

Decision Notice

Decision 041/2017: Mr James McEnaney and the Scottish Ministers

Accommodation arrangements for visitors on official business: handling of request

Reference No: 201602236

Decision Date: 21 March 2017



Scottish Information
Commissioner

Summary

The Ministers were asked for information concerning accommodation arrangements for people visiting Scotland on official business.

The Commissioner found that the Ministers failed to meet the required timescale for responding and failed to provide Mr McEnaney with adequate advice and assistance.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (3) (General entitlement); 10(1) (Time for compliance); 15 (Duty to provide advice and assistance)

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 14 October 2016, Mr McEnaney made a request for information to the Scottish Ministers (the Ministers). The information requested was as follows:
“... details of Scottish Government policies and procedures for booking accommodation for those visiting Scotland as part of official business (such as the recent visit of the ICEA group).”
2. On 11 November 2016, the Ministers informed Mr McEnaney that they were unable to comply with his request within the prescribed timescale in FOISA. They also informed him that they hoped to issue a response shortly.
3. On 21 November 2016, having received no response, Mr McEnaney wrote to the Ministers requesting a review of their failure to respond.
4. The Ministers notified Mr McEnaney of the outcome of their review on 5 December 2016. The Ministers provided Mr McEnaney with an explanation of the procedures followed when booking work-related accommodation. The Ministers also apologised to Mr McEnaney for the delay in responding to his request.
5. On 8 December 2016, Mr McEnaney wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr McEnaney stated he was dissatisfied with the outcome of the Ministers’ review as they had failed to explain why they had not responded to his request for information timeously. Additionally, he was dissatisfied that the Ministers had not provided any advice at an earlier stage explaining when a response was likely to be issued.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr McEnaney 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. The case was then allocated to an investigating officer.

7. 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) on the matters raised in Mr McEnaney's application.
8. The Ministers responded on 6 February 2017.

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

Section 10(1) of FOISA – Time for compliance

10. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
11. It is a matter of fact that the Ministers did not provide a response to Mr McEnaney's request for information within 20 working days, so the Commissioner finds that they failed to comply with section 10(1) of FOISA. She must also acknowledge that the Ministers apologised for this delay in their review outcome.
12. The Ministers explained that, on receipt, the request was allocated to the Scottish Government's Travel Management team, as the owners of the Scottish Government's travel management contract. The Ministers stated that this team comprised two part-time members of staff.
13. The Ministers explained that, as the Travel Management team were not aware of any specific policy relating to the provision of accommodation for non-Scottish Government staff, it was necessary for them to conduct a wide-ranging trawl and make numerous enquiries, to determine which parts of the organisation may have to make such bookings and identify what arrangements they had in place.
14. The Ministers stated that Mr McEnaney had specifically mentioned in his request visitors "such as the ICEA group". The Ministers explained that searches had to be conducted to find out what group he was referring to and what area of the Scottish Government was likely to have been involved in the process of booking accommodation for that group. The Ministers stated that this had caused significant difficulties, as the acronym used by Mr McEnaney was not readily identifiable to the Travel Management Team and a Google search identified a number of groups using that acronym. The Travel Management Team then had to conduct searches and consult staff in numerous areas of the Scottish Government to see if someone could identify the specific group mentioned in the request.
15. During that process, the Ministers explained, staff working within Education in the Scottish Government were able to identify the group referenced within the request and provide information to support the response. Education staff were involved in responding to a number of requests on similar education-based topics, so it was decided that the Travel Management Team and Education colleagues should collaborate to ensure cohesive

responses were issued to Mr McEnaney. However, the time involved in this collaboration further complicated the process and led to further delays.

16. Referring to the time taken in identifying the ICEA group, the Ministers acknowledged that it would have been more appropriate if the Travel Management Team had contacted the Ministers' Freedom of Information Unit for guidance or had sought clarification from Mr McEnaney at the beginning of the process.
17. The Commissioner is surprised that the Ministers did not seek clarification of the request (as they were entitled to do under section 1(3) of FOISA) from Mr McEnaney. This is addressed further below, in the Commissioner's findings on section 15 of FOISA.

Section 15 of FOISA – Duty to provide advice and assistance

18. Section 15(1) of FOISA requires a public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. Section 15(2) states that a Scottish public authority shall be taken to have complied with this duty if it conforms with the guidance contained in the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 Code of Practice).
19. The Section 60 Code of Practice¹, in the version in force at the time the Ministers received Mr McEnaney's request for information and at the time they informed him that their response would be late, contained recommended good practice (at Part 2, section 5) in relation to the provision of advice and assistance. This included guidance (at Part 2, section 5.3.3) on performing the duty to provide advice and assistance by seeking clarification from an applicant if the authority is unsure about what information the applicant wants. Section 5.4 goes on to make it clear that public authorities should not unreasonably delay in seeking clarification.
20. In this case, the Commissioner considers the failure to respond to Mr McEnaney's request within the 20 working days allowed under FOISA could easily have been avoided if the Ministers had contacted him at an early stage, to discuss his request and seek clarification of what he meant. The Ministers have indicated that they had difficulty locating any relevant information as they could not identify the acronym used in Mr McEnaney's request. In the Commissioner's view, this problem could have been overcome quickly, simply by engaging with him and asking him to explain its meaning.
21. Consequently, the Commissioner finds that the Ministers failed to provide adequate advice and assistance to Mr McEnaney, as a result of their failure to seek clarification of the information being requested. Consequently, the Commissioner finds that the Ministers failed to comply with section 15(1) of FOISA.
22. The Ministers stated that they had made their Travel Management Team aware of the need to seek clarification from a requester where unsure of any part of an information request. Additionally, the same team have been advised to raise as soon as possible any issues with capacity to respond timeously, to avoid the risk of similar issues arising in future. The Commissioner is pleased to note this, but would suggest that the Ministers monitor such requests meantime, to ensure that responses are issued timeously.

¹ <http://www.gov.scot/Resource/0046/00465757.pdf>

23. In his application to the Commissioner, Mr McEnaney noted also that, when the Ministers informed him they would be unable to comply with his request timeously, they provided no indication of when he could expect a response. Additionally, Mr McEnaney was dissatisfied that no explanation for the delay had been forthcoming from the Ministers.
24. The Ministers stated that, due to the complications involved in responding to the request and the limited staff time available due to day-to-day work pressures, it was not possible to identify a specific date when the response would be provided to Mr McEnaney.
25. The Ministers stated also that, as there was no easily identifiable cause for the delay in responding, they considered it would be appropriate simply to apologise for the delay. The Ministers did not believe providing a detailed reason for the cause of the delay would assist Mr McEnaney (and in fact believed would be more likely to cause further frustration to him).
26. These matters are not addressed expressly in the Section 60 Code of Practice which was in force at the time the Ministers received Mr McEnaney's request and when they informed him that their response would be late. Similarly, they are not addressed specifically in the revised Section 60 Code of Practice² which was in force at the time the Ministers responded to Mr McEnaney's requirement for review.
27. However, in the Commissioner's view, it would have been reasonable to expect the Ministers to have addressed these matters under the duty to provide advice and assistance. In the Commissioner's view, it would have been good practice to provide Mr McEnaney with some indication of the likely timescale for providing a response. Similarly, the Commissioner considers it would have been helpful (and good practice) to have provided Mr McEnaney with an explanation of the reason for the delay in responding (as there does, from the submissions set out above, appear to have been one). By failing to provide these explanations, the Commissioner finds that the Ministers failed to comply with section 15(1) of FOISA. The Commissioner would suggest that the Ministers reflect on these points, with a view to avoiding their recurrence.

Decision

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr McEnaney.

The Commissioner finds that the Ministers failed to respond to Mr McEnaney's request for information within the timescale laid down in section 10(1) of FOISA.

The Commissioner also finds that the Ministers failed to provide reasonable advice and assistance to Mr McEnaney in relation to their failure to respond timeously, under section 15 of FOISA.

The Commissioner does not require the Ministers to take any action in respect of these failures, in response to Mr McEnaney's application, given the explanations received during the investigation.

² <http://www.gov.scot/Resource/0051/00510851.pdf>

Appeal

Should either Mr McEnaney 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

21 March 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.

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info