

Decision Notice



Decision 242/2011 Calibre Resource and Recruitment Ltd and Scottish Water

Board minutes of Scottish Water Horizons

Reference No: 201101424

Decision Date: 6 December 2011

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Calibre Resource and Recruitment Ltd (Calibre Recruitment) requested from Scottish Water all board minutes for Scottish Water from April 2009 and all the board minutes of Scottish Water Horizons since inception. Following the intervention of the Commissioner, Scottish Water responded by providing what it considered to be all the relevant information it held. Following a review, Calibre Recruitment remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Scottish Water had dealt with Calibre Recruitment's request for information in accordance with Part 1 of FOISA, by supplying the information and by notifying Calibre Recruitment that it held no further information falling within the scope of the request. The Commissioner did not require Scottish Water to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4)

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 16 February 2010, Calibre Recruitment wrote to Scottish Water requesting all board minutes for Scottish Water from April 2009 and all board minutes of Scottish Water Horizons since inception.
2. Scottish Water responded on 9 March 2010, confirming that the board minutes for Scottish Water from May 2009 had been added to its website. It explained that the board minutes of Scottish Water Horizons would not be put on its website, but that they would be printed and forwarded to Calibre Recruitment "in due course".
3. On 15 April 2010, Calibre Recruitment wrote to Scottish Water, noting that it had not received the minutes of Scottish Water Horizons and requesting a review in respect of its failure to provide them.



4. On 20 May 2010, Calibre Recruitment wrote to the Commissioner, stating that it was dissatisfied with Scottish Water's failure to respond to its requirement for review and applying for a decision in terms of section 47(1) of FOISA. Following the Commissioner's *Decision 110/2010 Calibre Recruitment and Scottish Water*¹, Scottish Water notified Calibre Recruitment of the outcome of its review on 11 June 2010. Scottish Water stated that it considered Calibre Recruitment's request to be vexatious in terms of section 14(1) of FOISA.
5. On 14 June 2010, Calibre Recruitment wrote to the Commissioner, stating that it was dissatisfied with the outcome of Scottish Water's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. Following an investigation, on 9 March 2011 the Commissioner issued *Decision 046/2011 Calibre Recruitment and Scottish Water*², which found that Scottish Water had failed to comply with Part 1 (and in particular section 1(1)) of FOISA in refusing to comply with Calibre Recruitment's request for information under section 14(1) of FOISA. The Commissioner required Scottish Water to respond to Calibre Recruitment's request for information, other than in terms of section 14(1), by 25 April 2011.
7. Scottish Water responded to Calibre Recruitment on 24 May 2011, providing copies of what it considered to be all of the Scottish Water Horizons board meeting minutes from start of trading (April 2008) to the date of the request. Scottish Water redacted information which it considered to be either commercially sensitive (under section 33 of FOISA) or personal data (under section 38 of FOISA).
8. On 7 June 2011, Calibre Recruitment wrote to Scottish Water and requested a review of its decision, noting that certain information (board minutes of 9 May 2008 and the Financial Performance Report (item 6) of the minutes of 31 July 2009) had not been supplied.
9. Scottish Water responded on 7 June 2011. It stated that there was no meeting on 9 May 2008 and that the reference to a meeting of that date in the minutes of 9 June 2008 was wrong. Scottish Water apologised that the minutes for 31 July 2009 were incomplete and attached what it described as the correct version.
10. On 13 June 2011, Calibre Recruitment wrote to Scottish Water and again requested a review of its decision. Referring to what it considered to be inconsistencies in the information provided to it, it did not accept Scottish Water's response.
11. Scottish Water replied on 20 July 2011, confirming after further checks that there had been no board meeting between the April and June 2008 meetings, copy minutes for both of which had been provided to Calibre Recruitment. It attempted to provide explanations in response to the points raised by Calibre Recruitment.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/201001037.asp>

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2011/201001227.asp>



12. Following further correspondence with Scottish Water, on 28 July 2011 Calibre Recruitment wrote to the Commissioner, stating that it was dissatisfied with the outcome of Scottish Water's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
13. The application was validated by establishing that Calibre Recruitment 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

14. The investigating officer subsequently contacted Scottish Water, 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. In particular, Scottish Water was asked to explain the steps it had taken to identify and locate any relevant information it held.
15. Scottish Water responded with an explanation of the position it had taken. These submissions will be considered further in the Commissioner's analysis and findings below.
16. As indicated in paragraph 7 above, Scottish Water provided information to Calibre Recruitment subject to certain redactions. These redactions have not been questioned by Calibre Recruitment and consequently the Commissioner will not consider whether they were justified in terms of Part 1 of FOISA.

Commissioner's analysis and findings

17. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both Calibre Recruitment and Scottish Water and is satisfied that no matter of relevance has been overlooked.

Information held by Scottish Water

18. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received.
19. Scottish Water claims that it has provided all the information that falls within the terms of Calibre Recruitment's request for the board minutes of Scottish Water Horizons.



20. Calibre Recruitment disputes this. Given what it considers to be inconsistencies between the April and June 2008 minutes, it believes there would have been a meeting on 9 May 2008 (for which a minute should be held). From other perceived inconsistencies in the information supplied, it has concluded that further relevant information is held by Scottish Water and should be provided.
21. In order to determine whether Scottish Water dealt with Calibre Recruitment's request correctly, the Commissioner must be satisfied as to whether, at the time it received Calibre Recruitment's request, Scottish Water held any further information which would fall within the scope of that request.

Board minutes for 9 May 2008

22. Scottish Water has maintained that there was no meeting on 9 May 2008 and that reference to a meeting of that date in the minutes of 9 June 2008 was wrong – the previous board meeting had been on 23 April 2008.
23. Scottish Water was asked to supply the Commissioner with the minutes and agendas from April 2008 – July 2008, which it did in unredacted form. Scottish Water explained that no agenda had been issued for the April meeting.
24. Scottish Water provided written confirmation from the Company Secretary of Scottish Water Horizons that he had attended the April 2008 meeting. He also explained that a named colleague had attended subsequent meetings on his behalf, starting with the meeting of 9 June 2008. The Company Secretary confirmed in writing that he was aware (from personal knowledge) that no board meeting took place between 23 April 2008 and 8 June 2008, but that he had also confirmed this with the Commercial Director of Scottish Water and Chairman of Scottish Water Horizons.
25. Calibre Recruitment has highlighted that the action points in the minutes of the April meeting are not addressed in the minute of the June meeting. This, Calibre Recruitment argued, suggested an intervening meeting.
26. Scottish Water had replied to Calibre Recruitment on 20 July 2011 that the actions from April 2008 meeting were covered in the other business on 9 June 2008. Scottish Water also supplied a copy of the agenda for the June meeting, which referred to the April meeting minutes (and to no others). In subsequent correspondence with Calibre Recruitment, the officer who had attended the 9 June meeting on behalf of the Company Secretary reiterated that there had been no intervening meeting.
27. Scottish Water did not wish to comment further on the accuracy of the minutes, a point raised by Calibre Recruitment in its application.
28. The standard of proof to apply in determining whether a public authority holds information is the civil standard of the balance of probabilities. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of any searches carried out by the public authority. He will also consider, where appropriate, any other reason offered by the public authority to explain why the information is not held.



29. In this case, the Commissioner is satisfied that Scottish Water has conducted a reasonable assessment of whether it held any information on a meeting of 9 May 2008. Scottish Water has provided information that falls within the scope of request and, having been questioned about the completeness of that information, has relied on the personal knowledge of certain of its key personnel who would be best able to identify if the information were held, and also supply reasons if this were not the case. These officers have consulted other relevant personnel on the existence of the information.
30. The Commissioner acknowledges that the minutes of the meeting of 9 June 2008 do refer to the approval of minutes of 9 May 2008. On the other hand, neither the 23 April minutes nor the 9 June agenda make any reference to a meeting to be held, or held, on 9 May. In the circumstances, it appears conceivable that this reference could be a typographical error.
31. The Commissioner also acknowledges, however, the inconsistencies in respect of action points highlighted by Calibre Recruitment, which he accepts might be indicative of an intervening meeting. On the other hand, it appears equally conceivable that there might be other explanations. In this connection, he notes that the 23 April action points are all covered in the agenda for the 9 June meeting – and, for that matter (as Scottish Water has acknowledged) that the course of that later meeting failed to follow the agenda in other significant respects. In the Commissioner's view, none of this supports the argument that there was a meeting on 9 May – in fact, the 9 June agenda tends to suggest otherwise. While acknowledging that Calibre Recruitment might have other valid concerns about the relationship between the various agendas and minutes, he cannot accept from the information provided to him that there is any reasonable basis for concluding that a board meeting was held on 9 May 2008.
32. On the basis of the above analysis, therefore, the Commissioner accepts, on the balance of probabilities, that Scottish Water held no information in respect of the minutes of a board meeting held on 9 May 2008.

Other information

33. Calibre Recruitment had indicated on 7 June 2011 that the Financial Performance Report (item 6 from the minutes of 31 July 2009) was missing. Scottish Water apologised for this and supplied what it considered to be the complete version of the minutes. Calibre Recruitment then pointed out that the information supplied showed many inconsistencies (largely in relation to action points), which suggested that there was other significant information missing from the minutes supplied.
34. Calibre Recruitment's request is set out in paragraph 1 above. In response to this request, Scottish Water provided information and then later maintained (subject to the provision of a complete version of the 31 July 2009 minute) that it did not hold any further information falling within the scope of the request. The Commissioner will now consider whether this was the appropriate response.



35. Scottish Water explained that the difference between the copies of the minutes of 31 July 2009 arose because initially, in error, an incomplete draft was sent to Calibre Recruitment: the copy sent subsequently was of the minutes as approved. Scottish Water explained that minutes were submitted to the next meeting in draft for approval, so that corrections could be made if required.
36. Calibre Recruitment was asked to enumerate all the inconsistencies it had identified in the supplied information, in order to inform the Commissioner's investigation. Calibre Recruitment re-iterated the inconsistencies already drawn to the attention of Scottish Water and the Commissioner. Calibre Recruitment stated:
- "... as a generalisation, on review of the information that Scottish Water has provided me with, it is not possible to read through their minutes from month to month and follow through every action to be able to see the results of their Action Points. As a Public Body, it should be possible for any reader to follow through the Action Points, either to a final outcome or to a point where the Action is delayed/under review – this is not possible with the information that Scottish Water has provided me with so far."
37. It should be stressed that the remit of the Commissioner extends to deciding whether a Scottish public authority has complied with Part 1 of FOISA in responding to an information request. When information is supplied by a Scottish public authority in response to a request and the requester is dissatisfied because he or she believes that the information is misleading, inaccurate, contains errors, or is otherwise deficient, this is not something that the Commissioner can address in terms of FOISA. These issues may still be relevant to the Commissioner's investigation, but only insofar as they might suggest the existence of other, more complete, more accurate, information which has not been identified or supplied by the authority in response to the request. Consequently, the points made by Calibre Recruitment in relation to inconsistencies have only been considered by the Commissioner for this purpose.
38. As stated above, the Commissioner has noted Calibre Recruitment's concerns in relation to inconsistencies between minutes, with action points not being followed up. In respect of this, the Commissioner acknowledges that there are examples which do not show an explicit link between minutes, or between minutes and agenda, but equally there are examples which show congruence. In all the circumstances, the Commissioner is unable to accept in this instance that any inconsistencies and the like are indicative of other information being held.
39. Having considered carefully all the submissions made by Calibre Recruitment and Scottish Water, the Commissioner is satisfied with Scottish Water's explanations as to the information it did and did not hold. In all the circumstances of this case, therefore, the Commissioner accepts that Scottish Water holds (and held, at the time it received the applicant's request) no further recorded information falling within the scope of the request made by Calibre Recruitment, in addition to that already supplied (subject to redaction) to the applicant. Consequently, the Commissioner accepts that Scottish Water has now identified, located and provided to Calibre Recruitment all of the information it held and which fell within the scope of Calibre Recruitment's request.



DECISION

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

Appeal

Should either Calibre Recruitment or Scottish Water 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
6 December 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.
- ...