

Decision Notice

Decision 002/2019: The applicant and the Office of the Scottish Charity Regulator

Anti-Sexual Abuse Policy

Reference No: 201801611

Decision Date: 11 January 2019



Scottish Information
Commissioner

Summary

OSCR was asked for its anti-sexual abuse policy and associated complaints procedure. OSCR responded, advising that it did not hold the information requested but gave advice and assistance on generic HR policies which would be considered applicable in the circumstances.

Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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 23 May 2018, the applicant made a request for information to the Office of the Scottish Charity Regulator (OSCR). The information requested was “a copy of the organisation’s anti-sexual abuse policy and its associated complaints procedure...”
2. OSCR responded on 11 June 2018, stating it did not have a specific sexual abuse policy and therefore did not hold the information described in the request.
3. On 8 July 2018, the applicant wrote to OSCR, requesting a review of its decision in the expectation that the information was held.
4. OSCR notified the applicant of the outcome of its review on 1 August 2018. OSCR upheld the original response, with modifications. It affirmed that it held no specific policy meeting the terms of the request, but directed the applicant to generic HR policies on the Scottish Government website which it believed would be referred to in the event that such an incident was reported. It noted that these were not specific to OSCR.
5. On 27 September 2018, the applicant wrote to the Commissioner. The applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The applicant considered the outcome of OSCR’s review unsatisfactory, believing specific policies should be held by OSCR.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the applicant 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 October 2018, OSCR was notified in writing that the applicant had made a valid application. OSCR was asked to send the Commissioner the information withheld from the applicant. OSCR provided the information and 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. OSCR was invited to comment on this application and to answer specific questions, including evidencing any searches conducted.

Commissioner's analysis and findings

9. 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 the applicant and OSCR. He is satisfied that no matter of relevance has been overlooked.

Was the information requested held by OSCR?

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 contained 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 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 it to give the applicant notice in writing to that effect.
12. The applicant did not accept that OSCR held no relevant information. The applicant asked the Commissioner to compel OSCR to supply the specific anti-rape policy requested, this being one which was "suitable for preventing rape by male employees towards female employees and female members of the public."
13. OSCR submitted that the documents identified following the review were not considered to be held by OSCR at the time of the initial request. In responding to the review request, it was considered appropriate to provide this additional information and assistance to the applicant. OSCR referred to the subsection entitled Human Resources in Class 5 of the Guide to Information available on its website¹, which states:

"OSCR staff are employed by Scottish Ministers as Home Civil Servants. This means that OSCR staff have the same terms and conditions as staff within the Scottish Government. OSCR HR and payroll functions are carried out by the Scottish Government Human Resource Division on a shared service basis."

The relevant policies were, therefore, those of the Scottish Ministers rather than being specific to OSCR.
14. OSCR explained the searches it had conducted which led to the conclusion reached on review. OSCR has an electronic record and document management (eRDM) system called "Objective". Some older paper case records would not be on this system but, even for paper records, arrangements exist for scanning and filing paperwork and all documents received into Objective. In terms of searching for data, there is an optical character recognition facility for searching all machine-readable documents. Upon receipt of the request, OSCR searched for both "sexual abuse" and "anti-sexual abuse" in Objective: no policy information was located relating to either term.

¹ <https://www.oscr.org.uk/media/3361/oscr-guide-to-information-foisa-final-updated-2018-12-04.pdf>

15. To evidence the searches conducted, OSCR submitted a screen shot with results for the term “sexual abuse” and an explanation of returns for the phrase “anti-sexual abuse”. For the latter phrase, all five returns were generated as a result of the FOI requested submitted by the applicant. In other words, none related directly to a relevant policy.
16. With regard to the generic policies held by the Scottish Ministers, identified following discussion with Scottish Government Human Resources at the time of the review, OSCR re-stated that these would be used in the event of any relevant incident as staff are employed by the Scottish Ministers. In hindsight, OSCR recognised it might have been prudent to explain more fully to the applicant why these would be the relevant policies.
17. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that OSCR interpreted the applicant’s request reasonably and took adequate, proportionate steps to establish whether it held any information falling within the scope of this request.
18. As set out above, the Commissioner can only consider whether information is actually held by OSCR, not what information it should hold. While it would appear reasonable to expect matters of the kind covered by the request to be addressed by generic policies of the kind identified by OSCR, the Commissioner cannot comment on the adequacy of these specific policies.
19. In all the circumstances, therefore, the Commissioner accepts, on the balance of probabilities, that OSCR does not (and did not, at the time it received the request from the applicant) hold any information falling within the scope of this request. Consequently, the Commissioner is satisfied that OSCR was entitled to inform the applicant, under section 17(1) of FOISA, that it did not hold the information requested.

Other matters

20. Having asked for a “female-only” response, the applicant expressed dissatisfaction that the reviewer was not female (although noting that the initial response was handled by a female officer). OSCR explained that (given the resources at its disposal and the time available to respond) it was not always possible or practical to accede to such a request. The Commissioner understands this, bearing in mind that it is also good practice (from a Freedom of Information perspective) to ensure that the person conducting a review is not the same person who originally handled the request.

Decision

The Commissioner finds that the Office of the Scottish Charity Regulator complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the applicant.

Appeal

Should either the applicant or OSCR 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

11 January 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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