

Decision Notice 153/2020

Details of agreement on supervised teaching

Applicant: The Applicant

Public authority: Scottish Ambulance Service Board

Case Ref: 201902256



Scottish Information
Commissioner

Summary

SASB was asked for information detailing any agreement regarding a named person and the training of Scottish Ambulance Service personnel at a former medical practice.

SASB refused to provide information it held on the basis that it was personal data which it considered to be exempt from disclosure.

The Commissioner investigated and found that SASB had incorrectly identified and withheld information which did not fall within the scope of the Applicant's request and had failed to provide the Applicant with her appeal rights.

Following an investigation, Commissioner was satisfied that SASB had carried out adequate searches and that SASB held no information which would satisfy the request.

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); 21(10) (Review by Scottish public authority)

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 28 April 2019, the Applicant made a request for information to the Scottish Ambulance Service Board (SASB). The Applicant requested information which confirmed the approval by SASB, and any information showing or tending to show the agreement between SASB and the named person, or any other authority, with regard to teaching SASB clinical advisers in a GP practice by the named person.
2. SASB did not respond to the request.
3. On 13 June 2019, the Applicant wrote to SASB requesting a review of its failure to respond to the request.
4. SASB notified the Applicant of the outcome of its review on 18 June 2019. SASB withheld information on the basis that section 38(1)(b) (Personal information) of FOISA applied. It incorrectly provided the Applicant with the opportunity to request another review.
5. On 14 December 2019, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of SASB's review. She considered that its approach had been unhelpful and had failed to comply with statutory requirements. The Applicant questioned the way in which SASB had applied section 38(1)(b). On the basis that this was a pilot project, the Applicant expected the named person and SASB had obtained agreement of NHS Greater Glasgow and Clyde and West Dunbartonshire Health and Social Care Partnership and considered the provision of no information or advice raised suspicion.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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 December 2019, SASB was notified in writing that the Applicant had made a valid application. SASB was asked to send the Commissioner the information withheld from the Applicant and the case was allocated to an investigating officer.
8. On 19 December 2019, SASB contacted the Commissioner's office. SASB advised the Commissioner that, after responding to the Applicant on 28 June 2019, it had come to light that it held no information specific to this request. The information withheld under section 38(1)(b) of FOISA (a contract of employment) fell outwith the scope of the request.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. SASB was invited to comment on this application and to answer specific questions.
10. On 20 February 2020, the investigating officer asked SASB to confirm whether it was still seeking to rely on section 38(1)(b) of FOISA. In response, SASB submitted that, given that the information it had withheld under section 38(1)(b) fell outwith the scope of the request, it now wished to rely on section 17 of FOISA.
11. The Applicant was provided with an opportunity to comment on SASB's change of position and reliance on section 17 during the investigation.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered the information originally withheld from the Applicant and the relevant submissions, or parts of submissions, made to him by both the Applicant and SASB. He is satisfied that no matter of relevance has been overlooked.
13. As stated above, in the course of the investigation, SASB clarified that the information originally withheld was a contract of employment with the named individual which was entered into prior to the potential pilot project which formed the subject matter of this request.
14. The Commissioner has reviewed the contract of employment. He is satisfied that it does not fall within the scope of the Applicant's request. It does not relate to or convey any information which would satisfy the specific terms of this request. i.e. the supervised teaching at the GP practice in question.
15. The Commissioner, therefore, cannot accept that SASB was correct to rely on section 38(1)(b) of FOISA in their response to the Applicant.
16. The Commissioner will now consider whether SASB has taken adequate and proportionate steps to identify any information falling within the scope of the Applicant's request.

Information held by SASB

17. 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.
18. 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 the information an applicant believes the authority should hold, although an applicant's reasons may be relevant to the investigation of what is actually held.
19. 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. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately, the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

Submissions from the Applicant on section 17

20. The Applicant provided the Commissioner with details of the situation which led to the request for information.
21. The Applicant provided information relating to a meeting in 2016 attended by the named person and another medical colleague which was attended by members of SASB. The Applicant provided administrative emails discussing the setting up of the meeting and considered that the people named in those emails would have information or would know who might. Therefore, the Applicant believed that SASB would hold information within the scope of the request.
22. The Applicant also provided details of another pilot project and information she had located online. She considered there was likely to be a link between this project and the "idea" detailed in her request. The Applicant considered it highly likely that the people involved in this new project and in the original project would not have evolved entirely separately from the "idea" detailed by the named person previously, and the people involved were likely to be the same people involved in this collaboration. In her view, this also suggested that SASB would hold information falling within scope of her request.

Submissions from SASB on section 17

23. SASB provided the Commissioner with details of the searches undertaken to determine whether it held information falling within the scope of the request. SASB detailed the staff contacted, their roles (including department, e.g. human resources and regional departments) and explained why they would be potentially likely to be aware of any information held. It also provided their responses to the request for searches which showed nil responses.
24. One response recollected that the named person, as part of their role in supporting SASB Clinical Advisors, offered to provide some additional support regarding clinical decision

making at their practice location during clinical development time, but suggested that it would be likely that any information would be a matter between the named person and the other colleagues at the medical practice in question rather than SASB. Therefore, SASB are content that information falling within the scope of the request is not held by SASB.

The Commissioner's conclusion

25. Having considered all of the relevant submissions and the supporting evidence supplied, the Commissioner is satisfied that SASB carried out adequate, proportionate searches to identify and locate any recorded information held and falling within the scope of the Applicant's request. He is satisfied, on the balance of probabilities, that SASB does not hold the requested information. In reaching this conclusion, the Commissioner has taken account of the fact that he can only consider what information is actually held, not what information the Applicant might expect SASB to hold. He has also taken account of the fact that the pilot project in question did not take place and, consequently, it is reasonable to conclude that formal documentation relating to it would unlikely to have been compiled or retained.
26. The Commissioner, therefore, finds that SASB failed to comply with section 1(1) of FOISA by failing to give the Applicant notice, in line with section 17(1) of FOISA, that it held no recorded information falling within the scope of her request. As this has been notified to the Applicant during the investigation, the Commissioner does not require any action to be taken in relation to this breach.

Handling of request

27. SASB acknowledged and apologised that it incorrectly advised the Applicant to seek a review rather than appeal to the Commissioner and Court of Session in its review response. Consequently, the Commissioner finds that SASB failed to comply with section 21(10) of FOISA.
28. Given the Applicant was able to submit a valid appeal to the Commissioner, he does not require SASB to take any action in response to this failure. However, he has noted SASB's failure in handling this request in his case management system.
29. The Commissioner has issued guidance on the content of notices which sets out what information authorities must include both in the response to a request for information and in the response to a requirement for review¹.

Decision

The Commissioner is satisfied that the Scottish Ambulance Service Board (SASB) does not hold any information falling within the scope of the Applicant's request.

He finds that SASB failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant by failing to:

- notify the Applicant, in line with section 17 of FOISA, that it held no relevant recorded information falling within the scope of her request and
- provide the Applicant with her appeal rights in terms of section 21(10) of FOISA.

¹ https://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Contentofnotices/Content_of_notices.aspx

For the reasons set out above, the Commissioner does not require SASB to take any action in respect of these failures in response to the Applicant's application.

Appeal

Should either the Applicant or SASB 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

4 December 2020

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.

...

21 Review by Scottish public authority

...

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.

...

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