

Decision Notice

Decision 007/2017: Mr Robert Wilson and Scottish Enterprise

Support grant Information

Reference No: 201601862

Decision Date: 18 January 2017



Scottish Information
Commissioner

Summary

Scottish Enterprise was asked for the total sum of money paid by it and its subsidiaries directly to micro businesses in support grants in 2014/2015 and the number of micro businesses this had been distributed among. Scottish Enterprise said it did not hold the information.

The Commissioner disagreed and ordered Scottish Enterprise to respond on the basis that it held information falling within the scope of the request.

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 3 August 2016, Mr Wilson made a request for information to Scottish Enterprise. The information requested was the total sum of money paid by Scottish Enterprise and its subsidiaries directly to micro businesses in support grants, and the number of businesses this had been distributed among, in 2014/2015. He explained that he was classifying a “micro businesses” as one with under 10 employees and less than €2m turnover, in line with the European Commission’s definition.
2. Scottish Enterprise responded on 24 August 2016, giving Mr Wilson notice in terms of section 17(1) of FOISA that it did not hold the information he sought. It explained that it did not undertake any reporting, financial or performance related, on the basis of company size at either organisation or group level, and so could not provide the information.
3. On 1 September 2016, Mr Wilson wrote to Scottish Enterprise requesting a review of its decision. He provided reasons why he did not agree with the decision, based on his own experience of the grant process.
4. Scottish Enterprise notified Mr Wilson of the outcome of its review on 3 October 2016. It explained that while it did collect some relevant data, it did have the full set of data required to identify how many of the companies it supported were micro businesses. It therefore upheld its response under section 17(1) of FOISA.
5. On 11 October 2016, Mr Wilson wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Wilson provided an explanation of why he believed Scottish Enterprise held the information requested.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Wilson made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 1 November 2016, Scottish Enterprise was notified in writing that Mr Wilson had made a valid application. The case was then 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. Scottish Enterprise was invited to comment on this application and answer specific questions. In particular, it was asked to justify its response in terms of section 17(1) of FOISA.
9. Scottish Enterprise responded, explaining why it did not consider it held the information requested by Mr Wilson. It stated that it had been able to identify a number of micro businesses which had received grant assistance: while this would only provide a partial answer to Mr Wilson's request, it would be happy to offer this to Mr Wilson.
10. Scottish Enterprise also submitted that to provide any further information would exceed the cost limit set down in section 12(1) of FOISA.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Wilson and Scottish Enterprise. She is satisfied that no matter of relevance has been overlooked.
12. The question for the Commissioner in this case is whether Scottish Enterprise was entitled to provide Mr Wilson with notice in terms of section 17(1) of FOISA.

Information held by Scottish Enterprise

13. 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 restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. 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.
14. The Commissioner notes the submissions provided by Mr Wilson, in which he explains why he considers Scottish Enterprise should hold the requested information. In particular, Mr Wilson submits that he has made applications for grants in the past, which involved him providing Scottish Enterprise with information that would fall within the scope of his request.
15. In order to determine whether Scottish Enterprise dealt with Mr Wilson's request correctly, the Commissioner must be satisfied as to whether, on the balance of probability, at the time it received Mr Wilson's request, Scottish Enterprise held any information which would fall within the scope of that request.

16. As has been explained in previous decisions, FOISA provides the right of access to recorded information held by a Scottish public authority. It does not require an authority to create information in order to respond to a request for information.
17. In coming to a decision on this matter, the Commissioner has considered the Information Rights Tribunal case *Michael Leo Johnson v the Information Commissioner and the Ministry of Justice (EA/2006/0085 13 July 2007)*¹, which involved a request relating to the number of cases dismissed in the Queen's Bench Division of the High Court. (The Information Rights Tribunal deals with appeals against decisions of the (UK) Information Commissioner, made under the Freedom of Information Act 2000.)
18. In that case, as in this, the public authority had not collated the information at the time of the request. The Tribunal concluded that the Ministry of Justice did hold the information, commenting that the degree of skill and judgement that must be applied may well have a bearing on whether the requested information is held or not. In general, the Commissioner agrees with the approach taken by the Information Tribunal: a public authority will hold information if it holds the "building blocks" to generate the information and no complex exercise of skill or judgement is required to produce it.
19. In its submissions to the Commissioner, Scottish Enterprise explained what information it recorded and reported on with regard to its grant schemes. It stated that in accordance with the European Structural Funds 2014-2020 Document Retention Guidance, all company applications are signed by the applicant business and the original signed document is retained for 10 years. It explained the original applications are then scanned and stored as documents on its Case Management System (CRM).
20. Scottish Enterprise provided further explanation as to the systems it uses to record and store information it holds. It explained that any business applying for a grant has to state whether it is a Small to Medium sized Enterprise (SME), but it is not required to confirm its size. It stated that it assesses the size of a company "in relation to EC criteria based on total assets and annual turnover".
21. Scottish Enterprise provided the Commissioner with a copy a Business Support Application Form, which (at section 1) requires the applicant to confirm whether the company is an SME or a large enterprise. Later in section 1, the applicant had to specify the company turnover and the number of employees.
22. Scottish Enterprise also provided a copy of a Regional Selective Assistance Application Form. At part 2.5 of this, again, the applicant has to provide numbers of permanent employees and the annual turnover.
23. Having informed the Commissioner that it did not consider it held the information requested by Mr Wilson, Scottish Enterprise went on to submit that it did hold more detailed information for the companies that are account managed. For these, the company will have submitted management or annual accounts information on turnover, employment and international sales. Therefore, Scottish Enterprise submitted, while it would be unable to provide a full view of all grant expenditure paid to micro businesses in 2014/15, it had been able to identify the number of micro businesses assisted within its Account Management portfolio. From this, it could provide Mr Wilson with the sum of grant assistance for that group of companies (an estimated 247 microbusinesses).

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i90/Johnson.pdf>

24. Scottish Enterprise argued that to determine the total funding for all grants, a manual exercise would be required to extract the necessary information from the scanned copy application forms, to identify which companies met the definition of a micro business. It stated a complex analysis of information held within its finance systems would then be required to identify the funding paid to each company, so as to calculate the total spend paid to these micro businesses. It explained that in 2014/15, the number of grants awarded to companies in total was around 4,000.
25. Scottish Enterprise submitted that this work would cost in excess of the prescribed limit of £600 under section 12(1) of FOISA.
26. Mr Wilson's application to the Commissioner relates to his dissatisfaction with Scottish Enterprise's response in terms of section 17(1) of FOISA. The question, therefore, is whether it held the information in question at the time it received the request.
27. The Commissioner notes Scottish Enterprise's submissions to the effect that it does not report on, or collate, the information that Mr Wilson has requested. It does not necessarily follow that Scottish Enterprise does not hold such information. Having considered its submissions and information collected by Scottish Enterprise from applicants, the Commissioner is satisfied that it holds the "building blocks" from which the information could be generated. Applying the definition in Mr Wilson's request, the information in question is collected from applicants
28. The Commissioner has considered the process that Scottish Enterprise described it would have to undertake to extract and collate the information falling within the scope of Mr Wilson's request. This would involve searching financial systems and application forms, along with financial calculations.
29. Based on the processes described by Scottish Enterprise, and on its submissions overall, the Commissioner is not satisfied that the process explained would involve, or necessitate, any complex exercise of skill of judgement on the part of Scottish Enterprise. Taking account of all relevant submissions, the Commissioner concludes that Scottish Enterprise does hold information falling within the scope of Mr Wilson's request.
30. In all the circumstances, therefore, the Commissioner does not accept that Scottish Enterprise was entitled to notify Mr Wilson that it did not hold any relevant information, and so was not entitled to issue a response in terms of section 17(1) of FOISA. She now requires Scottish Enterprise to respond to Mr Wilson on the basis that information is held. In other words, it must provide him with a new review outcome, in terms of section 21(4)(b) of FOISA (i.e. substituting a new decision of its original decision).

Decision

The Commissioner finds that Scottish Enterprise failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Wilson, by incorrectly stating that no information was held and therefore failing to comply with section 1(1).

The Commissioner therefore requires Scottish Enterprise to respond to Mr Wilson in accordance Part 1 of FOISA, other than in terms of section 17(1) (i.e. in terms of section 21(4)(b) of FOISA), by 6 March 2017.

Appeal

Should either Mr Wilson or Scottish Enterprise 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.

Enforcement

If Scottish Enterprise fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Scottish Enterprise has failed to comply. The Court has the right to inquire into the matter and may deal with Scottish Enterprise as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

18 January 2017

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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