

Decision Notice

Decision 172/2017: Anna Hamilton and the Scottish Further and Higher Education Funding Council

Contract for legal services

Reference No: 201701559

Decision Date: 23 October 2017



Scottish Information
Commissioner

Summary

The SFC was asked for information relating to a contract for legal services and a report provided by the contractor. The SFC told the requester it did not hold some of the information requested.

During the investigation, the SFC notified the Commissioner that it did hold information falling within the scope of the request and that it had been provided to the requester.

The Commissioner was satisfied that, by the end of the investigation, all relevant information had been disclosed, but found that the SFC breached FOISA by initially informing the requester that it did not hold information.

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 6 March 2017, Ms Hamilton made a request for information to the Scottish Further and Higher Education Funding Council (the SFC). Ms Hamilton requested information on a contract for legal services awarded to DLA Piper and a report provided by DLA Piper relating to a governance review. The information requested included:
 - a) a copy of the DLA Piper contract agreement FINAL, and
 - b) the role of the person who authorised the DLA Piper report and on what date.
2. On 4 May 2017, Ms Hamilton wrote to the SFC, requesting a review in respect of its failure to respond to her information request.
3. On 26 June 2017, Ms Hamilton wrote to the Commissioner's office, stating she was dissatisfied with the SFC's failures to respond to her request and requirement for review. This resulted in the Commissioner issuing *Decision Notice 124/2017 Ms Anna Hamilton and the Scottish Further and Higher Education Funding Council*¹.
4. The SFC notified Ms Hamilton of the outcome of its review on 28 August 2017. It provided Ms Hamilton with some of the information she had requested. In relation to the above parts of her request, the SFC responded in terms of section 17(1) of FOISA, advising that the requested information was not held.
5. On 31 August 2017, Ms Hamilton wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Hamilton did not accept that the SFC did not hold the information.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2017/201701119.aspx>

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Ms Hamilton 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 12 September 2017, the SFC was notified in writing that Ms Hamilton had made a valid application. The case was then 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. On 26 September 2017, the SFC was invited to comment on this application and answer specific questions, in particular to explain the steps it had taken to identify and locate the information requested.
9. The SFC responded, explaining that, following further investigation, it had located information falling within the scope of the parts of Ms Hamilton's request under investigation. It confirmed that this information had been provided to Ms Hamilton. It explained that the information had been wrongly filed.
10. Ms Hamilton confirmed that the information had been disclosed and wished a decision on the SFC's handling of her 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 Ms Hamilton and the SFC. He is satisfied that no matter of relevance has been overlooked.

Information held by the SFC

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). 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.
14. In its submissions to the Commissioner, the SFC stated that its retention policy dictated that contract information should be destroyed after five years and it was assumed that the information requested at part a) above was no longer held. In this case, however, following further searches during the investigation, it had located the contract in question. It also confirmed that the information requested at part b) above was located by those further searches.
15. Having considered all relevant submissions and the terms of the requests, the Commissioner accepts that (by the close of the investigation) the SFC had identified and located all the information that it held falling within the scope of the request under investigation. He is also satisfied that the information located during the investigation has now been provided to Ms Hamilton.

16. However, it is evident that adequate searches were not carried out in dealing with Ms Hamilton's request or her requirement for review. If they had been, the Commissioner believes the information should have been located at that time. This may have negated the need for Ms Hamilton to make an application to the Commissioner.
17. In failing to take adequate steps to identify, locate and provide the requested information, the SFC failed to comply with section 1(1) of FOISA. In the circumstances, the SFC was incorrect to give Ms Hamilton notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of the request under investigation.

Decision

The Commissioner finds that the Scottish Further and Higher Education Funding Council (the SFC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms Hamilton. In failing to provide Ms Hamilton with all the information it held and which fell within the scope of her request, the SFC failed to comply with section 1(1) of FOISA.

Given that the information held has now been provided to Ms Hamilton, the Commissioner does not require the SFC to take any action regarding this failure, in response to Ms Hamilton's application.

Appeal

Should either Ms Hamilton or the Scottish Further and Higher Education Funding Council 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

23 October 2017

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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