

Decision Notice



Decision 007/2013 Mr H and the Scottish Ministers

Panel membership and programme accreditation status

Reference No: 201201783/201201509

Decision Date: 18 January 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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



Summary

Mr H requested from the Scottish Ministers (the Ministers) information on the membership of specific offender programme accreditation panels (request a). He also sought information on the accreditation status of the related offender programmes (request b). The Ministers did not respond to the requests and, following a review, as a result of which the Ministers advised Mr H that they did not hold information in relation to request a and sought clarification of request b, Mr H remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the Ministers held no information covered by request a. She also found that the Ministers had failed to provide Mr H with a review outcome in respect to request b and required them to do so.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1)(a)(Time for compliance); 17(1) (Notice that information is not held); 20(1) and (3) (Requirement for review of refusal etc.); 21(1), (4) and (5)(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 23 April 2012, following previous related correspondence, Mr H wrote to the Ministers requesting the following information:
“a copy of all documentation pertaining to current Scottish Accreditation Panel for Offender Programmes (SAPOP) and Scottish Community Justice Accreditation Panel (SCJAP) members” (request a).
In order to ensure that his request did not fall foul of the £600 upper cost limit, Mr H specified that, in relation to the above, he sought:
“a copy of documentation relating to SAPOP and SCJAP panel membership, biographies of members, timeframe and remit of the panels.”



In the same letter, Mr H sought:

“a copy of all documentation pertaining to requests for accredited status of a programme with SAPOP and SCJAP, and confirmation whether any application was refused, and if so, clarification details” (request b).

Again with a view to keeping the request within the cost limit, Mr H specified that this request was restricted to:

“the proposal for accredited status of the Community Sex Offender Programme (CSOGP).”

2. On 9 July 2012, having received no response from the Ministers, Mr H wrote to them requesting a review.
3. The Ministers responded to Mr H on 27 July 2012. With respect to request a, they advised that they did not hold the information requested, explaining that the panels in question were no longer in existence.
4. With respect to request b, the Ministers sought clarification as to the information Mr H was seeking.
5. On 1 August 2012, Mr H 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. On 7 August 2012, the Ministers wrote to Mr H again, advising that, in relation to request a, certain information in relation to SAPOP was already in the public domain on the Scottish Government’s website. They also attached copies of the relevant documents. In relation to his request about SCJAP, the Ministers confirmed that no information was held. In the same letter, the Ministers again sought clarification from Mr H in relation to request b, stating that the category of information requested was too vague and inviting him (with reference to examples) to specify more precisely the information he was interested in.
7. On 13 August 2012, Mr H wrote to the Ministers offering clarification of his request b. He stated that he sought a copy of “the application programme designers put forward for accreditation of CSOGP”.
8. On 30 August 2012, Mr H (having been asked to clarify his position following the Ministers’ letter of 7 August) wrote to the Commissioner’s office, confirming that he was dissatisfied with the Ministers’ responses to request a (on the basis that he had not been provided with any information relating to SCJAP panel membership) and b (on the basis that he did not believe the request was “too vague”).
9. The application was validated by establishing that Mr H 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

10. On 25 September 2012, the Ministers were notified in writing that an application had been received from Mr H and (as required by section 49(3)(a) of FOISA) invited to provide comments. The investigating officer's questions focused on the areas of dissatisfaction highlighted by Mr H.
11. The Ministers were also advised that there were two separate applications from Mr H, one in respect of request a and one in respect of request b. The application in respect of request b was treated as a technical application, no response having been provided to Mr H's requirement for review.
12. Given the relationship between these requests, the Commissioner has considered both in the same decision notice.
13. The relevant submissions received from both the Ministers and Mr H will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

Technical issues

15. The Ministers advised that there were multiple requests from Mr H, all around the same time, all of which were directed at the same policy area with the Scottish Government's Justice Directorate. They stated that, although the individual items of correspondence were not numerous in themselves, multiple requests were frequently contained within the same correspondence. The Ministers stated that this led to confusion over what was being responded to and by whom, which led to some of the responses being overlooked.
16. The Ministers further explained that, following receipt of Mr H's request for review, it was considered that his request b was vague and they did not know what information Mr H was referring to. However, they confirmed that they received the clarification required on 13 August 2012, as explained at paragraph 7 above.
17. The Ministers argued that it was not immediately obvious from the terminology used by Mr H that he was seeking a copy of the "application" (as clarified on 13 August 2012) when he referred to the "proposal" within his request.



18. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to exceptions which are not relevant here. As the Ministers did not provide a response to either of Mr H's requests for information within 20 working days, the Ministers failed to comply with section 10(1) of FOISA.
19. Mr H wrote to the Ministers on 9 July 2012, requesting a review on the basis that they had failed to respond to his requests. This letter was a valid requirement for review in terms of section 20(3) of FOISA (the requirements of which are set out in the Appendix below).
20. Section 21(4) of FOISA provides that an authority, in response to a requirement for review may:
 - Confirm a decision complained of, with or without such modifications as it considers appropriate
 - Substitute for any such decision a different decision, or
 - Reach a decision, where the complaint is that no decision has been reached.
21. There is no scope within section 21(4) for an authority to seek clarification at review stage. The Ministers acknowledged that they were not permitted to seek clarification at review stage, but consider that (as the request was not dealt with at the initial request stage) it would be helpful to Mr H to seek clarification, with a view to ensuring that he was provided with a response appropriate to the information he was actually seeking.
22. Although sympathetic to the Ministers' position in this particular set of circumstances, the Commissioner has no option but to find that the Ministers failed to respond to Mr H's requirement for review within 20 working days and consequently failed to comply with section 21(1) of FOISA.
23. The Ministers supplied a copy of the review response prepared for Mr H with regard to his original request and advised that a letter was also being issued to him separately with regard to his clarified request (which was considered sufficiently different from his original request to be treated as a separate information request).

Information held by the Ministers

24. In his application to the Commissioner, Mr H specifically raised concerns that he had not been provided with any information relating to the SCJAP panel membership (request a).
25. With regard to request a, the Ministers explained to the Commissioner that SCJAP, established in 2003, merged with the Scottish Prison Service Accreditation Panel in 2006 to form SAPOP. The Ministers advised that they provided Mr H with the documentation he was seeking in relation to SAPOP, which would therefore also relate to those members who remained when SCJAP merged with SAPOP in 2006. They further confirmed that SAPOP ceased to exist in 2011, and that consequently there were no "current members" (which was the basis of Mr H's request).



26. The Ministers also confirmed that they did not hold any information on the SCJAP panel members, which (as explained above) ceased to exist in 2006 when it merged with SAPOP. Consequently, again, there were no “current members”.
27. The Ministers stated that, following searches of their eRDM system, involving the keywords “SCJAP” and “Scottish Community Justice Accreditation Panel”, they were unable to identify information with regard to previous members of either panel. The Ministers advised that all relevant staff members who might have been likely to hold relevant information were asked to conduct searches of their email inboxes and any relevant paper files they had in their work area. All of them confirmed that no relevant information was held.
28. Given the obsolete status of both panels (and particularly, in this context, SCJAP) at the time of Mr H’s request, the explanations detailed above and the searches conducted by the Ministers, the Commissioner is satisfied that it was reasonable for the Ministers to conclude that they held no information falling within the scope of request a, with the exception of the public information on SAPOP provided to Mr H on 7 August 2012.

DECISION

The Commissioner finds that the Scottish Ministers partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by notifying Mr H, in line with section 17(1) of FOISA, that they did not hold the information requested in request a (with the exception of the information provided to him).

However, the Commissioner finds that the Ministers failed to comply with Part 1 of FOISA, by failing to provide a response to Mr H’s requests for information within the timescale laid down by section 10(1) of FOISA, and in not providing him a response to his requirement for review in relation to request b in accordance with section 21 of FOISA.

The Commissioner therefore requires the Ministers to provide a response to Mr H’s requirement for review in relation to request b, in accordance with the requirements of section 21 of FOISA, by 4 March 2013

Decision 007/2013
Mr H
and the Scottish Ministers



Appeal

Should either Mr H 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
18 January 2013



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.
- ...

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.

...

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.

...

- (3) A requirement for review must-
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify-
 - (i) the request for information to which the requirement for review relates; and
 - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).

...

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.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or



- (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...