

Decision Notice



Decision 179/2011 Mr John McLean and the Scottish Public Services
Ombudsman

Audit data

Reference No: 201101077
Decision Date: 5 September 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr McLean requested from the Scottish Public Services Ombudsman (SPSO) information relating to internal and external audits over a specified period. The SPSO responded by releasing information to Mr McLean. Following a review, Mr McLean remained dissatisfied that what had been supplied represented a full response to his request and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPSO had dealt with Mr McLean's request for information in accordance with Part 1 of FOISA, by providing such relevant information as it held at the time it received his request. He did not require the SPSO to take any action.

Relevant statutory provisions and other sources

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

Background

1. On 9 November 2010, Mr McLean emailed the SPSO requesting information relating to internal and external audits carried out on operations of the SPSO during the 2009 – 2010 annual reporting period. In particular, he asked to be supplied with the following:
 - a list of all procedures and systems audited for this report period
 - copies of the actual audit reports produced to comply with the SPSO's audit responsibilities, including any element of non-compliance and recommendations made
 - a copy of the audit schedule applicable to the specified periodHe emphasised that he was seeking only non-financial data, stating that he did not wish copies of any financial audits.
2. Mr McLean sent a further request by email dated 21 November 2010, requesting



- what systems and procedures had been audited by the SPSO's Audit and Advisory Committee in support of the SPSO's 2009 – 2010 annual report, relating specifically to "Internal Controls, Performance Management and Risk Management Systems"
 - the results and reports of these audits
 - what audits had been carried out in 2010 since the report cut-off date
 - copies of the audit schedules for the previous and current years, with any relevant results/reports.
3. Also on 21 November 2010, Mr McLean emailed the SPSO explaining that he would like to extend his request of 9 November 2010 to cover "the same information already requested but for the 2010 period after the close-out date of the report".
 4. The SPSO responded to Mr McLean on 8 December 2010, providing information in response to all three of the above requests. It also provided weblinks to information on its own website which was already readily available in the public domain.
 5. On 9 December 2010, Mr McLean emailed the SPSO requesting a review. He did not believe that the information provided by the SPSO represented an adequate response to the specific points of his requests.
 6. On 11 January 2011, the SPSO responded to Mr McLean's requirement for review, indicating it was upholding its original decision. It was satisfied that in responding to his requests, it had provided all of the relevant recorded information it held.
 7. On 11 June 2011, Mr McLean wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPSO's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
 8. The application was validated by establishing that Mr McLean had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

9. On 5 July 2011, the investigating officer contacted the SPSO, advising that an application had been received from Mr McLean and giving it an opportunity to provide comments on the application, all as required by section 49(3)(a) of FOISA. The SPSO was asked to respond to specific questions, with particular reference to the searches and enquiries undertaken to identify and locate any information it held which fell within the scope of Mr McLean's requests.



10. The SPSO responded on 27 July 2011. The submissions received from both the SPSO and Mr McLean, insofar as relevant, will be considered further in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr McLean and the SPSO and is satisfied that no matter of relevance has been overlooked.
12. Mr McLean was concerned that the information supplied to him failed to meet the specific points of his various requests. He also noted that there was information provided relating to 2008 (a period not covered by any his requests) and to various terms of reference (a subject not covered by any of the requests). The Commissioner would note at this point that (while consideration of what an authority *should* hold may be relevant to his investigation) he can only make his determination in a case such as this on the information the authority *does* hold.
13. The SPSO explained that its external auditors dealt with its accounts only, advising that any non-financial audits of systems and procedures (i.e. Mr McLean's specific area of interest) were carried out by the Scottish Legal Aid Board (SLAB), which was contracted to provide an independent internal audit function. It had concluded, therefore, that only the SLAB audit information fell within the scope of Mr McLean's requests.
14. The SPSO further explained that the secretary of its Audit and Advisory Committee had been consulted when responding to Mr McLean's request. It considered all the information it held about non-financial internal audits by SLAB in the 2009-10 and 2010-11 reporting periods had been provided to Mr McLean.
15. The SPSO went on to explain that there was a three-year Strategic Audit Plan covering the period April 2008 to March 2011, which included the periods specified in Mr McLean's requests. The Annual Assurance 2009-10 summarised the relevant work done in that period, with the results and the status of any recommendations, while the Internal Audit Update November 2010 provided an update on reviews in the period 2010-11: it included the report on the 2010 Document Management Internal Audit. The SPSO described information on the Case Management Internal Audit as completing the information held and provided to Mr McLean, noting that some of this predated the period 2009-10.
16. The SPSO also confirmed that no document entitled "Audit Schedule" existed. It explained that Mr McLean had also been directed to its website for additional information providing the context of its internal audit responsibilities and terms of reference.



17. Having considered all relevant submissions he has received, the Commissioner accepts that the SPSO provided Mr McLean with all of the information it held which fell within the scope of his requests, and that it does not (and did not at the time it received the requests) hold any further information falling within the scope of those requests.

DECISION

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

Appeal

Should either Mr McLean or the Scottish Public Services Ombudsman 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 notice.

Margaret Keyse
Head of Enforcement
5 September 2011



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.
...