

Decision Notice 033/2020

Director-General for Economy's travel between Edinburgh and London

The Applicant

Public authority: Scottish Ministers

Case Ref: 201902071



Scottish Information
Commissioner

Summary

The Ministers were asked about senior Scottish Government official travel between Edinburgh and London.

The Ministers provided the Applicant with some information, but they did not provide the Applicant with any information regarding two senior Scottish Government officials.

After a review, during which the Ministers identified further information regarding one of the officials, the Commissioner investigated, and was satisfied that the Ministers did not hold any information regarding the remaining official's travel (the Director-General for Economy) between Edinburgh and London .

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 17 September 2019, the Applicant made a request for information to the Scottish Ministers (the Ministers). The information requested was:
 - (i) Summary details of costs, frequency and methods of travel for the Scottish Government's Permanent Secretary and directors-general between Edinburgh and London since 1 January 2018.
 - (ii) Drafts, revisions and final copies of any internal policies, guidelines or advice relating to methods of travel to London for senior Scottish Government officials since 1 January 2018.
2. The Ministers responded on 10 October 2019 and disclosed information to the Applicant
3. On 17 October 2019, the Applicant wrote to the Ministers requesting a review of their decision on the basis that they had not provided him with any travel information regarding Liz Ditchburn (Director-General for Economy) or Malcolm Wright (Director-General for Health and Social Care). He asked the Ministers to reconsider whether there are really no records relating to travel to London by Ms Ditchburn and Mr Wright that could be released.
4. The Ministers notified the Applicant of the outcome of their review on 30 October 2019. They maintained that they held no information regarding Ms Ditchburn's travel between Edinburgh and London, but they had identified one journey by Mr Wright, and they provided the Applicant with details of this.
5. On 7 November 2019, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Ministers' review because he believed it was highly unlikely that Ms Ditchburn had not travelled to London at all in 2018 and 2019.

Investigation

6. 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 him for a decision.
7. On 20 November 2019, the Ministers were notified in writing that the Applicant had made a valid application and the case was 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 Ministers were invited to comment on this application and to answer specific questions. These related to the searches they had conducted for the information requested by the Applicant.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both the Applicant and the Ministers. He is satisfied that no matter of relevance has been overlooked.

Section 17(1) - Information not held

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received. This is subject to qualifications, but these are not applicable here. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.

Submissions from the Ministers

11. The Ministers noted that Ms Ditchburn had attended an event in London on 20 June 2018, but as she travelled from Motherwell to London this did not fall within the scope of the Applicant's request. The Ministers submitted that it had provided the Applicant with details of this journey in response to a different information request (one made after this particular information request).
12. The Ministers explained that Scottish Government travel is primarily booked through the Scottish Government travel agent in advance of the journey being undertaken. This travel agent provides weekly and monthly management information to the Scottish Government's Environmental and Travel Management team, who also receive copies of monthly consolidated invoices relating to the core Scottish Government contract with the travel agent.
13. The Ministers submitted that the Travel and Subsistence team collate figures given by Travel Management when directors-general have used the Scottish Government contracts with claims that have been submitted for payment: these claims are then cross checked with the monthly consolidated invoices and entered onto a spreadsheet.
14. The Ministers explained that this spreadsheet and the relevant quarterly reports were used to establish the information held within the scope of the Applicant's request.
15. In addition, the Ministers noted that they had also conducted a check of the iExpenses system. They explained that iExpenses is a system used to retrospectively claim travel and other expense where these have not been booked through the Scottish Government travel agent in advance. Ms Ditchburn's account was searched to determine if she (or any of her

staff) had booked travel via iExpenses during the period in question, but no further information was identified.

16. At review stage, the Ministers submitted that the Scottish Government Travel Manager extracted hard copies of the business travel for all members of the Executive Board per month from the monthly management information reports. These were crosschecked against the findings from a review of the Comma Separated Values (CSV) files supplied with respective monthly invoices (the source data used to compile the reports) and also against the monthly management information arranged by transaction date.
17. The Ministers explained that two members of Ms Ditchburn's support team manually searched every day of her calendar between the dates requested and this identified the single journey, from Motherwell, that did not fall within the scope of the request.
18. The Ministers submitted that the searches they had undertaken would have captured all travel taken by Ms Ditchburn during the period of the request, and they submitted that they held no information falling within the scope of the request.

Submissions from the Applicant

19. The Applicant noted that the Ministers had responded promptly and helpfully to his request, but he found it difficult to believe that Ms Ditchburn only travelled to London once in nearly two years.

Commissioner's conclusions

20. The Ministers provided the Commissioner with evidence of the searches they had undertaken, including quarterly reports of the journeys undertaken by Ms Ditchburn and an email confirming that her calendar was manually searched by two members of staff.
21. The Commissioner has reviewed all of the travel arrangements provided in the quarterly reports and he is satisfied that there are no journeys between Edinburgh and London for Ms Ditchburn. The Commissioner notes the journey from Motherwell on 19 June 2018, but as this did not include Edinburgh as an originating or destination location, it falls outwith the scope of the Applicant's information request.
22. The Commissioner is therefore satisfied that the Ministers do not (and did not, on receipt of the request) hold the information requested. He finds that the Ministers were therefore correct to give notice, in terms of section 17(1) of FOISA, that they did not hold the information requested.
23. The Commissioner notes that the Applicant's request for review stated that he did not accept that neither party had travelled to London since 1 January 2018. From this, it is clear to the Commissioner that travel to London was the key focus of the Applicant's interest, and not the originating point of travel.
24. While the Commissioner is satisfied that the Motherwell journey is outwith the scope of the Applicant's request, the Commissioner would have expected the Ministers, in line with paragraph 5.1.1 of the Code of Practice¹ issued under section 60 of FOISA, to have informed the Applicant that they did hold details of a journey to London from a location other than Edinburgh. The Commissioner notes that the Ministers later disclosed details of this journey to the Applicant, in response to a follow-on request, and so the Ministers clearly do not consider the information to be sensitive.

¹ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

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 the Applicant.

Appeal

Should either the Applicant 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

12 February 2020

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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