

Decision Notice



Decision 051/2011 Mr Edward Cairns and Audit Scotland

Complaint handling arrangements

Reference No: 201100222
Decision Date: 11 March 2011

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Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Edward Cairns requested from Audit Scotland information relative to its complaint handling arrangements. Audit Scotland responded by providing Mr Cairns with a copy of its complaints booklet and an explanation. Following a review, as a result of which Mr Cairns was provided with further information, Mr Cairns remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Audit Scotland had dealt with Mr Cairns' request for information in accordance with Part 1 of FOISA, by providing him with the relevant information it held. He did not require Audit Scotland to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (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 3 December 2010, Mr Cairns wrote to Audit Scotland requesting the following:
Under the terms of the Freedom of Information (Scotland) Act 2002 I formally request information on arrangements for ensuring the impartial and independent handling of serious complaints or allegations of wrongdoing against senior employees in your organisation, for example board members.
Does any such arrangement exist and in recent years have any such allegations been transferred for handling by an independent and impartial tribunal in order to comply with the terms of the Human Rights Act 1998 and Article 6 of the European Convention on Human Rights?



2. Audit Scotland responded on 9 December 2010. Mr Cairns was provided with a copy of Audit Scotland's complaints booklet and it was explained that complaints were reviewed by persons independent of the area or person complained about. Audit Scotland also advised Mr Cairns that the Scottish Public Services Ombudsman (SPSO) was the final independent external reviewer, responsible for ensuring that public bodies followed their complaints processes correctly. Finally, it confirmed that I had not required external assistance for complaints handling or hearings.
3. On 10 December 2010, Mr Cairns wrote to Audit Scotland again. In the course of this letter, he questioned the legality of Audit Scotland's stated position on the subject matter of his information request.
4. On 17 January 2011, Mr Cairns wrote to Audit Scotland requesting a review of its decision. In doing so, he referred to comments on legality in his letter of 10 December 2010.
5. Audit Scotland notified Mr Cairns of the outcome of its review on 1 February 2011. It confirmed that the information it had provided to him was correct, while also providing a complaints process flow chart for Mr Cairns' information.
6. On 2 February 2011, Mr Cairns wrote to the Commissioner, stating that he was dissatisfied with the outcome of Audit Scotland'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 Cairns 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

8. On 22 February 2011, the investigating officer notified Audit Scotland in writing that an application had been received from Mr Cairns, 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, Audit Scotland was asked explain the steps it had taken to identify and locate the information Mr Cairns had requested.
9. Audit Scotland responded to the effect that all relevant information it held had been provided to Mr Cairns, providing explanation of the steps taken to establish this.
10. In correspondence, Mr Cairns has questioned the legality of Audit Scotland's complaints handling processes. The Commissioner, however, can only comment whether or not Audit Scotland complied with the provisions of FOISA in dealing with Mr Cairns' request for information.



11. The relevant submissions obtained from Mr Cairns and Audit Scotland will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr Cairns and Audit Scotland and is satisfied that no matter of relevance has been overlooked.
13. The Commissioner notes that information was provided to Mr Cairns in the response provided on 9 December 2010 and that further information was provided in the response to his request for review on 1 February 2011. As in all cases, his decision considers the handling of Mr Cairn's request at time when Audit Scotland notified Mr Cairns of the outcome of its review.

Section 1(1) – General entitlement

14. 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 it by the authority, subject to certain restrictions which by virtue of section 1(6) of FOISA allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case.
15. In response to the investigating officer, Audit Scotland confirmed that it had provided Mr Cairns with all of the information it held which fell within the scope of his request, providing an explanation of the searches and enquiries carried out to determine what information was held.
16. Having considered Audit Scotland's submissions, and while noting Mr Cairns reasons for believing the requested information *should* be held, the Commissioner accepts that Audit Scotland carried out adequate searches and enquiries to establish that it did not hold any further information falling within the scope of Mr Cairns' request.
17. The Commissioner is therefore satisfied that any relevant information held by Audit Scotland has been provided to Mr Cairns, and consequently that Audit Scotland complied with section 1(1) of FOISA in dealing with his request.



DECISION

The Commissioner finds that Audit Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Cairns.

Appeal

Should either Mr Cairns or Audit Scotland 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
11 March 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.
...
- (6) This section is subject to sections 2, 9, 12 and 14.