

Morag Walker

Date 8 February 2021

Via E-mail: request-709628-a5f0d5db@whatdotheyknow.com

Our ref: EDIR: 30363

Your ref:

Dear Ms Walker

Freedom of Information (Scotland) Act 2002 – Request for Review

I write regarding your email dated 11 January 2021 in which you explained that you were dissatisfied with the response provided to your FOI request. I have carried out a review in accordance with the provisions of the Freedom of Information (Scotland) Act 2002 (“FOISA”). I have conducted my review by reviewing all of the previous correspondence associated with your request and confirming with the Communities & Families Service what information it holds in regard to the matters your request covers.

In your request for information, you asked for:

- 1) Details of meeting minutes of the Supreme Court ruling of Named Person being read and understood by Council Officials and any further discussions recorded.
- 2) Provide:
 - a) the lawful basis of processing wellbeing concern forms in the absence of freely given consent, and;
 - b) if consent has been given, how you demonstrate ‘freely given’ consent
- 3) Provide:
 - a) The process for passing on wellbeing concerns to/from Named Person in the absence of freely given consent, and;
 - b) How many wellbeing forms have been processed by Named Persons since August 2016 without subjects’ freely given consent.
- 4) Provide:
 - a) The process for Named Persons taking next steps, in the absence of freely given consent.
 - b) The number of individual ‘next steps’ which have been taken by Named Person without subject’s freely given consent since August 2016
 - c) The lawful basis you have applied for taking next steps since August 2016

- 5) Provide the process once feedback has been passed back to parents. How will you ensure that any further assistance is demonstrably requested by parents rather than enforced?
- 6)
 - a) Provide all updated welling forms (Information Sharing Flowchart, GIRFEC/GDPR) post August 2016 to reflect the Supreme Court ruling on human rights, thresholds, wellbeing and data protection legislation
 - b) Provide the processes / training / guidance whereby Named Persons are gathering (or not as the case may be), wellbeing information in the absence of freely given consent?
- 7) Provide updates to the flow chart 'Risk of Harm' to comply with Supreme Court ruling, human rights and data protection of 'risk of significant harm' which is the lawful threshold when considering sharing information without consent.
- 8) Provide an updated and lawfully compliant version of flowchart "Monitor and Record your concerns as well being matters" and "Monitor and Record Child's progress or risk of ongoing harm", demonstrating your understanding that 'harm' must be significant or serious detriment to the child".
- 9) Provide:
 - a) Updated guidance to Practitioners that a single point of access to services is legitimate and benign only if requested by parents, and;
 - b) That in the absence of freely given consent GIRFEC policy has no lawful basis.

The Council's response to each question / part of your request except for parts 3.b) and 4.b) was that the information is otherwise accessible and therefore not disclosable in response to an FOI request. The response provided you with links to websites which hold the relevant information. The response to parts 3.b) and 4.b) was that, under Section 12 of FOISA, the cost of providing the information you requested would exceed £600 and therefore the Council is not obliged to provide it.

I note from your e-mail requesting this review, your general dissatisfaction with the information you have been linked to, as you consider that it is not in line with the Supreme Court ruling. I can confirm that I have considered the entire content of your e-mail in my review, albeit much of it is not relevant to the specific review I am required to undertake. I will confirm below how much of the dissatisfaction you have expressed and the new requests for information you have made can be progressed.

The purpose of this review is for the Council to consider again the response provided to a request for information it has received. In undertaking the review, I can decide to uphold the response either with or without variation or can substitute the response for a new one.

Before turning to the substance of the review, I consider that it will be of assistance if I clarified the rights an applicant has under FOISA. An applicant has the right to access any recorded information held by the Council unless an exemption to its release applies, but FOISA does not require the Council to create information to satisfy a request, where such information is not already held. This clarification is particularly relevant to the number of parts of the request where you have indicated that you wish the information to be updated in response to your FOI request.

Following my review, I have concluded that I will uphold the response provided to your request. This is because the recorded information held by the Council which falls within the scope of your requests (except parts 3.b) and 4.b) is otherwise accessible through the links you were provided with. Whilst I acknowledge your dissatisfaction with the content of the information, as above, this cannot be addressed through a FOI request, instead I will provide some advice below as to how you can progress these matters.

Additionally, I have identified one further link that should have been included in response to part 2.b) of your request. This is the City of Edinburgh Council Record of Processing which details the GDPR lawful condition of processing that applies to all processing of personal data undertaken by the Council. This can be accessed on the Council website: <https://www.edinburgh.gov.uk/downloads/download/12955/gdpr-record-of-processing>.

In respect of parts 3.b) and 4.b) of your request, I am satisfied that, under Section 12 of FOISA, the Council is not obliged to provide the information you requested as to do so would cost in excess of the £600 statutory maximum. This is because these details are not recorded centrally by the Council and therefore upwards of 55,000 pupil records would require to be individually checked to provide this information.

Complaint(s) and Further Request for Information

Much of the content of your 11 January 2021 raises dissatisfaction with the current policy and practices of the City of Edinburgh Council and requests that policies and other documents be updated accordingly. Such concerns cannot be addressed via a Freedom of Information Request but instead should be raised directly with the relevant service as a complaint / expression of dissatisfaction. The Council website details how such a complaint can be made: <https://www.edinburgh.gov.uk/contact-us/comments-complaints>. I would advise that you may wish to log a complaint, or that I can, with your agreement, forward your e-mail to the Customer Care Team to be progressed as such. Can you please confirm to me if you wish me to do this.

Finally, in the course of handling your review, I have identified a number of new requests for information that you are seeking to make, as follows:

- 1) Provide current training materials about processing of information without freely given consent.
- 2) Provide evidence that CEC practitioners are no longer using Parts 4 & 5 of the Children and Young People (Scotland) Act 2014.
- 3) Provide evidence, including current training materials, that practitioners have been updated about the lawful threshold and are acting accordingly.
- 4) Provide City of Edinburgh Council's plans to update the Child Protection policy to reflect the Supreme Court ruling.
- 5) Provide evidence that City of Edinburgh Council is complying with the 2016 Supreme Court ruling, human rights and GDPR in relation to GIRFEC.

Such new requests cannot be progressed as part of my review but require to be submitted as a new FOI request. Again, information on how to do this can be found on the Council's website: <https://www.edinburgh.gov.uk/managing-information/freedom-information-foi/1>. I am unable, at present, to offer to progress this new request on your behalf as the e-mail

address I have is specific to your previous request but if you forward me your e-mail address I could do this.

Scottish Information Commissioner

If you are unhappy with this review outcome or the way we handled your request and review, you have a right of appeal to the Scottish Information Commissioner. You must submit your complaint to the Commissioner within 6 months of receiving this review response. The Commissioner can be contacted at:

The Office of the Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

Telephone: 01334 464610
Fax: 01334 464611

Website www.itspublicknowledge.info/Appeal
E-mail: enquiries@itspublicknowledge.info

Please note that, once the Commissioner provides you with a decision on any application made to him, you have the right to lodge an appeal against the decision on a point of law to the Court of Session.

Yours sincerely,

Fiona Smyth
Information Compliance Officer
Information Governance Unit