

Decision Notice

Decision 081/2014 Mr Matthew Clark and the Scottish Ministers

Beef exports to Japan

Reference No: 201302939

Decision Date: 11 April 2014



Scottish Information
Commissioner

Summary

On 20 September 2013, Mr Clark asked the Scottish Ministers (the Ministers) for communications sent by the Scottish Government to the UK Government concerning the export of beef to Japan.

The Ministers initially withheld the information under the exemption in section 29(1)(b) of FOISA. Following Mr Clark's application to the Commissioner, the Ministers decided that the exemption did not apply and disclosed information to him.

Following an investigation, the Commissioner was satisfied that the Ministers had disclosed all of the information that they held to Mr Clark. The Commissioner found that, by initially withholding information that they later concluded was not exempt from disclosure, the Ministers failed to comply with section 1(1) of FOISA.

Relevant statutory provisions

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 20 September 2013, Mr Clark emailed the Ministers requesting information about the date and content of any communications sent by the Scottish Government to the UK Government concerning the export of beef to Japan in the last five years.
2. The Ministers did not respond to this request. On 28 October 2013, Mr Clark emailed the Ministers requesting a review of their failure to respond.
3. The Ministers notified Mr Clark of the outcome of their review on 5 November 2013. The Ministers informed Mr Clark that the information he had requested was exempt from disclosure in terms of section 29(1)(b) of FOISA. (The exemption in section 29(1)(b) applies to information which relates to Ministerial communications). The Ministers informed Mr Clark that, if he was dissatisfied with this response, he could ask them to carry out a review of their response.
4. On 5 November 2013, Mr Clark asked the Ministers to carry out a further review. Mr Clark did not agree that the information was exempt from disclosure. He also noted that the Ministers had failed to address the public interest test required under FOISA.
5. The Ministers wrote to Mr Clark again on 16 December 2013. They explained that their letter of 5 November 2013 was a response to Mr Clark's requirement for review. Accordingly, Mr Clark did not have any right to require a further review under FOISA. The Ministers informed Mr Clark that if he remained dissatisfied with the outcome of the Ministers' review, he should apply to the Commissioner for a decision.
6. On 16 December 2013, Mr Clark 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.

7. On 29 January 2014, the Ministers wrote again to Mr Clark. The Ministers informed Mr Clark that they had reconsidered their earlier response and had concluded that the information he had requested was not exempt from disclosure. The Ministers disclosed information to Mr Clark which they considered fulfilled the terms of his request.
8. On 5 February 2014, Mr Clark wrote to the Commissioner stating that he was not certain that the Ministers had identified all relevant information falling within the scope of his request. Mr Clark wished this to be addressed in the Commissioner's investigation and decision.
9. The application was validated by establishing that Mr Clark 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 20 February 2014, the investigating officer contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. The Ministers were asked to explain the searches they had undertaken in order to locate and retrieve any relevant information.
11. On 10 March 2014, the Ministers disclosed one additional document to Mr Clark which had been omitted in error from the information disclosed to him on 29 January 2014.
12. The Ministers subsequently contacted the investigating officer to explain the searches they had undertaken in order to locate and retrieve any relevant information falling within the scope of Mr Clark's request.

Commissioner's analysis and findings

13. 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 Clark and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Has all relevant information been located and retrieved by the Ministers?

14. 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. This is subject to certain qualifying provisions which do not apply here. 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 the authority does not hold any information covered by the request, it is required to give the applicant notice in writing to that effect, under section 17(1) of FOISA.
15. In their submissions to the Commissioner, the Ministers stated that they had carried out a search of both electronic and paper records. The Ministers explained that all Scottish Government filing is done electronically, although, on occasion, paper copies of current topical issues are also retained. In relation to paper records, searches were conducted for any paperwork held on desks. In relation to electronic records, searches were carried out within the Scottish Government Electronic Records and Document Management System and email inboxes.

16. The Ministers listed the search terms that had been utilised in searching their electronic records. The Ministers stated that the searches had retrieved a large number of documents. These documents were subsequently checked for any reference to red meat or beef exports to Japan and to see if they comprised correspondence from the Scottish Government to the UK Government. The Ministers stated that the vast majority of the documents did not fall within the scope of Mr Clark's request.
17. The Ministers explained that the searches had been carried out by officials within the Food, Drink and Rural Communities Division of the Scottish Government.
18. The Commissioner has considered the Ministers' submissions, their explanation of the searches undertaken and their explanation of why no further information is held beyond that which has been identified. Having done so, she is satisfied that the Ministers have conducted proportionate and adequate searches. She is satisfied that all relevant information falling within the scope of Mr Clark's request has been located and retrieved and disclosed to him.
19. However, as the Ministers' response to Mr Clark's request failed to provide him with information which was covered by the terms of his request and was not exempt from disclosure, the Commissioner finds that the Ministers failed to comply with section 1(1) of FOISA. As Mr Clark has now received the information, the Commissioner does not require the Ministers to take any further action in relation to this breach.

Decision

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Clark. By initially withholding information that they later concluded was not exempt from disclosure, the Ministers failed to comply with Part 1 of FOISA, in particular, section 1(1). The Commissioner does not require the Ministers to take any action in relation to this failure.

Appeal

Should either Mr Clark or the Scottish Ministers 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.

Margaret Keyse
Head of Enforcement
11 April 2014

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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info