

Decision Notice

Decision 099/2019: Mr W and the General Teaching Council for Scotland

Professional Update Deferrals

Reference No: 201900166

Decision Date: 28 June 2019



Summary

The GTCS was asked about a named individual's attendance at meetings and tasks undertaken by that individual. The GTCS provided information, which it claimed was all the relevant information it held.

An application was made to the Commissioner, questioning whether the GTCS held more information. Following an investigation, the Commissioner was satisfied that the GTCS had carried out adequate searches and disclosed all the relevant information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 12 September 2018, Mr W made a request for information to the General Teaching Council for Scotland (the GTCS). Mr W made reference to a decision the GTCS had taken in connection with a previous complaint and requested information in three parts. At part 3, he asked for information regarding all Professional Update Deferrals for 2014 to 2018. He stated that this would include:
 - e) Details of all GTCS meetings attended by [named individual] including all minutes and contributions made by [named individual].
 - f) Meetings led by GTCS employees and attended by [named individual] on behalf of local councils and professional associations.
 - g) Details of any tasks undertaken on behalf of GTCS by [named individual] including any relevant documentation.
2. On 27 September 2018, the GTCS wrote to Mr W seeking confirmation that it had correctly considered his request to be from April 2018 to the date of his request.
3. The GTCS responded on 25 October 2018. The GTCS advised Mr W that it held information from April 2018 and provided him with minutes falling within the scope of part 3(e) of the request as set out above. In relation to parts 3(f) and (g), it informed him that no information was held.
4. On 20 November 2018, Mr W wrote to the GTCS, requesting a review of its decision on the basis that he had not specified a date in his request and challenged the Council's position that no information was held for part 3(f) of the request.
5. The GTCS notified Mr W of the outcome of its review on 20 December 2018. It provided Mr W with information falling within part 3(f) of his request. It noted that the date of April 2018 had been contained in another part of his initial request and that, other than the information provided, no information was held.

6. On 25 January 2019, Mr W wrote to the Commissioner's Office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr W later clarified that he was dissatisfied with the response to parts 3(e) to (g) of his request, as the GTCS had only provided documentation from April 2018 and did not include any earlier documentation which fell within the scope of his request.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr W made a request requests 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.
8. On 7 March 2019, the GTCS was notified in writing that Mr W had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The GTCS was invited to comment on this application and to answer specific questions, in particular to explain the steps it had taken to identify and locate the information requested.
10. The GTCS responded, providing submissions in support of its position that it did not hold any further information falling within the scope of Mr W's request.

Commissioner's analysis and findings

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

Information held by the GTCS

12. 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 qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
13. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold, although the applicant's reasons may be relevant to the investigation of what is actually held.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
15. The Commissioner has taken account of the submissions provided by Mr W, in which he submits that the GTCS only provided information from April 2018. The Commissioner notes that part 3 of the request had a timeframe of 2014 to 2018, and he considers that these dates define the scope of the relevant portions of part 3.

16. The GTCS described the searches and enquiries it undertook to ascertain what information it held falling within the scope of Mr W's request, confirming that the time period considered during the investigation was 2014 to 2018. These included submissions from the individual responsible for recording and holding any information that would fall within the scope of the request under investigation. The GTCS provided supporting evidence and explanation confirming the outcomes of its searches, including explanation of the named individual's involvement with the GTCS.
17. The GTCS concluded that, other than the information provided to Mr W in responding to his request and requirement for review (as outlined above), it held no further information.
18. Having considered all relevant submissions and the terms of Mr W's request, the Commissioner is satisfied that (during the investigation) the GTCS interpreted Mr W's request reasonably and took adequate, proportionate steps to establish what information it held in this case. Given the explanations provided, the Commissioner is satisfied – on the balance of probabilities – that the GTCS held no further information falling within the scope of Mr W's request, in addition to that already provided to him. Consequently, in respect of the parts under investigation, the Commissioner is satisfied that the GTCS responded to the request in accordance with Part 1 of FOISA.

Decision

The Commissioner finds that the General Teaching Council for Scotland Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr W, in the respects specified in his application to the Commissioner.

Appeal

Should either Mr W or the General Teaching Council for Scotland 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

28 June 2019

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.

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