



Scottish Information
Commissioner
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Decision Notice 084/2024

World Economic Forum – First Minister’s correspondence

Authority: Scottish Ministers
Case Ref: 202200273

Summary

The Applicant asked the Authority for correspondence between the First Minister and Dr Philippa Whitford MP regarding the World Economic Forum (WEF) and between the First Minister and the WEF over a two-year period. The Authority disclosed one email to the Applicant and informed them that it held no further information within the scope of their request. The Commissioner investigated and was satisfied that the Authority held no further information beyond what it provided to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

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 22 December 2021, the Applicant made a request for information to the Authority. The Applicant asked for:

- (i) all correspondence from the First Minister to Dr Philippa Whitford MP and all responses from Dr Philippa Whitford MP to the First Minister (whether by email, memo or audio format) relating to the WEF from 1 October 2019 to the date of their request
 - (ii) all correspondence (whether by email, memo or audio format) of all discussions between the First Minister and the WEF from 1 October 2019 to the date of their request.
2. The Authority failed to respond to the Applicant's request.
3. On 31 January 2022, the Applicant wrote to the Authority requesting a review in view of its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 25 February 2022. The Authority issued the Applicant with a notice, under section 17(1) of FOISA, that it did not hold the information requested in part (i) of their request and disclosed a single email (with the name of the sender withheld under section 38(1)(b) of FOISA) in response to part (ii) of their request.
5. On 4 March 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of Authority's review because they considered that it did hold information in relation to part (i) of their request, they did not find it credible that only a single email was held in relation to part (ii) and they thought that the name of the sender of that email should have been disclosed.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 25 April 2022, the Authority were notified in writing that the Applicant had made a valid application and the case was subsequently 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. The Authority was invited to comment on this application and to answer specific questions. These primarily related to how the Authority established what information it held falling within the scope of the Applicant's request.
9. During the course of the investigation, the Authority disclosed to the Applicant the name of the sender of the email it had withheld in its response to part (ii) of their request.
10. The Applicant confirmed that they were content for this matter to be excluded from the investigation. Consequently, the Commissioner has not considered the matter further.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Information held by the Authority

12. 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 public 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 applicable in this case.

13. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4). This is not necessarily to be equated with information that an applicant believes the public authority should hold. If no such information is held by the public authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
15. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

The Applicant's submissions

16. In relation to part (i) of their request, the Applicant explained that Dr Philippa Whitford MP is their MP. The Applicant contended that the First Minister had been in contact with Dr Philippa Whitford MP during the time period set out in their request, reporting that this had been discussed in a forum in which they were a participant.
17. The Applicant noted that it had been raised in this forum that the WEF was seeking to aid Ayrshire in relation to job losses in the area and that the First Minister was keen to "follow this up" due to a familial connection to the area.
18. In relation to part (ii) of their request, the Applicant submitted that it was "well documented" that the First Minister had held talks with Ursula Von Der Leyen (president of the European Commission and a board member of the WEF). The Applicant argued that it was unlikely, given the wide range of individuals comprising the WEF, that only a single survey had been sent to the First Minister over the time period set out in their request.

The Authority's submissions

19. In relation to part (i) of the request, the Authority explained that it would expect correspondence between the First Minister and Dr Philippa Whitford MP to be stored in its correspondence handling system or electronic record and document management (eDRM) system, clearly named to identify it as correspondence between those parties relating to the WEF.
20. The Authority confirmed that it had undertaken searches of its current and legacy correspondence handling systems for correspondence between the First Minister's office and Dr Whitford, which returned three items – none of which related to the WEF.
21. The Authority explained that had it undertaken a further search of the eRDM system, which would return any correspondence not handled via the correspondence management system, using the terms "World Economic Forum", WEF" and "Whitford" in the document title field.

22. The Authority submitted that this search returned no results and it noted again that it would expect any official records to be clearly titled to identify the communication topic and the relevant parties.
23. In relation to part (ii) of the request, the Authority stated that it had undertaken the following searches of its current and legacy correspondence handling systems, which returned no results within the scope of the Applicant's request:
 - Sender organisation/Organisation field: "World Economic Forum"
 - Sender field: "Klaus Schwab" (Chair and founder, WEF) and "Borge Brede" (President, WEF)
 - "Philip Rosler" (Managing Director, WEF) and "Emilio Granados Franco" (Head of Geopolitics and Risk, WEF).
24. The Authority explained that the First Minister's Private Office Manager was also asked to carry out a separate search of the First Minister's inbox for correspondence with the WEF. However, the Authority noted that such correspondence would only be retained for three months, with correspondence identified as requiring retention subsequently being saved in the correspondence handling and eRDM systems.
25. The Authority stated that this search returned no results. The Authority explained that this search had not been carried out in relation to part (i) of the request as it considered it highly unlikely any correspondence between Dr Philippa Whitford MP and the First Minister would not have been handled through its correspondence handling or eRDM systems.
26. The Authority explained that it had also undertaken searches of its eRDM system for the following key words within documentation:
 - "Nicola Sturgeon World Economic Forum"
 - "Nicola Sturgeon WEF"
 - "World Economic Forum Scottish Government"
 - "Correspondence World Economic"
 - "Forum Nicola Sturgeon"
 - "World Economic Forum First minister"
 - "World Economic Forum Nicola Sturgeon"
 - "World Economic Forum Klaus Schwab"
 - "Nicola Sturgeon Klaus Schwab"
 - "Nicola Sturgeon Christine Lagarde"
 - "Nicola Sturgeon Mark Carney"
 - "Nicola Sturgeon Peter Brabeck-Letmathe"
 - "@weforum.org"

27. The Authority noted that, with the exception of “World Economic Forum” and “@weforum.org”, these searches returned no results.
28. The Authority explained that it had found it necessary to carry out a sampling exercise in relation to the documents located by “World Economic Forum” and “@weforum” searches due the high number of results returned (6,222 and 1,000 results, respectively). This sampling identified, via the “@weforum” search, the single survey email provided to the Applicant.
29. The Authority stated that it had subsequently undertaken a focused search of its eRDM system for the following terms in the title of documents but this returned no further results:
 - “First”, “Minister”, “World”, “Economic” and “Forum”
 - “FM”, “World” “Economic” and “Forum”
 - “FM” and “WEF”
 - “First”, “Minister” and “WEF”
 - “Nicola”, “Sturgeon” and “WEF”
 - “NS” and “WEF”
30. Having undertaken the above searches, the Authority confirmed that it was satisfied that the only information held within the scope of the request was the survey email it had already provided to the Applicant.

The Commissioner’s view

31. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the request. The Commissioner is satisfied that the searches described by the Authority would have been capable of identifying any information relevant to the request.
32. Given the nature of the information requested and the searches undertaken by the Authority, the Commissioner is satisfied that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of part (i) of the Applicant’s request.
33. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied that this was not the case.
34. The Commissioner therefore finds that the Authority was therefore correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested in part (i) of the request.
35. The Commissioner is further satisfied that, in terms of part (ii) of the request, the Authority provided all of the information that it held falling within scope of the request.
36. The Commissioner therefore finds that the Authority’s response, in terms of part (ii) of the request, complied with section 1(1) of FOISA.

Handling of request

37. There are two procedural issues regarding the Authority’s handling of Applicant’s request that the Commissioner would like to note:

- the Authority failed to respond to the Applicant's request for information, leading the Applicant to submit a requirement for review
 - despite the Authority issuing a response to the Applicant after they had submitted their requirement for review, the Authority's response wrongly notified the Applicant of their right to seek a review of that response when it should have notified them of their right of appeal to the Commissioner.
38. The Authority explained that it had been unaware of the Applicant's requirement for review as they had sent it to an unmonitored case handling inbox which provides an automatic reply advising that the inbox is monitored and where emails should be redirected to.
39. However, the Authority accepted that it had received the Applicant's requirement for review and it apologised for failing to respond to their request for information, which it attributed to dealing with a high volume of requests (most of which it had responded to in a timely manner).
40. The Commissioner accepts the Authority's explanation but would like to remind it of the importance of adhering to the statutory timescales laid down by FOISA.

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002.

Appeal

Should either the Applicant or the Authority 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.

David Hamilton
Scottish Information Commissioner

14th May 2024

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

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.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) 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;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).