

Decision Notice



Decision 068/2013 Mr William Cordiner and the Scottish Fire and Rescue Service

Correspondence between employees

Reference No: 201201431
Decision Date: 16 April 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 23 August 2011, Mr Cordiner asked Tayside Fire and Rescue Board for copies of correspondence between certain employees of Tayside Fire and Rescue. Mr Cordiner was told that the correspondence was not held.

Following an investigation, the Commissioner found that Mr Cordiner's requirement for review had not been dealt with within the relevant statutory timescale.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 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. The Scottish Fire and Rescue Service (the Service) is the statutory successor to the Tayside Fire and Rescue Board (the Board). Until 1 April 2013, the Board was, in its own right, a Scottish public authority for the purposes of FOISA.
2. This decision is concerned with the actions of the Board, which was the joint board serving as the fire authority for the local authority areas of Perth and Kinross, Dundee and Angus.
3. Before 1 April 2013, the day to day running of the fire service in Tayside was carried out by Tayside Fire and Rescue (TFR) on the Board's behalf. This included corresponding with Mr Cordiner and the Commissioner on the Board's behalf in relation to Mr Cordiner's information request and subsequent application to the Commissioner. All references in this decision to correspondence with the Service is in fact a reference to correspondence which took place with TFR on the Board's behalf.
4. On 23 August 2011, Mr Cordiner wrote to the Service requesting copies of specified correspondence between certain employees of TFR.



5. The Service responded on 10 October 2011. It informed Mr Cordiner that it did not hold the requested information and that it had been destroyed in line with its Records Management and Archive Policy.
6. On 10 November 2011, Mr Cordiner wrote to the Service requesting a review of its decision. Mr Cordiner queried the justification for the destruction of the information and questioned whether the information that he had requested had, in fact, been destroyed.
7. Following an application to the Commissioner in relation to its failure to respond, the Service notified Mr Cordiner of the outcome of its review on 3 July 2012. The Service apologised for its failure to respond and confirmed that the information being sought had been destroyed. The Service provided Mr Cordiner with copies of two Authorisation for Disposal Forms (DRM-01) dated June 2010, which it considered provided evidence of the destruction of the requested information.
8. On 24 July 2012, Mr Cordiner wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Service's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr Cordiner 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. The investigating officer subsequently contacted the Service, 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. The Service was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
11. The Service subsequently responded, providing an explanation of its position regarding the matters raised in Mr Cordiner's application and clarifying why it did not hold the requested information.
12. Following further correspondence with the investigating officer, the Service located and retrieved one email that had been specified in Mr Cordiner's request of 23 August 2011. The Service indicated that it had been able to do so as a result of an upgrading of its email systems. The Service disclosed this email to Mr Cordiner on 7 January 2013.



Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Cordiner and the Service. She is satisfied that no matter of relevance has been overlooked.

The scope of the investigation

14. In his application to the Commissioner, Mr Cordiner expressed dissatisfaction with three aspects of the Service's response to his requirement for review:
- a) the Service's failure to comply timeously with his requirement for review;
 - b) the validity of the DRM-01 forms; and
 - c) the Service's position that it did not hold a specified email between two named employees.
15. The Commissioner has therefore considered only these specified matters in what follows.

Timescales

16. The Commissioner will firstly consider the complaint by Mr Cordiner that the Service failed to respond to his requirement for review within the timescale allowed under FOISA.
17. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
18. Since the Service did not provide a response to Mr Cordiner's requirement for review within 20 working days, the Commissioner finds that the Service failed to comply with section 21(1) of FOISA.
19. In its submissions to the Commissioner, the Service explained that there had been a misunderstanding between it and TFR regarding the procedure to be followed in conducting reviews. TFR and the Service had subsequently reviewed their internal procedures to ensure there was no recurrence of the problem encountered in this particular case.
20. Given that the Service has now responded to Mr Cordiner's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Cordiner's application.

The validity of the DRM-01 forms

21. As noted above, in his application to the Commissioner, Mr Cordiner expressed dissatisfaction regarding the legitimacy of the DRM-01 forms. Mr Cordiner suggested that the forms provided to him by the Service may have been altered or fabricated, or were otherwise invalid.



22. The Commissioner has considered the submissions made by Mr Cordiner regarding these forms. However, she is satisfied that that the procedure followed by the Service was in line with its Records Management and Archive Policy. The Commissioner has seen no evidence to suggest and has no reason to believe that the forms were altered or fabricated in the manner suggested by Mr Cordiner and she is therefore satisfied that the information referred to in the DRM-01 forms was lawfully destroyed in line with the Service's stated policy.

Section 17 of FOISA – information not held

23. Under section 17(1) of FOISA, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.
24. In its initial response to Mr Cordiner and in its response to his requirement for review, the Service informed Mr Cordiner that it did not hold a specified email between two employees of TFR, as it had been destroyed. As noted above, the Service later located and retrieved the email in question and disclosed it to Mr Cordiner on 7 January 2013.
25. The Commissioner must therefore decide whether the Service was entitled to give notice under section 17(1) that it did not hold the specified email. Section 1(4) of FOISA specifies that the information to be given by an authority in response to an information request is that held by it at the time the request is received. The Commissioner must consider whether the Service held the information at the time it received Mr Cordiner's request. In this case, the Service stated that it had received the request on 31 August 2011.
26. In its submissions to the Commissioner, the Service stated that it had been able to retrieve and locate the specified email following an upgrading of its email system in June 2012, which allowed emails dating back approximately six years to be retrieved if required. The Service explained that the high level of granularity in the search capabilities of the new system meant it was able to access a greater level of detail and could therefore pinpoint the specific email during a revised search.
27. The Service explained also that the previous system's search capabilities were more limited in scope and therefore produced higher numbers of potential search matches. The Service stated that the discovery process for such searches would have required the involvement of trained personnel from its Information and Communications Technology team running the search and then an investigating officer examining each of the results in turn. The Service estimated that this would take both employees five minutes for every email check, and that it would therefore have required a disproportionate effort on the Service's part.
28. The Commissioner is pleased to note that the Service was able to provide Mr Cordiner with the email after it had upgraded its email system.

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29. On the basis of the Service's explanation of the search capabilities of its previous email system, the Commissioner considers it likely that the deleted email was not capable of retrieval at the time of Mr Cordiner's request – or at least, not capable of retrieval without significant involvement of specialist ICT staff. However, from the information available to her, the Commissioner is unable to reach a definitive conclusion as to whether or not the email in question was actually "held" for the purposes of FOISA at that time. It is questionable whether any further investigation would lead to a definitive conclusion on this point. Given that Mr Cordiner has now received the email in question, the Commissioner considers that further investigation of this matter would entail disproportionate use of staff resources within her office and the Fire Service.

DECISION

The Commissioner finds that, in respect of the matters specified in the application, the Scottish Fire and Rescue Service (the Service) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Cordiner.

In failing to respond to Mr Cordiner's requirement for review within the timescale laid down by section 21(1) of FOISA, the Service failed to comply with Part 1.

Given that the Service subsequently provided a response to Mr Cordiner's requirement for review, the Commissioner does not require the Service to take any action in respect of this failure in response to Mr Cordiner's application.

For the reasons set out in paragraph 29, the Commissioner makes no finding in relation to section 17(1) of FOISA.

Appeal

Should either the Scottish Fire and Rescue Service or Mr Cordiner 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
16 April 2013



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.

...

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.

...



21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...