

Decision Notice

Decision 085/2018: Mr Derek Jackson and the Scottish Fire and Rescue Service

Independent Technical Adviser draft report: job evaluation implementation

Reference No: 201702273

Decision Date: 20 June 2018



Scottish Information
Commissioner

Summary

SFRS was asked for a draft report forming part of a job evaluation process. SFRS withheld this information under exemptions in FOISA but disclosed it during an investigation by the Commissioner.

The Commissioner decided that the SFRS failed to comply with Part 1 of FOISA by not disclosing the information earlier.

Relevant statutory provisions

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

The full text of the statutory provision cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. During a job evaluation process undertaken by an Independent Technical Adviser (ITA), Mr Jackson made a request for information to the Scottish Fire and Rescue Service (SFRS) on 10 November 2017, in which he requested a draft report written by the ITA.
2. SFRS responded on 14 November 2017, withholding the draft report under the exemptions in section 30(b) and (c) of FOISA: it did not believe the information was capable of disclosure while the evaluation review was ongoing as this would inhibit discussion and deliberation during this process.
3. That same day, Mr Jackson wrote to SFRS requesting a review of its decision, submitting that the review part of the process was already completed. He did not accept that there was early-stage policy discussion at the time he made his request, and also argued that the public interest favoured disclosure.
4. SFRS notified Mr Jackson of the outcome of its review on 11 December 2017. SFRS confirmed that it was upholding its decision to apply section 30(b) of FOISA, while also applying section 36(1) and (2) of FOISA to the withheld information, citing aspects of the law of confidentiality.
5. On 19 December 2017 Mr Jackson wrote to the Commissioner's Office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Jackson stated he was dissatisfied with the outcome of SFRS's review: he did not accept that the SFRS was correct to apply exemptions under sections 30(b) and 36 of FOISA. He questioned whether harm had been established for the purposes of the former and did not accept that the draft report could be considered confidential for the purposes of either of the section 36 exemptions.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Jackson made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

7. On 7 February 2018, SFRS was notified in writing that Mr Jackson had made a valid application. SFRS was asked to send the Commissioner the information withheld from Mr Jackson. SFRS provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. SFRS was invited to comment on this application and answer specific questions, focusing on the exemptions claimed by SFRS at review stage.
9. SFRS provided submissions to the Commissioner. Following a request for further comment and clarification, SFRS disclosed the draft report to Mr Jackson on 30 May 2018: the first covering letter indicated that disclosure was not under FOISA, but a further letter of 31 May 2018 confirmed that the information had been provided to Mr Jackson under FOISA.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Mr Jackson and SFRS. He is satisfied that no matter of relevance has been overlooked.
11. In terms of section 1(1) of FOISA, a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority. This requirement is qualified by section 1(6), which allows the authority to withhold information under exemptions and rely on various other provisions to refuse a request.
12. As set out above, the SFRS withheld the draft report from Mr Jackson when responding to his request and requirement for review, citing the exemptions referred to above. Following Mr Jackson's application to the Commissioner, however, SFRS disclosed the information requested by Mr Jackson. SFRS's final letter to Mr Jackson suggests that it is not entirely happy to disclose the information, but also makes it clear enough that disclosure is under FOISA and cites no reason why the information should have been withheld earlier.
13. The Commissioner is satisfied that the SFRS has now disclosed the information it held and which fell within the scope of Mr Jackson's request. Mr Jackson has confirmed that he now has the information he requested.
14. In all the circumstances, however, the Commissioner must find that – in failing to provide this information at the time of Mr Jackson's requirement for review, at the latest – the SFRS failed to comply with section 1(1) of FOISA in dealing with Mr Jackson's request for information.

Decision

The Commissioner finds that the Scottish Fire and Rescue Service (SFRS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Jackson.

Given the draft report has now been disclosed by SFRS, the Commissioner does not require the SFRS to take any action in respect of this failure, in response to Mr Jackson's application.

Appeal

Should either Mr Jackson or SFRS 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

20 June 2018

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.

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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info