

Decision Notice

Decision 014/2017: Eur Ing Richard Townsend-Rose and the Scottish Ministers

Water and sewerage charges

Reference No: 201601954

Decision Date: 25 January 2017



Scottish Information
Commissioner

Summary

The Ministers were asked for information relating to their understanding of the law concerning non-domestic water and sewerage charges. The Ministers withheld the information on the basis that it could be reasonably obtained by the applicant otherwise than by requesting it under FOISA.

The Commissioner accepted that the information was otherwise accessible to the applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (information otherwise accessible)

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. Eur Ing Townsend-Rose's (the Applicant) request related to previous correspondence from the Ministers to him, which included the following statement:

Where a property is part of a much larger building which is connected to public water and/or sewerage, then it may be liable for charges if it has access to services in the common parts of the building.

2. On 31 August 2016, the applicant requested the following information from the Ministers:

Please provide the recorded information which confirms that where a property is part of a larger building which is connected to public water and/or sewerage, then it may be liable for charges if it has access to services in the common parts of the building or similar words with the same effect.

3. The Ministers responded on 1 September 2016. The Ministers stated that the information was available to the public and provided links to various websites. The Ministers stated that, because they considered the information was reasonable accessible to the applicant, it was exempt from disclosure in terms of section 25(1) of FOISA.
4. On 2 September 2016, the applicant wrote to the Ministers requesting a review of their decision. The applicant did not consider that the information contained within the links evidenced the validity of the statement made to him previously by the Ministers.
5. The Ministers notified the applicant of the outcome of their review on 21 October 2016. The Ministers upheld their original decision without modification.
6. On 25 October 2016, the applicant wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The applicant did not agree that the information contained in the links answered his request. Additionally, he considered the Ministers should hold correspondence on the matter between themselves and Scottish Water and the Water Industry Commission for Scotland (WICS).

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. On 30 November 2016, the Ministers were notified in writing that the applicant had made a valid application. The case was then allocated to an investigating officer.
9. 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, in particular to clarify the steps they had taken in order to identify any relevant information falling within the scope of the request.

Commissioner's analysis and findings

10. 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 the applicant and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Background submission by the Ministers

11. The Ministers stated that, as the Scottish Government did not make water and sewerage provision for businesses, they were reliant on the companies that did (Scottish Water and WICS) to ensure that any relevant information they held was consistent and accurate.
12. The Ministers explained that the Water Industry Team in the Scottish Government had been in contact with the applicant previously and had endeavoured to explain the situation with regard to who controlled the charging system. They stated that they had sought to provide information held, with advice and assistance.

Has all relevant information been identified?

13. As in any case where an application is made to the Commissioner, she must satisfy herself that adequate steps have been taken by the authority to identify and locate all of the information it holds and which falls within the scope of the request.

Searches

14. The Ministers explained the searches they had undertaken. They searched their electronic Records and Document Management system (eRDM). The Ministers identified the search terms and date parameters that had been used.
15. The Ministers stated that this was an issue which the Scottish Government's Water Industry Team was aware of as ongoing, so they knew where to locate any relevant information in the eRDM. The Ministers explained that key officials within the Water Industry Team were consulted; these officials had extensive knowledge of the industry and would be aware if there was any additional information held falling within the scope of the request. The Ministers confirmed that these officials were unaware of any additional information which might fall within the scope of the request. As a result of the searches carried out and the enquiries made of key officials, no additional information was identified.

Correspondence with other bodies

16. In his application to the Commissioner, the applicant suggested that the Ministers must have had correspondence or discussions with other bodies such as Scottish Water or WICS regarding this specific matter.
17. The Ministers stated that they had been provided with copies of previous FOI responses issued by WICS to the applicant. They also stated that there had been telephone conversations between their Water Industry Team, WICS and Scottish Water, to ensure that the information they were providing to the applicant was in line with current policy.
18. The Ministers stated that, each year, Scottish Water submitted a detailed charging statement to WICS for approval; this must be within the limits set out in WICS's final determination of charges. The Ministers explained that both Scottish Water's detailed charging statement and the price limits must be consistent with the Principles of Charging Statement issued by the Ministers but, other than providing the Principles of Charging Statement, they had no involvement in the management of charges.
19. The Commissioner has considered the Ministers' explanation of the searches and enquiries undertaken and why those searches and enquiries would have been likely to identify and locate any relevant information.
20. The Commissioner accepts that the Ministers undertook reasonable, proportionate searches and enquiries in order to establish any relevant information that they held. She accepts that any relevant information would have been identified using the searches and enquiries described by the Ministers. Given the Ministers' role in this process, and bearing in mind that the applicant's concern is essentially about the proper interpretation of the law (a matter for the courts), the Commissioner accepts that they are unlikely to hold further information on the matter.
21. The Commissioner is satisfied therefore that the Ministers identified all of the relevant information they held when responding to the applicant's request.

Section 25(1) of FOISA – Information otherwise accessible

22. Under section 25(1) of FOISA, information which a requester can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test in section 2(1)(b) of FOISA.
23. Therefore, the issue to be considered in this case is whether the information requested by the applicant can be reasonably obtained by him through means other than FOISA.
24. The Ministers submitted that the relevant information they held was to be found on the website links they provided to him.
25. The applicant submitted that, in his view, none of the information provided in the links justified the validity of the statement which was the subject of his request for information.

The Commissioner's view

26. Before setting out her conclusions, the Commissioner would note that it does not fall within her remit to comment on how the Ministers have chosen to interpret any information that they hold, or on whether they are entitled to make any public statements based on the information they hold.

27. Similarly, it is not in the Commissioner's remit to arbitrate in a dispute regarding the interpretation of any legislation. While she is aware that the applicant has concerns in this respect, the Commissioner's locus extends only to determining whether the Ministers complied with FOISA when responding to his request, and whether they identified all relevant information in doing so.
28. The Commissioner has considered the submissions made by both the applicant and the Ministers and the information contained in the links provided by the Ministers. Notwithstanding the applicant's belief that the information is incorrect and his view that the Ministers' interpretation of the law is incorrect, the Commissioner is satisfied that the links do contain the information identified by the Ministers as falling within the scope of the request.
29. The Commissioner is therefore satisfied that this information was, as a matter of fact, reasonably obtainable by the applicant. Consequently, the Commissioner concludes that the Ministers were entitled to withhold the information under section 25(1) of FOISA.

Decision

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the applicant. The Ministers were entitled to withhold the information requested under section 25(1) of FOISA.

Appeal

Should either the applicant or the 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

25 January 2017

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

- (a) section 25;

...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

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