

Decision Notice



Decision 108/2013 Mr Robert Wardrope and the Scottish Public Pensions Authority

Change to guidance

Reference No: 201300708
Decision Date: 6 June 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 29 October 2012, Mr Wardrope asked the Scottish Public Pensions Agency (the SPPA) for information about a change made to specific pensions guidance. The SPPA responded by disclosing certain information and stating that it did not hold other information. The Commissioner carried out an investigation and found that the SPPA had provided Mr Wardrope with all of the relevant information it held.

Relevant statutory provisions

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 29 October 2012, Mr Wardrope wrote to the SPPA and requested information about a change that had been made to specific pensions guidance. The request was in five parts.
2. The SPPA responded on 21 November 2012. The SPPA provide some information to Mr Wardrope and stated that it did not hold certain of the information requested.
3. On 14 December 2012, Mr Wardrope wrote to the SPPA requesting a review of its decision. In particular, Mr Wardrope stated that he was aware of two pieces of correspondence, which both he and the SPPA held and which fell within the scope of his request. Given that the SPPA had failed to consider this correspondence in its response, he questioned whether adequate searches had been carried out to identify and locate any relevant information.
4. On 19 December 2012, Mr Wardrope wrote to the SPPA and clarified that his request for review related to all parts his request, with the exception of part 1.



5. The SPPA notified Mr Wardrope of the outcome of its review on 15 January 2013. The SPPA confirmed that it held the two specific pieces of correspondence referred to by Mr Wardrope, which it considered to be his personal data and therefore exempt from disclosure in terms of section 38(1)(a) of FOISA. The SPPA otherwise upheld its original response.
6. On 14 March 2013, Mr Wardrope wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPPA's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Wardrope 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

8. The SPPA is an agency of the Scottish Ministers (the Ministers) and, on 18 April 2013, in line with agreed procedures, the Ministers were notified in writing that an application had been received from Mr Wardrope (as required by section 49(3)(a) of FOISA). Subsequent references to contact with or submissions from the SPPA are therefore references to contact with or submissions from the Ministers on behalf of the SPPA. The case was then allocated to an investigating officer.
9. The investigating officer subsequently contacted the SPPA, 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. The SPPA was asked to justify its reliance on any provisions of FOISA it considered applicable, and in particular to explain the steps it had taken to identify and locate the information requested.
10. The SPPA responded on 13 May 2013, providing submissions in support of its position that it did not hold any further information.
11. The relevant submissions received from both the SPPA and Mr Wardrope will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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



Information held by the SPPA

13. 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 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.
14. 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. 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.
15. The Commissioner notes the submissions provided by Mr Wardrope, in which he provides reasons why he considers the SPPA should hold further detailed information. He did not believe the change would have been made to the guidance without the consideration leading up to that change being recorded.
16. The SPPA submitted that it had responded adequately to all parts of Mr Wardrope's request, and explained the searches and enquiries it carried out to ascertain whether it held information falling within the scope of Mr Wardrope's request.
17. In its correspondence with the investigating officer, the SPPA provided background details of how it dealt with Mr Wardrope's request. It explained that in its opinion relevant and adequate searches had been carried out. In particular, the SPPA explained that the retrieval of the information held (and provided to Mr Wardrope) had been straightforward, the parameters of search being easily defined given the limited number of staff involved with the amendment in question. The SPPA explained the searches and enquiries it carried out to ascertain whether it held information falling within the scope of Mr Wardrope's request.
18. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the SPPA interpreted each part of Mr Wardrope's request reasonably and took adequate, proportionate steps to establish what information it held and which fell within the scope of each part of the request. In reaching this conclusion, she has taken into account the explanation provided to Mr Wardrope by the SPPA (about the change in question) in a further letter of 17 April 2013.
19. The Commissioner is therefore satisfied that the SPPA was correct to give Mr Wardrope notice, in terms of section 17(1) of FOISA, that (with the exception the information it did provide) it held no information falling within the scope of his request. In providing such information as it did, she is satisfied that it dealt with the request in accordance with section 1(1) of FOISA.



DECISION

The Commissioner finds that the Scottish Public Pensions Agency complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Wardrope.

Appeal

Should either Mr Wardrope or the Scottish Public Pensions Agency 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
6 June 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.

...