

Decision Notice



Decision 119/2009 Mr Alan Gibson and the Scottish Ambulance Service Board

Changes made to operations and staffing at specified ambulance stations

Reference No: 200801712
Decision Date: 29 October 2009

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Scottish Information Commissioner

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Summary

Mr Alan Gibson asked the Scottish Ambulance Service Board (the SASB) for all recorded information on the reasons for changes made to operations and staffing at six specified ambulance stations. He also asked for information relating to the funding of those changes. The SASB provided some information relating to one of the specified ambulance stations, and advised that further recorded information was not held. Mr Gibson was not satisfied that all relevant information had been provided. Following a review, he remained dissatisfied and applied to the Commissioner for a decision.

After investigation, the Commissioner found that the SASB had overlooked some information covered by the terms of his request, and accordingly had failed to comply in full with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). The Commissioner required the SASB to provide Mr Gibson with this information. The Commissioner also found that the SASB had failed to comply with the statutory timescales for response in sections 10(1) and 21(1) of FOISA.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) (General entitlement); 10(1) (Time for compliance); 17(1) (Notice that information is not held) and 21(1) (Review by Scottish public authority)

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 4 July 2008 Mr Gibson wrote to the SASB, referring to previous correspondence in which the SASB had indicated that there were “good operational reasons” for changes made to operations and staffing at the Lochinver, Gairloch, Dunvegan, Lochcarron, Strontian and Mallaig ambulance stations. He asked for any recorded information held by the SASB:
 - (a) on those “good operational reasons”;
 - (b) which sets out the decision making process behind the decision to changes [sic] to the operational and staffing structure of those ambulance stations ;
 - (c) relating to how the changes at these stations were funded.



2. The SASB wrote to Mr Gibson on 1 August 2008 to advise that it was not able to provide a full response to his request at that date.
3. On 28 August 2008 the SASB responded to Mr Gibson's request of 4 July 2008. In relation to Dunvegan ambulance station, the SASB provided a review of ambulance provision sent to all staff in November 2002, and a letter sent in response to the collective grievance raised by ambulance staff at the station. The SASB advised that although staff at Mallaig and Strontian had been involved in a couple of meetings with the General Manager, there was no record of the content of the meetings. No recorded information was held in relation to Lochcarron, Gairloch and Lochinver ambulance stations. The SASB advised that additional monies for relief staff may have been provided for Gairloch and Lochinver, but that no recorded information on this had been located.
4. The SASB acknowledged the lack of recorded information available and informed Mr Gibson that many of the decisions regarding these ambulance stations were made by a General Manager who was no longer in post. The SASB offered Mr Gibson the opportunity to meet the current General Manager.
5. On 29 August 2008, Mr Gibson wrote to the SASB to request a review of its decision, as he believed the SASB held more information than had been provided.
6. The SASB provided its review response on 16 November 2008, with an apology for the delay in responding. It confirmed that the information provided was the only information held by the SASB in relation to Mr Gibson's request, and repeated the offer of a meeting with the General Manager for the North Area.
7. On 24 November 2008, Mr Gibson wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SASB's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Gibson was dissatisfied that he had received information about only one of the six ambulance stations listed in his request.
8. The application was validated by establishing that Mr Gibson 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

9. On 2 December 2008, the SASB was notified in writing that an application had been received from Mr Gibson and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The SASB was also asked to provide details of any searches or enquiries carried out in relation to Mr Gibson's request and request for review, and to explain why it was satisfied that the searches carried out were sufficient to have identified and retrieved all relevant information.

Decision 119/2009
Mr Alan Gibson and the
Scottish Ambulance Service Board



10. The SASB replied on 22 December 2008, and provided a file of correspondence relating to Mr Gibson's request and previous requests made by Mr Gibson. This included a letter to Mr Gibson dated 28 May 2007 which provided some information about the funding of the SASB, and the decision-making structure in relation to the reduction of on-call working in parts of the service.
11. The SASB's response of 22 December failed to provide details of the searches or enquiries carried out in relation to Mr Gibson's request and request for review. Accordingly, the SASB was then asked on 19 January 2009 to confirm whether enquiries had been carried out at local level (where decisions affecting staff structure and funding seemed to have been taken) to ensure that all information covered by Mr Gibson's request had been identified. In this letter the SASB was also asked for more information about the decision-making powers at each level of the ambulance service, and whether any decisions taken at local level would have to be ratified by senior officers. It was also asked about a reference to "further information" in relation to Dunvegan, found in an internal email in the file provided on 22 December 2008.
12. The SASB provided further information about the structure and personnel of the ambulance service at the time relevant to Mr Gibson's request. It confirmed that enquiries relating to Mr Gibson's request were in many cases carried out by phone, along with searches of email accounts and a review of paper files. The SASB advised that many of the original staff involved had since left the ambulance service and some email accounts had been closed down.
13. The SASB agreed to meet the investigating officer to explore in more detail whether information covered by the terms of Mr Gibson's request would have been retrieved by the searches and enquiries it had carried out. Unfortunately, there was a delay of several weeks before the meeting could be arranged; it finally took place on 21 May 2009.
14. Discussions during the meeting identified some points for further investigation, and the SASB was asked to carry out some additional searches among its records and to report its findings by 15 June 2009.
15. After the meeting, the investigating officer examined a file of information relating to Dunvegan ambulance station, and found that one document contained some information which was covered by the terms of Mr Gibson's request.
16. The SASB provided a report about its additional searches on 30 June 2009, but it was found that the report did not cover all actions agreed at the meeting of 21 May 2009. The SASB was asked to provide the outstanding responses by 10 July 2009, and did so. After some further discussion and correspondence, the conclusion was reached that the additional searches had failed to identify any more information covered by Mr Gibson's request. It was agreed that Mr Gibson should be advised of this, and should be provided with a report detailing the searches carried out during the investigation.



17. The investigating officer sent a full report of the investigation to Mr Gibson on 23 July 2009. Mr Gibson responded on 26 July 2009, raising some further queries in relation to the scope of the investigation. On 21 August 2009, the SASB was asked for a further submission on these points. After a short delay due to staff absence, the SASB provided its response on 21 September 2009. No additional information relating to Mr Gibson's request had been discovered.

Commissioner's analysis and findings

18. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Gibson and the SASB and is satisfied that no matter of relevance has been overlooked.
19. While accepting that the operational decision referred to in Mr Gibson's request was made several years ago, the Commissioner believes it was understandable to expect that the SASB records might document a significant change to the way in which the ambulance service operates from several of its stations. However, the Commissioner accepts that the SASB has now carried out searches and enquiries which would have identified any such information, and that (with the exception of part of one letter) no information covered by the terms of his request has been found beyond that originally supplied to him.
20. The Commissioner finds that the SASB was, for the most part, correct to advise Mr Gibson that it did not hold any other information covered by the terms of his request, but notes that it was not possible for the SASB to be completely assured of that fact on the basis of the searches and enquiries carried out on receipt of his request.
21. The Commissioner finds that the SASB failed to identify relevant information in one document, a letter dated 27 July 1997, and in relation to this matter failed to comply with section 1(1) of FOISA. He notes that the information has still not been sent to Mr Gibson, despite previous indications that the SASB was willing to do this. The Commissioner now requires the SASB to provide this information to Mr Gibson.
22. The Commissioner is concerned that it has taken so many months and so many enquiries to establish that the SASB does not hold any additional information relating to Mr Gibson's request. He notes that during his investigation the SASB frequently failed to provide responses within the period requested, and also failed to meet the statutory timescales in section 10(1) and 21(1) of FOISA when providing its initial response to Mr Gibson and the response to his request for review. The Commissioner has advised the SASB that he intends to carry out an assessment of its compliance with good practice, which will include its compliance with statutory timescales.

Decision 119/2009
Mr Alan Gibson and the
Scottish Ambulance Service Board



DECISION

The Commissioner finds that the Scottish Ambulance Service Board (the SASB) generally acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Gibson. However, he finds that the SASB failed to comply in full with section 1(1) of FOISA in failing to provide some information covered by the terms of Mr Gibson's request. The SASB also failed to comply with the timescales laid down in sections 10(1) and 21(1) of FOISA.

The Commissioner requires the SASB to provide Mr Gibson with the information specified in paragraph 21 of this Decision Notice, no later than 14 December 2009.

Appeal

Should either Mr Gibson or the SASB 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
29 October 2009



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.

(...)

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after -

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request;

(...)

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.

(...)