Business Technology Solutions (BTS) department to request a download of the profile notes.
23. As a result of this search, the Authority identified that it held information which was dated between August 2020 and May 2022, but it did not cross reference these dates with those in the information request (it acknowledged that this check should have taken place at this point) and the information that was held was assumed to fall within the scope of the request.
24. On receipt of the Applicant's requirement for review, the Authority explained that it carried out discussions via MS Teams, and the information that had been identified was reviewed. The Authority again confirmed that the dates were not checked at the review stage and all of the information was deemed to be within the scope of the request. The Authority provided the Commissioner with evidence of these actions.
25. The Authority acknowledged that it had made several errors during its processing of the Applicant's request, and it advised the Commissioner that lessons had been learned. The Authority explained that discussions had since taken place with all team members highlighting the importance of checking the final response against the initial request. The Authority submitted that the timescale errors should have also been picked up at the review stage, but unfortunately this did not happen.
26. The Authority stated that once it had received a copy of the Applicant's application from the Commissioner, it carried out an investigation via discussions on Teams calls and emails and that further searches were carried out. It provided the Commissioner with documentation that evidenced these actions including copies of the additional searches it had conducted and the results of those searches.
27. As part of these additional searches, the Authority explained that an email was sent to the lead social worker, who confirmed that no information was held for the dates specified in the information request. It submitted that a further request was made to its social work archive to search the system again to identify if any case details were held for the particular dates specified in the information request. It noted that the only information that was located was the information covering the period 2020 to 2022 and that no additional information was held for the dates requested.
28. The Authority submitted that a further conversation took place between IMRT staff and social work archives to identify if case files could be held elsewhere in social work. It was confirmed that all details would have been recorded and held on SWIFT (Social work Information Technology) as this system went live in 2007 (prior to the dates specified in the

information request). Before the Authority contacted the Commissioner with the outcome of these additional searches it carried out one final check, to cover case details and system processes. It confirmed that if the Applicant's mother had been assessed or had any social work involvement prior to the dates showing on SWIFT (since superseded by Revault) then the original details would still be available on Revault, as the electronic files do not get destroyed.

29. During this search and a further Teams call, the Authority identified that a contact had been created on SWIFT for the Applicant's mother in 2011. It was established that this contact was created on SWIFT as the Applicant's mother was, at that time, caring for another family member, not because she had been assessed or was receiving care from social work herself. The Authority provided the Commissioner with a screenshot that listed all the dates and contacts for the Applicant's mother.
30. The Authority submitted that as the Applicant's mother was connected to the other family member, it asked a member of IMRT to review the contact further. The Authority provided the Commissioner with additional information arising from this review. The Authority submitted that it reviewed the file relating to this family member in case there was any information therein that discussed or referred to a social work assessment of the Applicant's mother. The Authority stated that there was no record of any assessments being carried out on the Applicant's mother in relation to the dates specified in the original request.

The Commissioner's view on whether information is held

31. As noted above, the Commissioner's role is to determine whether or not information is held, and if it is held, whether any exemption relied on by an Authority has been correctly applied.
32. The Commissioner has considered the submissions from the Applicant and the Authority carefully. He acknowledges that the Applicant has serious doubts about his mother's mental capacity prior to her death. He understands that the Applicant's mother made significant changes to her will in 2017, and the Applicant is concerned that these changes were made at the behest of a third party, while his mother was lacking capacity. The Applicant considers it likely that social work had involvement in his mothers' life prior to 2017, and he is seeking evidence to support this. The Commissioner has sympathy for the Applicant and the concerns he holds.
33. However, the Commissioner has considered the detailed explanations provided by the Authority along with evidence of the searches it carried out, which included copies of screenshots and emails, and he is satisfied that the information requested by the Applicant was capable of being identified by the searches carried out by the Authority. He considers that the Authority carried out thorough searches to establish what information it held that was relevant to the request and taking into account the explanations and evidence provided to him, he is satisfied, on the balance of probabilities, that the Authority does not hold the information requested by the Applicant.
34. As the Commissioner finds that the Authority does not hold the information, he must also find that it failed to comply with the requirements of section 17(1) of FOISA, as it did not notify the Applicant that the information was not held until after he had appealed to his office.

35. As outlined above, the Authority initially notified the Applicant that it did hold the information he was seeking, and that it was being withheld under section 30(c) and 36(2) of FOISA. It is clear that these exemptions were misapplied as the Authority did not, in fact, hold any information falling within the scope of the Applicant's information request. When applying exemptions to information, authorities must ensure that the information is actually held and that it falls within the scope of the request.
36. The Commissioner considers that the Authority's handling of this information request was poor and it failed, in its response and review outcome, to take note of the particular dates specified by the Applicant. The result of this failure is that the Authority advised the Applicant that information was held, when it was not. The Commissioner acknowledges that the Authority rectified this failing during his investigation, and it apologised for the oversight, but the original approach taken by the Authority was confusing and it misled the Applicant into believing information was held.
37. The Commissioner considers that the information requested in this case is sensitive and of significant personal value to the Applicant, and he considers that the Authority should have taken more care with its responses, given these sensitivities.

Decision

The Commissioner finds that the Authority 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 is satisfied that the Authority does not hold the information requested by the Applicant.

However, the Commissioner finds that by failing to issue a notice under section 17(1) of FOISA following the Applicant's requirement for review, the Authority failed to comply with Part 1 of FOISA.

Given that the Authority has since given the Applicant notice, under section 17(1) of FOISA, that the information is not held, the Commissioner does not require the Authority to take any action in respect of this failure.

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

12 May 2025