

Decision Notice



Decision 050/2011 Mr Tommy Kane and the Scottish Ministers

Project Checkers

Reference No: 201100039
Decision Date: 11 March 2011

www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

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



Summary

Mr Tommy Kane requested from the Scottish Ministers (the Ministers) information on a project relating to the future ownership of water and wastewater services in Scotland, known as “Project Checkers”. The Ministers responded by informing Mr Kane that the requested information was not held. Following a review, Mr Kane remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted the Ministers did not hold the requested information and therefore found that they had dealt with Mr Kane’s request for information in accordance with Part 1 of FOISA. He did not require the Ministers to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17(1) (Notice that information is not held)

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 28 July 2010, Mr Kane wrote to the Ministers requesting the following information:
 - a) *A list of meetings during the period October 1st 2006 and September 31st 2007 between officials from the then Scottish Executive and/or Ministers from the Scottish Executive with the Water Industry Commission and/or Consultants in relation to the project, known as ‘Project Checkers’, which was commissioned by the Water Industry Commission for Scotland to consider options for potential models of ownership for Water and Wastewater Services in Scotland. This should include the meeting which took place on the 21st March 2007 and any other meeting.*
 - b) *Presentations, minutes and/or notes from any meetings which took place between officials from the Scottish Executive and/or Ministers from the Scottish Executive with the Water Industry Commission and/or Consultants in relation to the project, known as ‘Project Checkers’, which was commissioned by the Water Industry Commission for Scotland to*



consider options for potential models of ownership for Water and Wastewater Services in Scotland. This should include the meeting which took place on the 21st March 2007 and any other meeting during the period October 1st 2006 and September 31st 2007.

- c) *Any correspondence between [5 named] Scottish Executive officials with Alan Sutherland and/or any other member of the Water Industry Commission for Scotland in relation to, or mentioning, the aforementioned 'Project Checkers'. The correspondence should include e-mail, letters and reports written and exchanged between October 1st 2006 and September 31st 2007.*
 - d) *Any correspondence between [5 named] Scottish Executive officials with the consultants LECG, ING Barings or any other consultant in relation to, or mentioning, the aforementioned 'Project Checkers'. The correspondence should include e-mail, letters and reports written and exchanged between October 1st 2006 and September 31st 2007.*
 - e) *Any correspondence between the Minister Ross Finnie and Alan Sutherland and/or any other member of the Water Industry Commission for Scotland in relation to, or mentioning, the aforementioned 'Project Checkers'. The correspondence should include e-mail, letters and reports written and exchanged between October 1st 2006 and May 1st 2007.*
 - f) *Any correspondence between the Minister Stewart Stevenson and Alan Sutherland and/or any other member of the Water Industry Commission for Scotland in relation to, or mentioning, the aforementioned 'Project Checkers'. The correspondence should include e-mail, letters and reports written and exchanged between May 5th and September 1st 2007.*
2. The Ministers responded on 26 August 2010. They explained that they did not hold the requested information and advised Mr Kane to contact the Water Industry Commission for Scotland (the WICS).
 3. On 6 September 2010, Mr Kane wrote to the Ministers, requesting a review of their decision. In particular, Mr Kane suggested that, as the Scottish Government oversaw the Scottish Water Industry and its regulation, and given the potential consequences of the recommendations emanating from the project, it would have knowledge of the research and its recommendations.
 4. The Ministers notified Mr Kane of the outcome of their review on 24 November 2010. The review confirmed that a search had been carried out and that no information falling within the scope of the above requests had been found.
 5. On 6 January 2011, Mr Kane 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.
 6. The application was validated by establishing that Mr Kane had made requests 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 those requests. The case was then allocated to an investigating officer.



Investigation

7. On 20 January 2011 the investigating officer notified the Ministers in writing that an application had been received from Mr Kane, 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. In particular, the Ministers were asked to confirm what searches had been carried out to ascertain whether they held any information falling within the scope of Mr Kane's requests.
8. In response, the Ministers advised of the searches carried out, in dealing with Mr Kane's request and subsequently. The relevant submissions made by Mr Kane and the Ministers will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Kane and the Ministers and is satisfied that no matter of relevance has been overlooked.

Section 17(1) – information not held

10. Section 17(1) of FOISA states that, where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information.
11. During the investigation, the Ministers informed the Commissioner that they did not hold any information falling within the scope of the requests made by Mr Kane and provided details of the searches carried out. The Ministers provided the Commissioner with an explanation of the criteria used when searching the Scottish Government electronic Records Document Management (eRDM) system, and confirmed that the 5 individuals mentioned in Mr Kane's request had also been questioned. At the time of the review, the office of the relevant Ministers had also been questioned.
12. One of the individuals recalled a meeting at which the WICS had made a presentation on this matter. However, he did not believe that the presentation had been saved on the eRDM system (as was confirmed by the relevant searches of the system) and did not have a copy. None of the individuals questioned recalled 'Project Checkers' as a designation shared with the Ministers.
13. While noting Mr Kane's belief that information of this kind *should* be held, and his reasons for so believing, the Commissioner accepts in this case that the Ministers carried out adequate searches and enquiries during the investigation to establish that no recorded information was held falling within the scope of any of Mr Kane's requests.



14. Having considered the submissions received from the Ministers, therefore, the Commissioner is satisfied that it does not (and did not at the time it received Mr Kane's request) hold any information falling with the scope of Mr Kane's requests.

DECISION

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

Appeal

Should either Mr Kane or the Scottish Ministers 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
11 March 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.

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.

...