

Decision Notice



Decision 262/2013 Mr James Boyle and the General Teaching Council for Scotland

Information relating to procedural hearings

Reference No: 201300726
Decision Date: 21 November 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 31 October 2012, Mr Boyle asked the General Teaching Council for Scotland (the GTCS) for information concerning certain investigations undertaken by it and the conclusions reached. The GTCS initially informed Mr Boyle that it had provided him with all of the information that it held. After reviewing the terms of Mr Boyle's request, the GTCS relied on the exemption in section 38(1)(a) of FOISA on the basis that any information covered by the request comprised Mr Boyle's own personal data.

Following an investigation, the Commissioner found that the GTCS was entitled to withhold the information under section 38(1)(a) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(a) and (2)(e)(i) (Effect of exemptions); 38(1)(a) and (5) (definitions of "data subject" and "personal data") (Personal information)

Data Protection Act 1998 (the DPA) section 1(1) (Basic interpretative provisions) (definition of personal data)

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 31 October 2012, Mr Boyle wrote to the GTCS requesting details of certain investigations undertaken, and decisions made, by the GTCS including members of GTCS committees.
2. The GTCS responded on 13 November 2012. The GTCS provided an explanation of certain of its processes to Mr Boyle. It also informed him that certain decisions to which he had referred in his request had not actually been taken by the GTCS.
3. On 12 December 2012, Mr Boyle wrote to the GTCS requesting a review of its decision. Mr Boyle reiterated his requests and stated that he did not consider the GTCS had answered his requests.



4. Mr Boyle did not receive a response to his requirement for review and, on 27 January 2013, wrote to the Commissioner stating that he was dissatisfied with the GTCS's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. Following this application, which led to *Decision 047/2013 Mr James Boyle and the General Teaching Council for Scotland*¹, the GTCS carried out a review and notified Mr Boyle of the outcome on 5 March 2013. The GTCS informed Mr Boyle that it had no additional information to share with him. It explained that it had already provided him with some information. Additionally, it stated that it had already provided him with an explanation of its processes in relation to the matters that were the subject of his request.
6. On 14 March 2013, Mr Boyle wrote to the Commissioner, stating that he was dissatisfied with the outcome of the GTCS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Boyle made a request for information to a Scottish public authority and 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

8. The investigating officer subsequently contacted the GTCS, 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. The GTCS was asked to explain the nature of the information that had been created in relation to the matters covered by Mr Boyle's request. The GTCS was asked also to clarify the searches it had undertaken in order to locate and retrieve any relevant information falling within the scope of Mr Boyle's request. Additionally, the GTCS was asked to provide the Commissioner with any information previously disclosed to Mr Boyle.
9. The GTCS subsequently provided the Commissioner with a sample of the information that had previously been disclosed to Mr Boyle and explained the searches that it had conducted in order to locate and retrieve any information falling within the scope of the request. During the investigation, the investigating officer also visited the GTCS's premises in order to view the scanned archive copy of information that the GTCS held relating to the matters covered by Mr Boyle's request.
10. During the investigation, the GTCS concluded that it held other information which could fall within the scope of Mr Boyle's request. It also concluded that the information sought by Mr Boyle (including the information already provided to him) comprised entirely his own personal data. Accordingly, the GTCS considered the information to be exempt from disclosure in terms of section 38(1)(a) of FOISA.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2013/201300390.aspx>



11. The investigating officer subsequently sought, and received, submissions from the GTCS explaining why it considered the information under consideration to be exempt from disclosure under section 38(1)(a) of FOISA. The investigating officer also sought and received submissions from Mr Boyle.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Boyle and the GTCS. She is satisfied that no matter of relevance has been overlooked.

Section 38(1)(a) of FOISA – personal information

13. Section 38(1)(a) of FOISA contains an absolute exemption in relation to personal data of which the applicant is the data subject. The fact that it is absolute means that it is not subject to the public interest test set out in section 2(1) of FOISA.
14. This exemption exists under FOISA because individuals have a separate right to make a request for their own personal data (commonly known as a "subject access request") under section 7 of the DPA. The DPA will therefore usually determine whether a person has a right to their own personal data. Section 38(1)(a) of FOISA does not deny individuals a right to access to information about themselves, but ensures that the right is exercised under the DPA and not under FOISA.
15. Personal data is defined in section 1(1) of the DPA as data which relate to a living individual who can be identified: a) from those data, or b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (the full definition is set out in the Appendix).
16. The GTCS has withheld the information sought by Mr Boyle under this exemption. The GTCS submitted that all of the relevant information either originates from Mr Boyle (or his representatives) or is an expression of opinion concerning matters relating to him or because he is the subject of the data.
17. Mr Boyle submitted that the information under consideration did not comprise his personal data. In his view, the information concerned the GTCS's legal duties, decisions taken by it and information on its committees and sub-committees.
18. Having considered the nature of the information under consideration, the Commissioner is satisfied that the information which the GTCS holds comprises Mr Boyle's personal data. The Commissioner is satisfied that the information relates to Mr Boyle as an individual and he can be identified from those data. The information is biographical in relation to - and focusing on - Mr Boyle. Whilst some of the information concerns procedures followed by the GTCS, such information appears entirely within the context of discussions of matters relating to Mr Boyle.



19. Having concluded that the information under consideration is Mr Boyle's own personal data, the Commissioner finds that the GTCS is entitled to withhold the information under section 38(1)(a) of FOISA. However, by failing initially to inform Mr Boyle that the information was being withheld under this exemption, the Commissioner finds that the GTCS failed to comply with Part 1 of FOISA. The Commissioner notes that this failing took place in the context of a considerable volume of complex and overlapping correspondence from Mr Boyle and she does not require the GTCS to take any action in response to this decision.
20. As noted above, the exemption in section 38(1)(a) is an absolute one and the Commissioner is therefore not required to go on to consider whether the public interest lies in the information being released or withheld.
21. The Commissioner appreciates that Mr Boyle considers the GTCS has reached certain conclusions, and made certain decisions, from the information, with which he disagrees. However, the Commissioner notes that her remit is to ascertain whether or not recorded information can be disclosed under FOISA. Consequently, in this instance, she cannot comment on whether the GTCS was entitled to draw certain conclusions or make particular decisions based on that information.

DECISION

The Commissioner finds that the General Teaching Council for Scotland (the GTCS) was entitled to withhold the information sought by Mr Boyle under the exemption in section 38(1)(a) of FOISA.

However, by failing initially to treat the request as one seeking Mr Boyles's own personal data, the GTCS failed to comply with part 1 of FOISA. The Commissioner does not require the GTCS to take any action in relation to this failing in response to this decision.

Appeal

Should either Mr Boyle or the General Teaching Council for Scotland 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
21 November 2013



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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and

...

- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –

...

- (e) in subsection (1) of section 38 –

- (i) paragraphs (a), (c) and (d); and

...

38 Personal information

- (1) Information is exempt information if it constitutes-

- (a) personal data of which the applicant is the data subject;

...



(5) In this section-

...

"data subject" and "personal data" have the meanings respectively assigned to those terms by section 1(1) of that Act;

...

Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

"data subject" means an individual who is the subject of personal data;

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...