

Decision Notice



Decision 189/2011 Mr Bernard Murney and the Scottish Public Services
Ombudsman

Information relating to expense claims

Reference No: 201101272
Decision Date: 16 September 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr Murney requested from the Scottish Public Services Ombudsman (the SPSO) information relating to expenses claims made by senior staff of the SPSO for the period 2002 to 2010. The SPSO responded by providing Mr Murney with information for the period from 2005 onwards, but advised him that it did not hold any relevant information for the period prior to 2005. Following a review, Mr Murney remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner was satisfied that the SPSO did not hold any information falling within the scope of Mr Murney's request for the period prior to 2005, and that it had complied with Part 1 of FOISA by providing Mr Murney with written notice to that effect, as required by section 17(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement) and 17(1) (Notice that information is 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 4 April 2011, Mr Murney wrote to the SPSO requesting copies of all documents relating to expenses claims made by senior staff at the SPSO from 2002 to 2010.
2. The SPSO responded on 4 May 2011. The SPSO provided Mr Murney with three documents containing details in tabular form of expenses claims made by the Ombudsman, Deputy Ombudsman and senior management from 2005 onwards, taken from the SPSO's accounting system.
3. On 3 June 2011, Mr Murney wrote to the SPSO requesting a review of its decision. Mr Murney considered the information he had received to be incomplete and contained only some of the information to which he believed he was entitled.



4. Following additional correspondence in which the SPSO sought to clarify why Mr Murney considered the information provided to be incomplete, the SPSO notified Mr Murney of the outcome of its review on 8 July 2011. The SPSO provided Mr Murney with additional information comprising its travel and subsistence expenses policy, a standard claim form, copies of receipts and copies of completed claim forms. The SPSO also explained to Mr Murney that it did not hold any relevant information falling within the scope of his request for the period prior to 2005. The SPSO explained that, before 2005, the Scottish Parliament controlled the SPSO's finances and expense claims at that time were made direct to the Scottish Parliament.
5. On 13 July 2011, Mr Murney 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. Mr Murney indicated that he was dissatisfied with the SPSO's failure to provide any information for the period prior to 2005.
6. The application was validated by establishing that Mr Murney had made a request 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

7. The investigating officer subsequently contacted the SPSO, 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. In particular, the SPSO was asked to provide explanations of its procedures regarding the claiming of expenses prior to 2005, and the steps undertaken to establish whether it held information regarding claims made prior to 2005.
8. The SPSO responded on 31 August 2011, providing responses to the questions raised, and an explanation of why it did not hold any relevant information for the period prior to 2005.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Murney and the SPSO and is satisfied that no matter of relevance has been overlooked.

Section 17 – Notice that information is not held

10. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.

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11. In this case, the SPSO notified Mr Murney in its review response dated 8 July 2011 that it did not hold any information falling within the scope of his request for the period prior to 2005.
12. In order to determine whether the SPSO dealt with Mr Murney's request correctly, the Commissioner must be satisfied as to whether, at the time it received Mr Murney's request, the SPSO held any information which would fall within the scope of his request, insofar as it related to the period prior to 2005.
13. In his submissions to the Commissioner, Mr Murney suggested that there ought to be a paper trail of such information within the SPSO.
14. In its submissions to the Commissioner, the SPSO explained that, prior to 2005, staff of the SPSO followed the Scottish Parliamentary travel and expense claim process. The SPSO explained that, as part of that process, individual claims were made direct to the Scottish Parliament, copies of expense claims were retained by the individual staff member making the claim until payment was confirmed in the following pay slip and the SPSO did not itself retain a copy of the claim.
15. The SPSO further explained that, as the relevant information for the period in question was held by the Scottish Parliament, and not by the SPSO, it did not consider it necessary to conduct any searches in order to ascertain whether it held the information under consideration.
16. Having considered the terms of Mr Murney's request and the explanation provided by the SPSO, the Commissioner's view is that the SPSO did not (at the time of receiving his request) hold any information that would address Mr Murney's request for the period prior to 2005. The Commissioner is satisfied by the SPSO's explanation of why it would not be expected to hold any information relating to the period prior to 2005 and he therefore accepts that the SPSO was correct to respond to Mr Murney's request (as it related to the period prior to 2005) in terms of section 17 of FOISA.

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 Murney.

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Appeal

Should either Mr Murney or the SPSO 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
16 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.

...

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.

...