

Decision Notice



Decision 068/2011 Mr Edward Cairns and Scottish Enterprise

Complaint handling arrangements

Reference No: 201100221
Decision Date: 25 March 2011

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
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Summary

Mr Edward Cairns requested from Scottish Enterprise information relative to its complaint handling arrangements. Scottish Enterprise responded by providing Mr Cairns with an explanation of its processes. Following a review, Mr Cairns remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Scottish Enterprise had partially failed to deal with Mr Cairns' request for information in accordance with Part 1 of FOISA, by failing to supply all of the requested information as required by section 1(1). As Scottish Enterprise disclosed the requested information to Mr Cairns during the investigation, the Commissioner did not require Scottish Enterprise to take any further action in response to this decision.

Relevant statutory provisions and other sources

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

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 3 December 2010, Mr Cairns wrote to Scottish Enterprise with the following request:
Under the terms of the Freedom of Information (Scotland) Act 2002 I formally request information on arrangements for ensuring the impartial and independent handling of serious complaints or allegations of wrongdoing against senior employees in your organisation, for example board members.
Does any such arrangement exist and in recent years have any such allegations been transferred for handling by an independent and impartial tribunal in order to comply with the terms of the Human Rights Act 1998 and Article 6 of the European Convention on Human Rights?



2. Scottish Enterprise responded on 5 January 2011. Mr Cairns was provided with an explanation of the processes involved in dealing with complaints of the kind referred to in his request.
3. On 6 January 2011, Mr Cairns wrote to Scottish Enterprise requesting a review of its decision. In particular, Mr Cairns drew Scottish Enterprise's attention to a previous complaint he had made and the way in which that complaint had been handled by Scottish Enterprise.
4. Scottish Enterprise notified Mr Cairns of the outcome of its review on 31 January 2011, informing him that the response provided had been appropriate in the circumstances.
5. On 2 February 2011, Mr Cairns wrote to the Commissioner, stating that he was dissatisfied with the outcome of Scottish Enterprise's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Cairns 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

7. On 21 February 2011, the investigating officer notified Scottish Enterprise in writing that an application had been received from Mr Cairns, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, Scottish Enterprise was asked explain the steps it had taken to identify and locate the information Mr Cairns had requested. It was also asked to consider Mr Cairns' request again and confirm what (if any) relevant information it held, advising whether (with reasons) it could be disclosed to Mr Cairns.
8. Scottish Enterprise responded, providing an explanation of the steps taken to establish what information it held. Scottish Enterprise also confirmed that while it believed that it had provided an accurate explanation of the relevant processes in its response to Mr Cairns, it acknowledge that it did not disclose the documentation containing the relevant information. In the course of the investigation, it confirmed that it had done this.
9. Mr Cairns raised a number of issues about how Scottish Enterprise had dealt with a previous complaint he had made. The Commissioner, however, can only comment whether or not Scottish Enterprise complied with the provisions of FOISA in dealing with Mr Cairns' request for information.
10. The relevant submissions obtained from Mr Cairns and Scottish Enterprise will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered the information provided to Mr Cairns in response to his request and during the investigation, together with submissions made to him by both Mr Cairns and Scottish Enterprise. He is satisfied that no matter of relevance has been overlooked.

Section 1(1) – General entitlement

12. 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 certain 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).
13. Having considered Scottish Enterprise's submissions, the Commissioner accepts that Scottish Enterprise carried out adequate searches and enquiries to establish what information it held falling within the scope of Mr Cairns' request. In the circumstances, he accepts that the information disclosed to Mr Cairns in the course of the investigation represents all of the information Scottish Enterprise held and which fell within the scope of the request.
14. The Commissioner acknowledges that the information provided to Mr Cairns in response to his request was no doubt intended as a digest of the information Scottish Enterprise held on the matter to which the request related. Having considered the information disclosed in the course of the investigation, however, the Commissioner cannot accept that it was fully conveyed to Mr Cairns in that initial response. In failing to provide all of the relevant information which it held, the Commissioner finds that Scottish Enterprise failed to comply with section 1(1) of FOISA in responding to Mr Cairns.
15. As Scottish Enterprise has since disclosed the information to Mr Cairns, the Commissioner does not require Scottish Enterprise to take any action in response to this failure.



DECISION

The Commissioner finds that Scottish Enterprise partially failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 in dealing with Mr Cairns' information request, by failing to provide him with all of the information it held and which fell within the scope of his request.

Given that Scottish Enterprise disclosed the remaining information during the investigation, the Commissioner does not require it to take any further action in response to this decision.

Appeal

Should either Mr Cairns or Scottish Enterprise 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
25 March 2011



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.
- ...
- (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.
- ...