

Decision Notice



Decision 051/2013 Mr M and Strathclyde Fire Board

Evaluation of fire appliances

Reference No: 201202511
Decision Date: 25 March 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 31 August 2012, Mr M asked Strathclyde Fire Board (the Board) for information about the evaluation of Aerial Rescue Pumps (ARPs). On review, Mr M was informed that the Board did not hold the information. Following an investigation, the Commissioner found that this was correct. However, she also found that the Board had failed to respond to Mr M's requirement for review within the required timescale.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information not held)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 31 August 2012, Mr M wrote to the Board in the following terms:
Could I please ask you to send me a copy of the Favourable Operational Evaluations that justified the purchase of [ARPs]; as per—Page 19 of 2007-2010 Integrated Risk Management Plan; under the heading "What we achieved: Aerial Rescue Pumps.
2. The Board responded on 27 September 2012, indicating that it was withholding the information it held in terms of sections 33(1)(b) of FOISA (Commercial interests and the economy). The Board offered Mr M the opportunity to discuss the matter personally.
3. On 4 October 2012, Mr M wrote to the Board, declining the offer to discuss the matter and repeating his request for the information. This was accepted by the Board as a request for review.
4. The Board notified Mr M of the outcome of its review on 15 November 2012. It informed Mr M, in terms of section 17(1) of FOISA, that it did not hold the information he sought.



5. On 6 December 2012, Mr M wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of the Board's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr M made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 13 December 2012, the investigating officer notified the Board in writing that an application had been received from Mr M, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions on its handling of the request.
8. The Board responded, providing submissions in support of its position that it did not hold the information requested by Mr M. These will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr M and the Board and is satisfied that no matter of relevance has been overlooked.

Information held by the Board

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 certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). 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.
11. During the investigation, the Board informed the Commissioner that it had interpreted Mr M request as seeking evidence to support the Board's evaluation of the appliances prior to putting a purchase programme in place. The Commissioner accepts this interpretation.



12. The Board explained that there was a run-in period after the purchase of the first combined ARP and all crew members at a specific fire station were invited to evaluate their experience of its use. It described the purpose of these evaluations as being to inform plans to purchase further ARPs, and to inform any possible design or engineering changes to ensure the ARPs were fit for purpose. The Board also explained that these evaluations were compiled for the specific purpose of informing the purchase programme, which was ultimately put in place. Although it did not have any record of the evaluations being destroyed, the Board confirmed that the evaluation reports could not be traced and accordingly could not be made available.
13. Mr M provided background as to why he was requesting the information, explaining that during and following a meeting with a senior fire officer in August 2009, he had been promised (but never provided with) a copy of the evaluations he now sought under FOISA.
14. The Board did not dispute that the senior fire officer (now retired) referred to by Mr M believed that the information was held by the Board at the time of that particular meeting. The Board provided explanations of the different categories of evaluation that would have been carried out at the time in question, but further explained that, following Mr M's request, the information could not be traced.
15. During the investigation, the Board explained the searches it carried out to establish what relevant information it held. These included both manual and electronic searches of the relevant hard copy and electronic filing systems, and discussions with relevant staff. It further explained that the relevant decisions were made circa 2005 and that several staff members were no longer available for consultation.
16. The Commissioner has considered the steps taken by the Board and is satisfied that the searches carried out were adequate in the circumstances. Taking account of the terms the request, the Commissioner accepts that it was reasonable in all the circumstances for the Board to conclude that it no longer held information which fell within the scope of Mr M's request. She is therefore satisfied that the Board was correct to give Mr M notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

Technical Issues

17. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case.
18. Mr M's request for review was dated 4 October 2012. Given that the response to the request for review is dated 15 November 2012, the Commissioner finds that the Board failed to comply with section 21(1) of FOISA by failing to respond Mr M's request for review within the time allowed.



DECISION

The Commissioner finds that Strathclyde Fire Board (the Board) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr M.

The Commissioner finds that by notifying Mr M, in line with section 17(1) of FOISA, that it did not hold the requested information, the Board complied with Part 1 of FOISA.

However, in failing to provide any response to Mr M's requirement for review within 20 working days, the Commissioner finds that the Board failed to comply with section 21(1) of FOISA.

Appeal

Should either Mr M or Strathclyde Fire Board wish to appeal against this decision, there is an 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 March 2013



Appendix

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.
- ...
- (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.
- ...