

Decision Notice

Decision 001/2015: Autism Rights and the Scottish Ministers

Consultation responses

Reference No: 201402431

Decision Date: 6 January 2015



Scottish Information
Commissioner

Summary

On 19 May 2014, Autism Rights asked the Scottish Ministers (the Ministers) for information relating to confidential responses submitted to the consultation on the draft Mental Health Bill. The Ministers responded with some information.

Following investigation, the Commissioner found that the Ministers failed to properly interpret Autism Rights' request, resulting in the provision of wrong information, and failed to give Autism Rights notice that they did not hold some of the information requested. However, by the end of the investigation, she was satisfied that the Ministers had provided Autism Rights with the correct response.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information not held)

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

Background

1. On 19 May 2014, Autism Rights made a request for information to the Ministers. The information requested included a request for the number of individuals who submitted "confidential" responses to the consultation on the draft Mental Health Bill and, within that number, the number of employees or representatives who submitted "confidential" responses in each of a number of specified categories of organisation.
2. The Ministers responded on 4 June 2014, informing Autism Rights that they had received seven confidential responses, all from individuals. None of these were receiving funding from the Scottish Government (the breakdown sought by Autism Rights was to include voluntary organisations in receipt of public funding).
3. On 15 June 2014, Autism Rights wrote to the Ministers requesting a review of their decision. They reiterated this part of the request and submitted that it had not been answered in full.
4. The Ministers notified Autism Rights of the outcome of their review on 1 July 2014. They informed Autism Rights that they had received 22 confidential responses, only four of which indicated which organisation they were attached to.
5. The Ministers confirmed that of the two individual organisations named in these responses neither received central government funding. In terms of local government funding, the Ministers explained that the information was not held.
6. Following further correspondence, which appeared to result in further contradictory information being provided, Autism Rights wrote to the Commissioner on 15 October 2014. They applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Autism Rights stated they were dissatisfied with the outcome of the Ministers' review because of the discrepancies in the information provided. They wished to know the true figures.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Autism Rights made a request for information to a Scottish public authority and asked the authority to review their response to that request before applying to her for a decision. 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. On 28 October 2014, the investigating officer notified the Ministers in writing that Autism Rights had made a valid application. The Ministers were invited to comment on this application and to answer specific questions on the way they had handled and responded to Autism Rights' request for information.
9. The Ministers responded on 13 November 2014, explaining that the information provided in both the initial response and review outcome had been incorrect. They also provided the Commissioner with a copy of a further response, sent to Autism Rights on 18 November 2014, in which they apologised for the errors in the previous responses and confirmed that only one "confidential" response had been received, from an individual. They had no information as to whether this response was made on behalf of any of the kinds of organisation specified in the request. They apologised for the inaccuracies in previous responses

Commissioner's analysis and findings

10. 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 Autism Rights and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Information held by the Ministers

11. 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, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not relevant in this case.
12. 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 no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.

Interpretation of the request

13. In their application to the Commissioner, Autism Rights complained about inconsistencies and contradictions in the Ministers' responses.
14. In their submissions to the Commissioner, the Ministers acknowledged that there were inaccuracies in both the initial response and the review outcome. In part, at least, this appeared to be the result of confusing confidential responses with those which were anonymous.
15. In the Commissioner's view, failure to interpret a request properly, and thus identify the information requested accurately, is a failure to comply section 1(1) of FOISA. The Commissioner expects that requests will be fully assessed and analysed on receipt. Where

there is reasonable doubt as to what an applicant is requesting, then an authority should seek to clarify what information is being sought, as allowed by section 1(3) of FOISA. In any event, any failure of this kind in dealing with the request at first instance should be addressed on review: that is one of the reasons why the review process is there.

16. In this particular case, however, the Commissioner is satisfied that the Autism Rights' request was clear and no clarification was required. There would appear to have been no good reason for the Ministers' failure to interpret it properly, and thus comply with section 1(1) of FOISA, either initially or on review. In the circumstances, the Commissioner is surprised that such a failure could occur on both occasions.
17. Having considered the Ministers' submissions and the information provided to Autism Rights during the investigation, the Commissioner is now satisfied that the Ministers have responded to Autism Rights' request correctly, in terms of section 1(1) of FOISA. In the circumstances, she does not require any further action to be taken in response to Autism Rights' application.
18. However, the Commissioner must also note that (as Autism Rights have now been notified) the Ministers did not in fact hold any information which would allow them to provide the breakdown requested by Autism Rights. In failing to notify Autism Rights of this in response to their request and requirement for review, the Ministers failed to comply with section 17(1) of FOISA.

Decision

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002, by (i) failing to comply with section 1(1) of FOISA in interpreting and responding to the request and (ii) failing to notify Autism Rights, in line with section 17(1) of FOISA, that they did not hold information falling within the scope of part of the request. Given that these failures were addressed during the investigation, the Commissioner does not require the Ministers to take any action in this case, in response to Autism Rights' application.

Appeal

Should either Autism Rights 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

6 January 2015

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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