



Scottish Information
Commissioner
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Decision Notice 291/2024

Whistleblowing training package

Authority: Police Service of Scotland

Case Ref: 202401126

Summary

The Applicant asked the Authority for information about staff who had completed the Authority's whistleblowing training package. The Authority provided some information initially, but the Applicant considered the Authority's response to be incomplete. During the investigation, the Authority issued a revised response containing the missing information.

The Commissioner investigated and found that the Authority had failed to comply with Part 1 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 11 February 2024, the Applicant made a request for information to the Authority. He asked for a range of information (covering mandatory whistleblowing training, health and safety inspections, budgetary and finance information and information about the Scottish Violence Reduction Unit). He also specifically requested:
 - (i) The number of officers and civilian staff who had completed the Authority's online/Moodle whistleblowing learning package as of 31 October 2023 (or current day if unable to search by a historical date).

He wanted the information to be provided as a percentage of the total workforce and broken down per officer rank or staff grade against the number of officers or staff in workforce, number completed training and percentage completed.

2. The Authority wrote to the Applicant on 11 March 2024, to let him know that it had been unable to respond to his request within the statutory timescale, but that it did intend to respond as soon as possible.
3. On 2 April 2024, the Applicant wrote to the Authority expressing his dissatisfaction that the Authority had still not responded. He asked for a response as soon as possible.
4. The Authority notified the Applicant of the outcome of its review on 10 July 2024. The Authority disclosed information in response to request (i).
5. On 20 August 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 he considered that the information provided to him in response to request (i) was incomplete. The Applicant did not challenge the Authority's responses to his other requests.

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 29 August 2024, the Authority was notified in writing that the Applicant had made a valid application.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on the Applicant's reasons for believing the response to be incomplete.

Commissioner's analysis and findings

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

Section 1(1) – General entitlement

10. 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 in section 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4).
12. This is not necessarily to be equated with the information that an applicant believes an authority should hold. If no relevant 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 lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. 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.
14. The Applicant was dissatisfied because he considered that the information disclosed did not contain all the information he had asked for.
15. The Applicant submitted that the information did not cover any police officer ranks above Superintendent. He noted that the ranks of Chief Superintendent, Assistant Chief Constable, Deputy Chief Constable and Chief Constable were missing from the disclosed information and no explanation or justification had been given to him to explain why this was the case.
16. During the investigation, the Authority was questioned about the information it had disclosed to the Applicant, particularly the information about senior ranks that appeared to have been omitted. The Authority subsequently contacted the Applicant and provided him with the information about senior ranks that had not been included in its original review outcome.
17. The Applicant was satisfied with the disclosure but was unhappy that the Authority only disclosed the information to him after the Commissioner commenced his investigation. The Applicant suggested that the Authority was attempting to cover up facts regarding its handling of whistleblowing disclosures.
18. During the investigation, the Authority apologised to the Applicant and acknowledged that its previous review outcome of 26 August 2024 was incorrect, and the information was not provided to him in the requested format.
19. It is a matter of fact that the Authority did not provide a complete response to the Applicant in line with the requirements of Part 1 of FOISA. It acknowledges that it withheld information that fell within the scope of the Applicant's request, and did not disclose this information until after the Commissioner began an investigation into its handling of the Applicant's information request.
20. The Authority has indicated to the Commissioner that this error was a result of workload pressures. The Commissioner recognises that all Scottish public authorities experience resourcing issues, on some occasions, and that meeting statutory requirements at those times can be challenging. However, authorities must take steps to ensure that requesters are not disadvantaged as a result of workload pressures or staffing issues.
21. In all the circumstances of this case, the Commissioner must find that the Authority failed to comply with Part 1 of FOISA.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in failing to provide a complete response to the information request made by the Applicant.

Given that the Authority has now provided the Applicant with a complete response, the Commissioner does not require the Authority to take any action in response to 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

10 December 2024