

Decision Notice

Decision 036/2019: Mr R and the Scottish Ministers

Training records

Reference No: 201900086

Decision Date: 7 March 2019



Scottish Information
Commissioner

Summary

The Ministers were asked about the training records for Cabinet Ministers in relation to the Freedom of Information (Scotland) Act 2002 and the Scottish Ministerial Code.

The Ministers advised that they did not hold the information requested. The Commissioner investigated and accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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 18 November 2018, Mr R made a request for information to the Scottish Ministers (the Ministers). Mr R asked for specific information about the training records for each Cabinet Minister in relation to the Freedom of Information (Scotland) Act 2002 and the Scottish Ministerial Code.
2. The Ministers responded on 11 December 2018. The Ministers provided Mr R with a notice in terms of section 17(1) of FOISA, stating they did not hold the information requested.
3. On 11 December 2018, Mr R wrote to the Ministers, requesting a review of their decision as he had difficulty in accepting that no information was held.
4. The Ministers notified Mr R of the outcome of their review on 18 December 2018. They upheld the original response without modification.
5. On 15 January 2019, Mr R wrote to the Commissioner's Office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr R stated he was dissatisfied with the outcome of the Ministers' review because he believed the information requested was held.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr R made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 30 January 2019, the Ministers were notified in writing that Mr R had made a valid application. The case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Ministers were invited to comment on this application and answer specific questions, with reference to the steps they had taken to identify and locate the information requested.

9. The Ministers responded, maintaining that they did not hold the information requested by Mr R and explaining the searches carried out.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr R and the Ministers. He is satisfied that no matter of relevance has been overlooked.

Information held by the Ministers

11. 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. This is 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. These qualifications do not apply in this case.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). 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 the authority to give the applicant notice to that effect.
13. 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.
14. The Ministers confirmed the searches and enquiries they undertook to ascertain what information they held falling within the scope of Mr R's request, detailing the searches undertaken. These included consultation with the individuals who would be responsible for the provision of any training of the kind requested by Mr R. The Ministers advised that, while individuals may undertake eLearning in relation to FOISA, and that Ministers were provided with a copy of the Scottish Ministerial Code on induction, they did not receive any specific training as requested by Mr R.
15. The Ministers concluded that they held no information falling within the scope of Mr R's request. The Ministers provided supporting evidence confirming the outcomes of their searches.
16. Having considered all relevant submissions and the terms of the request, the Commissioner accepts the Ministers took adequate, proportionate steps to establish what information they held in this case. Given the explanations provided, the Commissioner is satisfied that the Ministers did not, on receipt of the information request, hold the information requested by Mr R.
17. The Commissioner is therefore satisfied that the Ministers were correct to give Mr R notice, in terms of section 17(1) of FOISA, that they held no information falling within the scope of his request.

Decision

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002, in responding to the information request made by Mr R.

Appeal

Should either Mr R or the Ministers 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

7 March 2019

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.

...

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-

- (i) to comply with section 1(1); or
(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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