

# Decision Notice

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**Decision 006/2019: Dr O and the Scottish Ambulance Service Board**

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## **Minutes of BASICS meetings**

Reference No: 201800661

Decision Date: 25 January 2019



Scottish Information  
Commissioner

## Summary

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The SASB was asked for copies of up to date minutes of BASICS Scotland Scottish Ambulance Service National Group meetings from 2017. SASB stated that it did not hold the minutes, and confirmed this at review.

During the investigation, after contacting BASICS, SASB provided copies of the minutes to the requester. However, the Commissioner accepted, on the balance of probabilities, that SASB did not hold the minutes at the time it received the request.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (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

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1. On 15 November 2017, Dr O made the following request for information to the Scottish Ambulance Service Board (SASB):  
  
“Please could you provide me with up to date minutes of the BASICS [British Association of Immediate Care] Scotland SAS National Group Meetings from 2017”.
2. SASB responded on 16 November 2017. It informed Dr O that BASICS was the responsible authority for taking the minutes of the meetings between BASICS and the SASB, and as such SASB was unable to provide any minutes.
3. Later that day, Dr O wrote to SASB requesting a review of its decision. He pointed out that BASICS Scotland is a registered charity which is not subject to FOISA; therefore, it was not required to provide copies of the minutes. Dr O stated that as the minutes relate to provision of health services to patients of the SASB by a third party responder, it surely could not be the case that the SASB did not hold copies of the minutes.
4. SASB notified Dr O of the outcome of its review on 7 March 2018. SASB acknowledged its failure to provide a review response within the timescales and reiterated its original response that it did not hold copies of the minutes of the meetings. It provided Dr O with a link to the BASICS members’ website and noted that, as a member, Dr O had full access to the minutes published there.
5. On 15 April 2018, Dr O applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Dr O was dissatisfied with the SASB’s statement that it did not hold the minutes he had requested.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Dr O 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 22 May 2018, SASB was notified in writing that Dr O had made a valid application 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. SASB was invited to comment on this application and to answer specific questions about its statement that it did not hold the information requested by Dr O, including details of the searches or enquiries undertaken to establish this.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Dr O and SASB. He is satisfied that no matter of relevance has been overlooked.

### Is relevant information held by SASB?

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). 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 standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why it does not hold the information.
13. In his application, Dr O submitted that he had made a separate information request asking how many SASB officers attended the BASICS Scotland meetings in question and how the minutes were distributed. The SASB informed him that around eight SASB officers can attend meetings and minutes are emailed to them all. Dr O submitted to the Commissioner that the SASB therefore holds multiple copies of the minutes. He considered that, even if the minutes were deleted from individual email accounts, it was likely that they would be held in central or local SASB backup systems and the data would remain on hard drives until overwritten by new data or until all hard drives have been destroyed.
14. In its submissions to the Commissioner, the SASB explained that it provides a budget to BASICS to undertake the minutes of the meetings and to publish them on their members' site once approved. For this reason it considered that it did not hold the information.

15. SASB provided a screenshot of its searches for BASICS minutes, which focused on the email account and computer drive of one of the SASB's representatives at the meetings. Only two items were identified as relating to BASICS minutes and these post-dated the request.
16. SASB explained that BASICS is a charitable organisation who work to assist SASB in achieving its core functions, alongside other independent charities. Volunteers at BASICS help the SASB respond to patients in remote and rural locations and have a close working relationship with SASB but are an independent organisation. SASB provides a budget to BASICS for administration purposes, which includes preparing and publishing the minutes of the BASICS meetings. The meetings are led by BASICS and the minutes are prepared and controlled by members of BASICS. These minutes are sent to attendees for approval then published on the BASICS website where they are available for all members to view. SASB stated that, as Dr O is a member of BASICS, he has access to the minutes.
17. Following the submissions from SASB, the investigating officer contacted Dr O to confirm whether he was a member of BASICS and whether he did have access to their members' site where the minutes were published.
18. Dr O confirmed that he was a member of BASICS and said he had attempted to access the minutes there in the first instance; however, the minutes were not available at the time of his request. He had contacted BASICS, but had received no response. Therefore, as BASICS are not a public authority for the purposes of FOISA, he contacted SASB for the minutes. (Dr O confirmed that he had checked the BASICS web site again on receipt of the investigating officer's letter and found the most up to date minutes available were from February 2017.)
19. Dr O subsequently provided further detail of the information on the website to the Commissioner, identifying that five sets of minutes for 2017 were not available.
20. The investigating officer then contacted SASB on 2 August 2018, to inform it that the minutes were not available on the website to which it had directed Dr O. The investigating officer sought clarification as to why the minutes were not up to date and whether SASB were aware of this when it provided its response to Dr O. SASB was asked to provide further evidence with regard to the searches undertaken. It was also asked about the purpose and relationship of SASB and BASICS, and to confirm whether SASB had any business need to retain copies of the minutes on its systems.
21. SASB responded that it had asked BASICS to upload the missing minutes to their website. SASB had also asked for copies of the minutes. It confirmed that, on receipt of the minutes, it had provided them to Dr O in full (along with minutes for 2018 meetings which he had requested separately).
22. Dr O confirmed receipt of the information, but stated that he still required the Commissioner to reach a decision in this case.

### *Conclusions*

23. Having considered carefully all relevant submissions and the terms of the request, the Commissioner cannot be satisfied that, when first responding to Dr O's request, SASB took adequate, proportionate steps to establish what information it held (or whether that information was held for the purposes of FOISA). There is no evidence that staff attending the BASICS meetings were asked to search for copies of the minutes before the Commissioner began to investigate this case.

24. The Commissioner also considers that SASB should have checked whether the information was available on the BASICS website prior to directing Dr O to that source.
25. However, given that SASB has provided evidence of searches carried out during the Commissioner's investigation, and given that SASB had to ask BASICS to upload the minutes and provide copies to Dr O, the Commissioner is satisfied, on the balance of probabilities, that SASB did not hold the information requested by Dr O at the time of his request or review request.
26. The Commissioner is therefore satisfied that SASB correctly gave notice that it did not hold the requested information, as required by section 17(1) of FOISA.

## Decision

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The Commissioner finds that the Scottish Ambulance Service Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Dr O.

## Appeal

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Should either Dr O or the Scottish Ambulance Service Board 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**

**25 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.

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#### 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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