

Decision Notice



Decision 052/2010 Mr Peter Cherbi and the Scottish Legal Complaints Commission

Involvement with the Institute of Chartered Accountants of Scotland

Reference No: 200901189
Decision Date: 29 March 2010

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Scottish Information Commissioner

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Summary

Mr Cherbi requested from the Scottish Legal Complaints Commission (SLCC) all material and discussions relating to the SLCC's involvement with the Institute of Chartered Accountants for Scotland (ICAS). The SLCC responded by stating that it did not hold the information which Mr Cherbi had requested. Despite conducting a review that confirmed this decision, the SLCC later identified relevant information, which it supplied to Mr Cherbi. However, Mr Cherbi remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the SLCC identified a further relevant document, the Commissioner found that the SLCC had failed to deal with Mr Cherbi's request for information in accordance with Part 1 of FOISA, by incorrectly stating, in terms of section 17 of FOISA, that it did not hold information falling within the scope of Mr Cherbi's request. However, he was satisfied that the SLCC had, by the end of the investigation, identified all the information falling within the scope of the request, and that reasonable searches had been undertaken by the SLCC to identify these.

In its correspondence with the Commissioner, the SLCC acknowledged that this case had highlighted weaknesses in its systems, but described a range of steps that had been undertaken to address these. The Commissioner therefore does not require any actions to be taken in respect of these breaches.

Relevant statutory provisions and other sources

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

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 8 April 2009, Mr Cherbi wrote to the SLCC requesting all material and discussions relating to the SLCC's involvement with ICAS.



2. The SLCC responded on 6 May 2009, stating that it has no involvement with ICAS. It therefore issued a notice stating that it did not hold any information falling within the scope of Mr Cherbi's request in terms of section 17(1) of FOISA.
3. On 6 May 2009, Mr Cherbi wrote to the SLCC requesting a review of its decision.
4. The SLCC notified Mr Cherbi of the outcome of its review on 7 May 2009. The SLCC upheld its original decision without amendment.
5. Later the same day, Mr Cherbi wrote to the SLCC attaching correspondence that fell within the scope of his request and asking the SLCC to reconsider its responses to him in light of this.
6. On 11 May 2009, the SLCC wrote again to Mr Cherbi stating that it had re-reviewed and reconsidered the matter. It stated that it does not retain records forever and that its original response was therefore correct, explaining that the information was no longer held and was not held at the time of Mr Cherbi's request.
7. However, SLCC later identified certain information that did fall within the scope of Mr Cherbi's request. This was identified within paper records released in response to another freedom of information request, which had not been previously searched. The SLCC wrote to Mr Cherbi again on 25 May 2009, apologising for this oversight and enclosing copies of relevant documents.
8. On 29 June 2009, Mr Cherbi wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SLCC's review (the outcome of which was specified in the SLCC's communication on 7 May 2009) and applying for a decision in terms of section 47(1) of FOISA. He noted that the supplied documentation was only identified after a "third review", and that the SLCC claimed that most of the relevant documents had been destroyed, but provided no explanation as to why and when they were destroyed.
9. The application was validated by establishing that Mr Cherbi had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

10. On 5 August 2009, the SLCC was notified in writing that an application had been received from Mr Cherbi and was asked to provide the Commissioner with full details of the searches undertaken to identify the information that fell within the scope of Mr Cherbi's request.
11. The SLCC was also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and to respond to specific questions. In particular, the SLCC was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.



12. The SLCC's response explained the processes that had been followed at various stages of considering Mr Cherbi's request. It acknowledged that it had initially failed to consider the information that was released in response to a previous information request. It was only after it had completed its review of Mr Cherbi's request that this was reviewed in the process of responding to another information request, and recognised to fall within the scope of Mr Cherbi's request.
13. The SLCC also explained that, after receiving notification of the investigation in this case, it had repeated its searches for documents falling within the scope of Mr Cherbi's request. It indicated that this had led to the identification of one other document referring to ICAS within the text.
14. The SLCC sent a copy of this document to Mr Cherbi (subject to redaction of certain content) on 3 September 2009. Following a request from Mr Cherbi to review this redaction, a further copy with part of the redacted content reinstated was disclosed on 9 September 2009.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both Mr Cherbi and the SLCC and is satisfied that no matter of relevance has been overlooked.
16. Mr Cherbi was dissatisfied with the manner in which his request was handled, highlighting that it was only after a "third review" that the SLCC disclosed a limited amount of documentation.

Handling of Mr Cherbi's request

17. The SLCC has acknowledged that its handling of this request had highlighted weaknesses in its systems. It explained that when Mr Cherbi's request was received, the Office Manager, who handles initial FOI requests, sent an email to the Management Team asking if they held any information relating to the request. The team responded confirming that they had searched their personal email and PCs and did not have any documents or information in relation to the request. In addition, the Office Manager had searched the IT systems using the search terms "The Institute of Chartered Accountants in Scotland" and "ICAS" and that this search was understood to be comprehensive. The Office Manager also checked incoming mail records and spoke directly with the Management Team and searched Word Pro, the SLCC's case-handling software.
18. In response to Mr Cherbi's request for review, the SLCC confirmed its original decision that no information was held. The reviewer did not undertake further searches, but considered the adequacy of the process that led to the initial conclusion that no relevant information was held. The SLCC explained that the reviewer had responded promptly after doing this because she was also aware that any correspondence with ICAS was limited. She therefore concluded that the initial response had been appropriate.



19. As noted above, certain documents were later discovered that fell within the scope of the request. The SLCC acknowledged that its initial searches had not taken in the papers held following the response to a previous freedom of information request. The SLCC's submissions to the Commissioner explained that it was now well aware of the need to ensure that its searches for information requested considered both electronic and paper records.
20. With respect to the document identified during the investigation, following a further search of electronic records, the SLCC noted that this document had not been identified in previous searches. This document contained the word "ICAS" but searches using this keyword had failed to identify it.
21. The SLCC informed the Commissioner that this issue had subsequently been raised with ISIS, the government shared IT provider upon whom the SLCC relies. As a result of this, it was able to explain that its initial searches had been conducted in a way which meant that that a reference to the keywords it was using within a document but not in the document title would have led to a nil return. It explained that it was now aware that it should search for keywords within the names of documents, and in the text of documents separately in order to identify all relevant information.
22. The SLCC submitted that the problems in this case were exacerbated and came clearly to light in this case as this request related to one meeting held with ICAS. The SLCC explained that that meeting was not of assistance to the SLCC and nothing happened thereafter other than that the results being reported to the Board.
23. The SLCC explained that records were therefore not kept of what occurred at the meeting; they simply existed to show that a meeting took place and were reported to the Board to show that nothing came of it. The SLCC explained that the difficulties have therefore been experienced due to the low profile of the meeting and that the IT system was not operating as it had assumed.
24. Having considered the submissions and details of searches undertaken by the SLCC, the Commissioner is satisfied that the SLCC has now identified and supplied to Mr Cherbi all the information falling within the scope of Mr Cherbi's request. However, the Commissioner concludes, as the SLCC has acknowledged, that it was incorrect to advise Mr Cherbi that it did not hold information in terms of section 17(1) of FOISA. By failing to identify and provide the information that was subsequently supplied to Mr Cherbi, the SLCC also failed to comply with section 1(1) of FOISA.
25. The Commissioner has noted that the SLCC has taken steps to learn from the mistakes that were made in this case. It has recognised the need to undertake manual searches of any paper records within which relevant information might be held, and it has clarified its understanding of how to conduct searches for electronic records within its IT systems.

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26. The Commissioner is also aware that the SLCC is a relatively new public authority, which is still in the process of developing and testing its information management systems. In particular, he notes that the SLCC Board has decided that an audit should be undertaken of the way in which it handles its FOI requests, and that it has been recognised that the SLCC needs to conduct an information audit and improve its data storage and data retrieval systems. He welcomes the steps that the SLCC is proactively taking to strengthen these systems.

DECISION

The Commissioner finds that the Scottish Legal Complaints Commissioner (the SLCC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Cherbi.

By wrongly notifying Mr Cherbi that it did not hold any information falling within the scope of his request, the SLCC incorrectly applied section 17(1) of FOISA. By failing to identify and supply the information which fell within the scope of Mr Cherbi's request and which was subsequently supplied to him, the SLCC failed to comply with section 1(1) of FOISA.

The Commissioner is satisfied that the SLCC has identified and provided Mr Cherbi with all the information which fell within the scope of his request, and he does not require any further action to be taken in relation to these breaches in response to this decision.

Appeal

Should either Mr Cherbi or the SLCC wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
29 March 2010



Appendix

Relevant statutory provisions

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.

...

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.

...