

Decision Notice

Decision 115/2019: Miss H and the Scottish Qualifications Authority

Investigation carried out by the SQA and Ofqual

Reference No: 201900883

Decision Date: 6 August 2019



Scottish Information
Commissioner

Summary

The SQA was asked about a joint investigation it carried out with Ofqual. The SQA told the requester it no longer held the information. The Commissioner investigated and accepted this.

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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 8 March 2019, Miss H made a request for information to the Scottish Qualifications Authority (the SQA). Miss H requested evidence of a joint investigation between the SQA and Ofqual regarding a whistleblowing allegation made under the Public Interest Disclosure Act 1998 (PIDA) to the SQA, and referred to in a letter dated November 2008.
2. The SQA responded on 19 March 2019. It gave Miss H notice, under section 17(1) of FOISA, that the information was not held. It explained that the information would have been held for three years and then destroyed, in line with its retention schedule.
3. On 2 April 2019, Miss H wrote to the SQA requesting a review of its decision as she was dissatisfied with its response.
4. The SQA notified Miss H of the outcome of its review on 25 April 2019, upholding its original response and confirming that it held no information.
5. On 29 May 2019, Miss H wrote to the Commissioner. Miss H applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Miss H stated she was dissatisfied with the outcome of the SQA's review because she had not obtained the information she had asked for.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Miss H made a request 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.
7. On 17 June 2019, the SQA was notified in writing that Miss H had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SQA was invited to comment on this application and to answer specific questions regarding its claim that the information was not held.

Commissioner's analysis and findings

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

Information held by the SQA

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. This is 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. These qualifications do not apply in this case.
11. 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 the authority to give the applicant notice to that effect.
12. The Commissioner's remit is to investigate and reach a determination on information held by a Scottish public authority, including whether any relevant information is held. He cannot comment on what the SQA ought to hold, but he can consider whether the SQA took adequate, proportionate steps to establish what information, if any, it held and which fell within the scope of Miss H's request.
13. The standard of proof in considering whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches and investigations carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.

The SQA's submissions

14. The SQA explained that Miss H's request referred to correspondence from 2009. The SQA noted that its current Head of Accreditation, who was in position at the time of the investigation, was contacted for advice on locating the information. The Head of Accreditation recalled the initial complaint and identified the areas that were likely to hold information. Searches were then carried out in SQA Accreditation as this was the area of the SQA that would have been investigating with Ofqual.
15. The SQA submitted that the individual who would have been responsible for this investigation no longer works there and it noted that they left in March 2012. The SQA explained that when an individual leaves the team any outstanding work that needs to be followed up within the Accreditation team is transferred to a shared folder, and their inbox is then routinely deleted when they leave. The SQA noted that as the investigation referred to by Miss H had been finalised there was no need to retain the correspondence in the shared area.
16. The SQA submitted that, once Accreditation had carried out searches and confirmed they held no relevant information, it checked the retention schedule to confirm how long this type of information should be retained. The SQA provided the Commissioner with a copy of its retention schedule.

17. The SQA submitted that the information requested by Miss H would have been destroyed in 2011/12. It noted that it did not hold a record of the destruction of the documents as its records management plan was not formally in place at that time, and there was no formal requirement to document the destruction of records.

Commissioner's conclusions

18. The Commissioner understands that Miss H does not accept that the information has been destroyed and she considers that the SQA will still hold evidence from the investigation.
19. However, having taken account of the submissions made by the SQA and having reviewed the SQA's retention schedule, the Commissioner accepts that, on the balance of probabilities, the SQA does not hold any information falling within the scope of Miss H's request. The Commissioner notes that the SQA's retention schedule makes it clear that information of the type requested by Miss H should be retained for three years and then destroyed. He notes that the complaint that led to the investigation was made in November 2008 and that much (if not all) of the relevant documentation would have been created in 2009.
20. Given the records management policies of the SQA and the fact that the information requested in this case is 10 years old, the Commissioner cannot see any operational reason for the SQA to have retained this information.
21. The Commissioner is satisfied that the SQA has taken all proportionate steps to identify whether or not it holds information falling within the scope of Miss H's information request, and he finds that the SQA was correct to give Miss H notice under section 17(1) of FOISA, that the information was not held.

Decision

The Commissioner finds that the Scottish Qualifications Agency complied with the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Miss H.

Appeal

Should either Miss H or the SQA 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

6 August 2019

Appendix 1: 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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