

Decision Notice

Decision 229/2014: Dr John Welford and South Ayrshire Council

Young Scot National Entitlement Cards

Reference No: 201402007

Decision Date: 31 October 2014



Scottish Information
Commissioner

Summary

On 4 February 2014, Dr Welford asked South Ayrshire Council (the Council) for information relating to the Council's processes for obtaining a Young Scotland National Entitlement card (NEC).

The Council responded by providing Dr Welford with the information provided to parents, an explanation of the process and some statistics on uptake of the card.

The Commissioner investigated and accepted that the Council had provided Dr Welford with all of the information it held and which fell within the scope of his request. However, she also found that the Council failed to respond to Dr Welford's requirement for review within the timescale laid down in section 21(1) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 20(1) and (3) (Requirement for review of refusal etc.); 21(1), (4) and (5) (Review by 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

1. On 4 February 2014, Dr Welford made a request for information to the Council. Dr Welford sought:
 - Confirmation of the voluntary nature of the NEC – he sought hard copy evidence in the form of prospectuses, letters to parents, etc.
 - Confirmation that there were alternative arrangements available to those that did not wish to register for a NEC (again, with hard copy evidence)
 - The number of pupils that had opted for, and out of, the NEC scheme
2. The Council responded on 19 February 2014. The Council supplied Dr Welford with answers to all of his points, including statistics on the number of students who had applied for, and opted out of having, a NEC. It provided a copy of an application form and supporting information provided to the parents of pupils in its secondary schools.
3. On 28 February 2014, Dr Welford wrote to the Council requesting a review of its decision. On the basis of the information provided to parents, he could not accept the Council's stated position that the NEC was optional.
4. The Council did not respond to his requirement for review, but offered clarification on 4 and 5 March and 7 April 2014.
5. On 16 April 2014, Dr Welford wrote to the Council again requesting a review. He stated that he had not been provided with hard copy evidence of the matters raised in his request.

6. The Council notified Dr Welford of the outcome of its review on 15 May 2014. The Council stated that it had provided him with all of the information it held and which fell within the scope of his request. It stated that it was reviewing the letter to parents, in light of what it perceived to be concerns that it could be misconstrued.
7. On 11 August 2014, Dr Welford wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Dr Welford stated he was dissatisfied with the outcome of the Council's review because he felt that the Council was being deliberately deceptive.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Dr Welford made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
9. On 3 September 2014, the Council was notified in writing that Dr Welford had made a valid application.
10. 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 specifically to justify its reliance on any provisions of FOISA it considered relevant.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Dr Welford and the Council. She is satisfied that no matter of relevance has been overlooked.

Information held by the Council

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. The Commissioner cannot require an authority to create information to respond to a request.

Dr Welford's submissions

13. Dr Welford's request for information stemmed from a concern that the Council had made the NEC mandatory, contrary (in his opinion) to Scottish Government policy.
14. Dr Welford argued that the evidence he had been provided with by the Council (the application form and covering letter to parents) suggested to him that the process was compulsory. This, he submitted, was contradictory to the statements made by the Council in the responses to his request, which indicated that the process was optional. Dr Welford did not accept that he had been provided with information to support the conclusion that the process was optional.

The Council's submissions

15. The Council confirmed that Dr Welford was provided with a copy of the letter to parents and the application form for the NEC. The Council explained that a NEC was only issued to a pupil if they submitted a completed application form. The requirement to apply for the card

was, the Council submitted, itself evidence that the cards were not compulsory. In the circumstances, it did not consider any opt-out process to be necessary.

16. The Council went on to explain that the guidance note accompanying the application form (a copy of which was supplied to Dr Welford) stated that the NEC was “available”, implying (in its view) a notion of choice. The application form itself, it noted, contained a declaration that the applicant wished to apply for the card, so at no point did it state or attempt to imply that the cards were mandatory. The Council also considered it clear from the information provided to Dr Welford that the optional nature of the cards was understood by pupils and parents.
17. The Council concluded that it had provided Dr Welford with all of the information it held and which fell within the scope of his request.

The Commissioner’s conclusion

18. The Commissioner has considered the submissions made by the Council and Dr Welford. It is not her role to determine whether either party is correct about the nature of the NEC. As indicated above, all she can do is determine whether the Council has given Dr Welford all the relevant information it held when it received his request.
19. In all the circumstances of this particular case, the Commissioner is satisfied that all the information held by the Council and which fell within the scope of Dr Welford’s request was provided to him. While it is not her role to adjudicate on the correct interpretation of the nature of the NEC, she is satisfied that she has been given a cogent explanation of the Council’s understanding of the position and of the import of the relevant documentation. Given that explanation, she is satisfied that it would not be reasonable to expect the Council to hold any further information which would satisfy the terms of Dr Welford’s request.

Timescales

20. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.
21. The Commissioner is satisfied that Dr Welford submitted a valid requirement for review, meeting the requirements of section 20(3) of FOISA on 28 February 2014. It would be reasonable to conclude from this communication that Dr Welford was not satisfied that he had been given all the relevant information held by the Council. Although the Council provided clarification to Dr Welford on 4 and 5 March and 7 April 2014, it did not provide a review response meeting the requirements of section 21(4) until 15 May 2014.
22. As the Council did not provide a response to Dr Welford’s request for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.

Decision

The Commissioner finds that South Ayrshire Council largely complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Dr Welford.

In failing to respond to Dr Welford's requirement for review of 28 February 2014, within the timescales laid down by section 21(1) of FOISA, the Council failed to comply with Part 1 of FOISA. The Council has since responded to the requirement for review and the Commissioner does not require it to take any action in respect of this failure, in response to Dr Welford's application.

Appeal

Should either Dr Welford or South Ayrshire 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

31 October 2014

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.
- ...

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.
- ...
- (3) A requirement for review must-
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify-
 - (i) the request for information to which the requirement for review relates; and
 - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).
- ...

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.
- ...
- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or

- (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

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