

Decision Notice

Decision 021/2015: Mr Colin Simpson and the Scottish Ministers

Single Chamber Parliament

Reference No: 201402725

Decision Date: 11 February 2015



Scottish Information
Commissioner

Summary

On 23 June 2014, Mr Simpson asked the Scottish Ministers (the Ministers) for information relating to the decision to have a single chamber parliament in the event of independence.

The Ministers failed to respond to the initial request and stated that they held no relevant information following a review. Mr Simpson remained dissatisfied and applied to the Commissioner for a decision.

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

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 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 23 June 2014, Mr Simpson made a request for information to the Ministers. He asked for:
 - (i) all information relating to the decision to have a Single Chamber Parliament in the event of a Yes vote in the Independence Referendum, and
 - (ii) measures that would be put in place to prevent any future government of an independent Scotland undertaking any measures that could lead to Scotland becoming in any way like any of the "less desirable regimes" in a list of countries he provided.
2. The Ministers did not respond to this request.
3. On 8 August 2014, Mr Simpson wrote to the Ministers, requesting a review on the basis that the Ministers had failed to respond.
4. The Ministers notified Mr Simpson of the outcome of their review on 1 September 2014. They Ministers apologised for not responding to the original request and, with some explanation of their position, stated that they held no information falling within the scope of the request.
5. On 24 November 2014, Mr Simpson wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Simpson stated he was dissatisfied with the outcome of the Ministers' review as he believed there was information held that fell within the scope of his request.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Simpson 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.
7. On 15 December 2014, the Ministers were notified in writing that Mr Simpson had made a valid application.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Ministers were invited to comment on this application and answer specific questions, with a view to explaining the steps taken to identify and locate the information requested.

Commissioner's analysis and findings

9. 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 Simpson and the Ministers. She is satisfied that no matter of relevance has been overlooked.
10. 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.
11. The information to be given is that held by the authority at the time the request is received, subject to any amendment or deletion which would have been made, regardless of the receipt of the request, between the date of receipt and the time the information is given (section 1(4)). This is not necessarily to be equated with information an applicant believes the authority *should* hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
12. The Ministers believed it was widely accepted that Scotland already had a functioning democratic society. The proposal to have a Single Chamber Parliament in an independent Scotland was the long-standing position of the current Scottish Government. Consequently, the Ministers stated that they held no information relating to this decision, as no alternative options were considered when preparing for the referendum.
13. The Ministers provided background information to help explain their position. Following the referendum on devolution in 1997, the Secretary of State for Scotland set up the Consultative Steering Group on the Scottish Parliament. The remit of this group was to report on the "operational needs and working methods" of the new Parliament and make proposals for its standing orders and rules of procedure.
14. The group's main report, "Shaping Scotland's Parliament", was published in January 1999 and, the Ministers explained, acknowledged the absence of a second chamber. This, they believed, supported their position that a single chamber parliament was a long-standing policy position, well established and therefore not a subject which required consideration in the White Paper.

15. With regard to the second element of Mr Simpson's request, the Ministers stated that this was not a topic that had ever been considered. It was not felt necessary to do so, given Scotland's established democratic society.
16. The Ministers stated that they conducted checks with the staff responsible for drafting the White Paper, who confirmed that this was not a topic that was considered in preparing for constitutional reform. The Ministers referred to point 560 of the White Paper¹ which states:

"Scotland already has many of the institutions that a modern independent democratic state needs: a modern parliament elected by proportional representation, a government accountable to parliament, a civil service appointed on merit and supporting the elected government and an independent judiciary and legal system"
17. With this in mind, the Ministers explained, it was not considered necessary to conduct any comparison with other regimes along the lines suggested by Mr Simpson.
18. To support their position, the Ministers provided the Commissioner with details of the searches they had carried out, with details of the search terms used and evidence of the results of these searches (i.e. that no information was held).
19. Having considered the terms of this request, all of the relevant submissions and the outcome of the searches undertaken, the Commissioner accepts that the Ministers took adequate, proportionate steps to ascertain whether they held any information falling within the scope of Mr Simpson's request. From the explanations provided by the Ministers, the Commissioner accepts that it would be reasonable to conclude that such information was unlikely to be held.

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 Simpson.

¹ <http://www.scotland.gov.uk/Resource/0043/00439021.pdf>

Appeal

Should either Mr Simpson 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

11 February 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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