

Decision Notice



Decision 075/2011 Mr Eddie Cairns and the Scottish Ministers

Complaints handling

Reference No: 201100124
Decision Date: 18 April 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr Cairns requested from the Scottish Ministers (the Ministers) information relating to complaints handling procedures. The Ministers responded by describing their complaints handling procedures. Following a review, Mr Cairns remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had dealt with Mr Cairns' request for information in accordance with Part 1 of FOISA, by disclosing all the information they held which fell within the scope of his request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (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 1 December 2010, Mr Cairns wrote to the Ministers, requesting information on “arrangements for ensuring the impartial and independent handling of serious complaints or allegations of wrongdoing against senior employees in your organisation”. He also asked: “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. The Ministers responded on 16 December 2010, explaining the three steps in their complaints handling procedures and enclosing a booklet on the complaints process. On the second part of the request, the Ministers advised Mr Cairns that they did not hold the requested information.



3. On 27 December 2010, Mr Cairns wrote to the Ministers requesting a review of their decision. He believed the information he had been provided with to be false, given his understanding of his legal rights.
4. The Ministers notified Mr Cairns of the outcome of their review on 17 January 2011, upholding the original decision on the grounds that all the relevant information they held had been released to Mr Cairns.
5. On 18 January 2011, Mr Cairns wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' 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 31 January 2011 the Ministers were notified in writing that an application had been received from Mr Cairns, being given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the Ministers were asked to explain the steps taken to establish what information they held which fell within the scope of Mr Cairns' request.
8. In response, the Ministers explained the steps taken in response to Mr Cairns' request. The relevant submissions made by Mr Cairns and the Ministers will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Cairns and the Ministers and is satisfied that no matter of relevance has been overlooked.
10. In terms of section 1(4) of FOISA, the information to be given to an applicant in response to a request under section 1(1) is (subject to exceptions which do not appear to be relevant in this case) that information held by the authority at the time the request is received. Where a Scottish public authority receives a request for information it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant in writing that it does not hold the information.



11. Mr Cairns' request is set out in paragraph 1 above. In response to this request, the Ministers disclosed some information, while informing Mr Cairns that it held no further information falling within the scope of the request. The Commissioner must now consider whether this was the appropriate response. His role in this connection is to satisfy himself as to what relevant information the Ministers actually held, as distinct from what they should have held (although consideration of the latter question may be relevant in coming to a conclusion on the former).
12. Mr Cairns commented in his request for review to the Ministers that he considered the information disclosed to him to be false. He did not specify in more detail what particular aspect of the information caused him to reach this view, although he commented that in his view the procedures in place in the Scottish Government did not comply with his understanding of the legislation he had cited in his request. He also commented that given his view, this issue would appear to be a matter of public interest.
13. The Ministers confirmed that they held no information falling within the scope of Mr Cairns' request, other than that which had already been provided to him in response to his request. In their submissions, the Ministers confirmed that checks had been undertaken with the Complaints Manager for the Scottish Government, who they considered would have immediate knowledge of the complaints procedures. The Ministers also indicated they had sought clarification from their legal advisers. They were aware of no legal duty to hold such information, or of any guidance which created an expectation that such information would be held.
14. Having considered all the submissions made by Mr Cairns and the Ministers, the Commissioner has concluded that the Ministers took adequate steps in the circumstances to identify and locate all of the information they held which fell within the scope of Mr Cairns' request. He is also satisfied that, at the time the Ministers received the request, no information falling within its scope (in addition to the information that supplied to Mr Cairns at that time) was held.
15. Consequently the Commissioner is satisfied that the Ministers dealt with Mr Cairns' request in accordance with Part 1 of FOISA.

DECISION

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Cairns.

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and the Scottish Ministers



Appeal

Should either Mr Cairns or the Scottish Ministers 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
18 April 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.

...

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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