

Decision Notice

Decision 214/2014: Mr John McLean and the Scottish Parliamentary Corporate Body

Actions of Local Government and Regeneration Committee

Reference No: 201400973

Decision Date: 7 October 2014



Scottish Information
Commissioner

Summary

On 6 January 2014, Mr McLean asked the Scottish Parliamentary Corporate Body (the SPCB) for information relating to a minute of the Scottish Parliament's Local Government and Regeneration Committee (LG&RC).

Where the SPCB considered Mr Mclean's email to contain valid information requests, it responded by stating that it did not hold the information requested. Following a review, Mr McLean remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the SPCB had properly responded to Mr McLean's requests for information in accordance with Part 1 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 8(1) (Requesting information); 17(1) (Notice that information is 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 6 January 2014, Mr McLean wrote to the SPCB asking a number of questions. In these, he sought information relating to actions of the LG&RC, with reference to the minute of a meeting of 11 December 2013.
2. The SPCB responded on 3 February 2014, stating that it did not consider Mr McLean's correspondence of 6 January 2014 to contain requests for information as defined in FOISA. With regard to parts of his correspondence relating to a "formal procedure" and "records" of particular events, it stated that no information was held.
3. On 4 February 2014, Mr McLean wrote to the SPCB again, requesting a review of its decision. He explained why he believed his correspondence to contain requests for information.
4. The SPCB notified Mr McLean of the outcome of its review on 21 March 2014, confirming its original decision. Where it considered his questions to contain requests for information, it confirmed that it held no information.
5. On 3 April 2014, Mr McLean applied to the Commissioner for a decision in terms of section 47(1) of FOISA.

Investigation

6. The application was accepted as valid. The Commissioner was satisfied that limited aspects of Mr McLean's correspondence of 6 January 2014 could reasonably be construed as requests for recorded information in terms of FOISA (see below). In respect of these requests, the Commissioner confirmed that Mr McLean made requests for information to a Scottish public authority and asked the authority to review its responses before applying to her for a decision.
7. Mr McLean was informed at the outset that the Commissioner's investigation was limited to aspects of his correspondence of 6 January 2014 which could reasonably be construed as valid requests for information in terms of section 8(1)(c) of FOISA, to the extent that he had provided reasons why he was dissatisfied with the SPSO's responses to these. He identified wider concerns, but these could not be considered by the Commissioner.
8. Consequently, the Commissioner's investigation was limited to consideration of the SPCB's responses to two of Mr McLean's requests, as set out below:
 - (i) With reference to a section of the Committee's meeting which was held in private, Mr McLean asked: "...if this matter was treated as "restricted" what was the reason stated?" [**Request 1**]
 - (ii) "It [the minute of 11 December 2013] states that 'in one exchange Mr McLean used inappropriate language and made in appropriate allegations against the Clerk'
 - (a) Can you please advise what specific language do you refer
 - (b) Can you please [provide] details of the inappropriate allegation made against the Clerk?" [**Request 2**]
9. On 21 May 2014, the SPCB was notified in writing that Mr McLean had made a valid application.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPCB was invited to comment on this application and answer specific questions, including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

11. 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 Mr McLean and the SPCB. She is satisfied that no matter of relevance has been overlooked.

Background

12. The SPCB provided the Commissioner with the following background information relating to Mr McLean's requests.
13. The LG&RC agreed that it would take evidence on an annual basis from the Scottish Public Services Ombudsman, following publication of his annual report. In previous years this had generated correspondence from some members of the public and groupings. For the latest report, therefore, the LG&RC agreed to issue a call to the public for questions to the Ombudsman. In making this general call, the Committee was specific about the type of questions (in that they could not touch on individual cases) and the length of the questions.

Mr McLean submitted some questions and, during this time, sent a number of emails to the Clerk to the Committee, copied to the Committee Convener.

14. The SPCB explained that questions from the public were put to the Ombudsman at a Committee meeting and reported in the official report. Any questions not asked in public sessions were put to the Ombudsman in writing. Following the evidence-taking sessions with the Ombudsman on 11 December 2013, the Committee discussed (in private) the evidence received from the public, including Mr McLean's emails. A summary of this discussion and the subsequent decision was recorded in the minutes of the meeting¹. This minute was published on the LG&RC's website and was also sent to Mr McLean by email on 12 December 2013.
15. The minute concluded, given the nature and volume of correspondence received from Mr McLean, that no further substantive communication should be entered into with him regarding the SPSO.
16. Point 5 of the minute of 11 December 2013 formed the basis of Mr McLean's requests for information.

Validity of requests

17. The SPCB submitted that Mr McLean's requests were not valid information requests in terms of FOISA. It argued that these were seeking confirmation of Mr McLean's interpretation or attempting to find out what was in the minds of the Committee members when they made their decision.
18. Section 8(1) of FOISA sets down the basic requirements for a valid information request made in terms of section 1(1). Section 8(1)(c) specifies that a request must describe the information requested.
19. The Commissioner's view, as set out in her guidance on validity² and in various decisions, is that the purpose of requiring a description of the information is to allow the public authority to identify and locate the information requested.
20. Although she has some sympathy for the SPCB's position with regard to Mr McLean's questions, the Commissioner is satisfied that Requests 1 and 2 contain an adequate description of the information sought by these requests to allow the authority to identify and locate the information, or to come to the conclusion that no such information is held. Consequently, she is satisfied that these requests are valid requests for information in terms of FOISA.
21. The SPCB submitted that if the Commissioner were to conclude that these requests were valid, there was no information held and it would seek to rely on section 17(1) of FOISA.

Request 1

22. This request referred to the part of the LG&RC meeting held in private. In the Commissioner's view, a reasonable interpretation of this request is that Mr McLean sought reasoning as to why this section of the meeting was held in private.

¹ http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Minutes/20131211-Minutes.pdf

² <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/CourtofSessionGuidance2010/Validrequests.aspx>

23. The SPCB explained that Rule 12.3.4 of the Parliament's Standing Orders³ provides that "Committee meetings shall be held in public except as mentioned in paragraph 5". Rule 12.3.5 states: "All or part of a meeting of a committee may be held in private if the committee so decides..."
24. Given the explanation detailed above, the Commissioner is satisfied that it would be reasonable to conclude that any information recorded about such a decision would be in the minute of the relevant meeting. As no such reasons are recorded in the minute, she is satisfied that no information is held by the SPCB which would satisfy the terms of this request.

Request 2

25. In relation to Request 2, the SPCB explained that Mr McLean sent emails to the Clerk, copied to the Committee Convener. It was the content of these which was discussed at the Committee meeting on 11 December 2013. The SPCB stated that it provided Mr McLean with a copy of the minute, which was also published on its website. The SPCB confirmed that it held no further information in relation to this request.
26. Again, given the nature of the Committee's proceedings, the Commissioner would expect any recorded information on its deliberations and conclusions to be found within the minute of the relevant meeting. As to the content of the communications which led to the relevant conclusions, Mr McLean himself was the author of these. In the circumstances, the Commissioner accepts that the SPSO held no further information which would answer this request, in addition to that recorded in the minute or in the communications to which Mr McLean was a party.
27. The Commissioner notes that, regardless of any question of validity of the requests, Mr McLean was notified in the outcome of the SPCB's review that no further information was held which would satisfy the terms of his requests. Consequently, she finds that the SPCB handled Mr McLean's requests correctly, in accordance with Part 1 of FOISA.

Decision

The Commissioner finds that the Scottish Parliamentary Corporate Body complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information requests made by Mr McLean.

³ <http://www.scottish.parliament.uk/parliamentarybusiness/26508.aspx>

Appeal

Should either Mr McLean or the Scottish Parliamentary Corporate Body 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
7 October 2014

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.

...

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
- (a) is 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) states the name of the applicant and an address for correspondence; and
 - (c) describes the information requested.

...

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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