

Decision Notice

Decision 091/2014 David Whitton and the Scottish Ministers

List of schools with pupils attending St Mary's Music School

Reference No: 201400031

Decision Date: 29 April 2014



Scottish Information
Commissioner

Summary

On 7 November 2013, Mr Whitton asked the Scottish Ministers (the Ministers) for the names of the schools with pupils who had accessed St Mary's Music School (St Mary's) in Edinburgh during the last five years. The Ministers told Mr Whitton that they did not hold this information.

Following an investigation, the Commissioner found that the Ministers had been entitled to tell Mr Whitton that they did not hold the information.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 7 November 2013, Mr Whitton wrote to the Ministers to request:
“...the names of the schools over the last 5 years which have been successful in accessing St Mary's.”
2. The Ministers responded on 13 November 2013, explaining that they did not have this information, as it was not collected by the Scottish Government.
3. On 16 November 2013, Mr Whitton wrote to the Ministers requesting a review of their decision. He argued that, although the Ministers might not hold the information centrally, they were in a position to be able to access the records if they wished to do so. He also commented on the merits of recording such information.
4. The Ministers notified Mr Whitton of the outcome of their review on 19 December 2013. They confirmed that they did not hold the information he had requested.
5. On 6 January 2014, Mr Whitton wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' 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 Whitton 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.

Investigation

7. On 11 February 2014, the Ministers were notified in writing that an application had been received from Mr Whitton. The Ministers were asked to describe the steps taken to identify and locate any information held which fell within the scope of Mr Whitton's request. They were asked to provide details of the information which the Scottish Government holds about

student placements at St Mary's, and to provide background information about Scottish Government funding for such placements.

8. The Ministers responded on 5 March 2014 with their submissions, which included details of the searches undertaken and how applications for places at St Mary's are administered.

Commissioner's analysis and findings

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

Information held by the Ministers

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to qualifications which are not relevant here, that held by the authority at the time the request is received.
11. The Ministers described the searches they carried out to establish whether they held any information covered by Mr Whitton's request. They searched electronic files on the topic of St Mary's, in addition to carrying out more general searches of the Ministers' electronic records system which has been in place since 2004. The Ministers also searched paper records going back to 2008.
12. The Ministers explained the way pupil places were managed under "The St Mary's Music School (Aided Places) (Scotland) Regulations 2001".¹ The Ministers clarified that whilst the scheme is fully funded by the Scottish Government, the administration of the scheme is the responsibility of the school. All paperwork for applications from pupils seeking admission (including details of the school which the pupil presently attends) is held by St Mary's itself, and not by the Ministers.
13. The Ministers explained that they were not responsible for the selection of pupils; this responsibility lay with St Mary's, so the Ministers had no reason to record the details of the schools from which pupils were applying. The Ministers indicated that they occasionally received an enquiry about the scheme, but otherwise were not in direct communication with schools or pupils who were taking up an aided place.
14. The Ministers provided an example of the claim form which St Mary's submits to the Scottish Government for reimbursement of the costs for funded pupils. The Commissioner is satisfied that the form does not name the schools which the pupils previously attended.
15. Having considered all of the submissions received from the Ministers, the Commissioner is satisfied that the searches the Ministers carried out were adequate and proportionate in the circumstances. The searches would have been likely to identify any recorded information held by the Ministers and covered by Mr Whitton's request. She also accepts that, under the existing administrative arrangements, there is no reason for the Ministers to record the details of the schools whose pupils have accessed St Mary's. (The merits of creating a system for recording such details in future is not something which falls within the Commissioner's remit and she cannot comment on this matter.)
16. Given these circumstances, the Commissioner finds that the Ministers were correct to notify Mr Whitton that they did not hold the information he had asked for.

¹ <http://www.legislation.gov.uk/ssi/2003/280/contents/made>

Decision

The Commissioner finds that the Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Whitton.

Appeal

Should either Mr Whitton 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
29 April 2014

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.

...

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