

Decision Notice



Decision 096/2010 Mr Rami Okasha and the Scottish Ministers

Notes of meetings of the Scottish Government's Senior Management Team

Reference No: 200902059
Decision Date: 15 June 2010

www.itspublicknowledge.info

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Summary

Mr Rami Okasha submitted two separate requests to the Scottish Ministers (the Ministers) for copies of the notes of meetings of the Scottish Government's Senior Management Team within two specified time periods. The Ministers responded by withholding the information under various exemptions in the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, as a result of which, the Ministers advised Mr Okasha that they did not consider his requests to be valid under FOISA, Mr Okasha remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers had failed to deal with Mr Okasha's requests for information in accordance with Part 1 of FOISA, by incorrectly concluding that the requests did not fulfil the requirements of section 8(1) of FOISA. He required the Ministers to review their handling of Mr Okasha's information requests, and notify him of the outcome of the review.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 8(1)(c) (Requesting information) and 21(1), (4) and (5) (Review by Scottish Public Authority)

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.

Glasgow City Council v Scottish Information Commissioner [2009] CSIH 73

Background

1. On 7 September 2009, Mr Okasha emailed two separate requests to the Ministers, requesting copies of the notes of meetings of the Scottish Government's Senior Management Team from (1) May 2007 to June 2008 and (2) July 2008 to 7 September 2009 respectively.
2. The Ministers responded on 7 October 2009. In respect of request (1), the Ministers advised Mr Okasha that they did not hold any information falling within the scope of the request. In relation to request (2), the Ministers stated that they did hold some information; however, they considered it was exempt from disclosure under sections 29(a), 30(b)(i) and (ii), 30(c) and 33(2) of FOISA.



3. On 31 October 2009, Mr Okasha emailed the Ministers, requesting a review of their decision. In particular, Mr Okasha argued that the public interest in disclosing the information was not outweighed by that in maintaining the exemptions.
4. The Ministers subsequently wrote to Mr Okasha on 1 December 2009. The Ministers stated that, having considered the Court of Session ruling in the case of Glasgow City Council v Scottish Information Commissioner (issued on 30 September 2009) (the Opinion)¹, they now regarded the original requests to be invalid. The Ministers advised Mr Okasha that they now considered they were under no obligation to respond to his request for review.
5. On 2 December 2009, Mr Okasha 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.

Investigation

6. On 12 February 2010, the Ministers were notified in writing that an application had been received from Mr Okasha and were asked to provide the Commissioner with any information withheld from him. The Ministers subsequently responded by restating their view that they did not consider Mr Okasha's requests for information to be valid. The case was then allocated to an investigating officer.
7. Given the Ministers' views, the Commissioner's investigation and decision in this case is limited to the consideration of whether Mr Okasha's requests for information were valid for the purposes of FOISA, and whether the Ministers were obliged to review their handling of these requests.
8. The investigating officer contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their view that the requests were invalid.
9. The Ministers responded on 11 May 2010, providing submissions to justify their view that Mr Okasha's information requests were not valid for the purposes of FOISA. These are considered in detail in the Commissioner's analysis and findings section below.

¹ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Okasha and the Ministers and is satisfied that no matter of relevance has been overlooked.

Validity of requests

11. The Commissioner has considered whether Mr Okasha's requests for information were valid in terms of section 8 of FOISA, since the Ministers' submissions contended that they were not. As noted at paragraph 4 above, the Ministers had advised Mr Okasha that they had reached this view in the light of the Opinion.
12. Section 8 of FOISA specifies that a request for information for the purposes of FOISA is one which:
 - (a) is made in writing or another permanent form capable of subsequent reference,
 - (b) states the name of the applicant and an address for correspondence and
 - (c) describes the information requested.
13. The Ministers argued that they considered Mr Okasha's requests to be invalid as he had failed to provide a description of the information requested as required by section 8(1)(c) of FOISA.
14. The Ministers stated that the documents which Mr Okasha had requested contained a range of information concerning the Senior Management Team covering an extensive range of subjects and discussions taking place around these subjects.
15. The Ministers argued that without providing a description of the information required, they were unable to know what information Mr Okasha was actually interested in. They submitted that what he had done was to identify where they may find the information being sought without telling them what that information actually was. The Ministers submitted that it was not the case that Mr Okasha had not provided a description that was clear enough, but that he had provided no description at all.
16. The Ministers considered that they could not assume that Mr Okasha wanted all of the information contained within the particular documents requested, particularly as the subject matter is so varied. They surmised that it may be the case that he is only interested in certain issues or topics, but without having a description of the information, they could not know.
17. The Commissioner notes that, in the Opinion, the Court of Session emphasised that FOISA gives a right to information, not documents. However, the Court also said, in paragraph 45, that where a request refers to a document which may contain the relevant information, it may nonetheless be reasonably clear in the circumstances that it is the information recorded in the document that is relevant.



18. In the Commissioner's guidance² on validity of information requests in the light of the Opinion, which was published on 27 January 2010, he states (at paragraphs 3.1, 3.4 and 3.5):

"FOISA provides a right to obtain information and not a right to obtain copies of specific documents. However, this does not mean that a request for a copy of a document is automatically invalid, as long as it is reasonably clear from the request that it is the information recorded in the document that the applicant wants. If it is not reasonably clear, the public authority can contact the applicant to obtain clarification.

[...]

Therefore where an applicant has asked for a copy of a document and it is reasonably clear in the circumstances that it is the information recorded in the document which the applicant wants, the public authority should respond to the request as a request properly made under FOISA. A reference to a specific document is a commonplace way of describing the information sought and can be of assistance to an authority in identifying and locating the information. Such a reference can also benefit the authority by limiting the scope of the information request, e.g. to that contained in a minute of a certain date.

If it is not reasonably clear to a public authority what information the applicant wants, and the public authority reasonably needs further detail to identify and locate the information, the public authority must tell the applicant what other information it needs."

19. The Commissioner has considered the terms of the information requests and the content of both the Opinion and his own guidance.
20. He notes that the statutory requirement, under section 8(1)(c) of FOISA, is confined to a description of the information requested. He takes the view that the purpose of the description is to allow the public authority to identify and locate the information and that the purpose of the reference in FOISA to "information" is to relieve the applicant from specifying particular documents, since he or she cannot be expected to know in what form information is held. The principal objective of the whole FOISA regime is to make information accessible, provided it can be identified and located at a cost that is not excessive, and provided it does not fall within one of the statutory provisions (such as that in section 14) or statutory exemptions.
21. Where an applicant has made a request for a copy of a document, and it is reasonably clear in the circumstances that it is the information recorded in the document which the applicant wants, the public authority should respond to the request as a request properly made under FOISA.
22. Notwithstanding its expression in terms of request for a copy of particular documents, the Commissioner considers it to be clear that Mr Okasha's information requests intended to seek all information that is contained in any of the documents requested.

² <http://www.itspublicknowledge.info/uploadedfiles/CourtofSessionGuidanceonValidity.pdf>



23. In this case, the Commissioner considers Mr Okasha's descriptions of the information he wishes to access are sufficiently clear to enable its identification and location, which must be the primary consideration in determining whether such a description is valid. The description, in the view of the Commissioner, clearly fulfils the requirements of section 8(1)(c) of FOISA.
24. In the circumstances, the Commissioner has concluded that Mr Okasha's requests to the Ministers adequately described the information he was seeking, and that they were valid information requests which fulfilled all of the requirements of section 8(1) of FOISA.
25. Accordingly, the Commissioner is unable to accept that the Ministers were under no obligation to carry out a review of their original decision as required by Mr Okasha.

Failure to conduct reviews

26. Section 21(1) of FOISA gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.
27. Section 21(4) of FOISA states that, on receipt of a requirement for review, an authority may do the following in respect of the information request to which it relates
 - a. confirm a decision complained of, with or without such modifications as it considers appropriate;
 - b. substitute for any such decision a different decision; or
 - c. reach a decision, where the complaint is that no decision had been reached
28. Section 21(5) then requires the public authority to give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
29. The Commissioner therefore finds that the Ministers failed to carry out reviews of their handling of Mr Okasha's two requests in line with section 21 of FOISA, and, in particular, sections 21(4) and (5) of FOISA, within the 20 working days allowed by section 21(1) of FOISA. By so doing, they failed to comply with Part 1 of FOISA.
30. The Commissioner requires the Ministers to review their handling of Mr Okasha's two information requests in line with the requirements of section 21(4) of FOISA, and to notify Mr Okasha of the outcome of their review in terms of section 21(5) of FOISA. .



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 requests made by Mr Okasha. The Commissioner concludes that both requests meet the requirements of section 8(1) (and, in particular, section 8(1)(c)) of FOISA. By failing to conduct a review of their responses to Mr Okasha's information requests within the timescale specified in section 21(1), the Ministers failed to comply with Part 1 of FOISA

The Commissioner therefore requires the Ministers to conduct reviews in relation to Mr Okasha's requests and notify Mr Okasha of the outcome of the reviews by 30 July 2010.

Appeal

Should either Mr Okasha or the Ministers 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 notice.

Margaret Keyse
Head of Enforcement
15 June 2010



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.

...

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-

...

- (c) describes the information requested.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates –
 - (a) confirm a decision complained of, with or without such modification as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.



- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...