

Decision Notice



Decision 076/2011 Mr Eddie Cairns and the Police Complaints Commissioner
for Scotland

Complaints Procedures

Reference No: 201100134
Decision Date: 18 April 2011

www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

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



Summary

Mr Cairns requested from the Police Complaints Commissioner for Scotland (the PCCS) information relating to its complaints handling procedures. The PCCS responded by describing its complaints handling procedures. Following a review, Mr Cairns remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the PCCS had dealt with Mr Cairns' request for information in accordance with Part 1 of FOISA, by disclosing all the information it held which fell within the scope of his request.

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 1 December 2010, Mr Cairns wrote to the PCCS requesting 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”. He also asked: “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. The PCCS responded on 12 January 2011 with details of its structure and its complaints handling procedures, together with advice on the correct legal route once its own procedures have been exhausted. It advised that it had no arrangements for the transfer of complaints to “an independent and impartial tribunal” and therefore had not transferred any cases to such a tribunal.



3. On 17 January 2011, Mr Cairns wrote to the PCCS, requesting a review of its decision. He highlighted that he was concerned about arrangements to ensure compliance with Article 6 in cases where there was a conflict of interest, suggesting that the PCCS's response was "fundamentally unlawful".
4. The PCCS notified Mr Cairns of the outcome of its review on 18 January 2011, upholding its original decision on the grounds he had been given the information he had requested.
5. On 21 January 2011, Mr Cairns wrote to the Commissioner, stating that he was dissatisfied with the outcome of the PCCS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. 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

7. On 31 January 2011, the PCCS was notified in writing that an application had been received from Mr Cairns, given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, the PCCS was asked to explain the steps taken to establish what information it held which fell within the scope of Mr Cairns' request.
8. In response, the PCCS advised of the steps taken in response to Mr Cairns' request. The relevant submissions made by Mr Cairns and the PCCS will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both Mr Cairns and the PCCS and is satisfied that no matter of relevance has been overlooked.
10. In terms of section 1(4) of FOISA, the information to be given to an applicant in response to a request under section 1(1) is (subject to exceptions which do not appear to be relevant in this case) that information held by the authority at the time the request is received. Where a Scottish public authority receives a request for information it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant in writing that it does not hold the information.



11. Mr Cairns' request is set out in paragraph 1 above. In response to this request, the PCCS disclosed some information, while confirming that it held no further information falling within the scope of his request (by reason that such arrangements did not exist). The Commissioner must now consider whether this was the appropriate response. His role in this connection is to satisfy himself as to what relevant information the PCCS actually held, as distinct from what it should have held (although consideration of the latter question may be relevant in coming to a conclusion on the former).
12. In his request for review, Mr Cairns set out his grounds for expecting the PCCS to handle complaints in a particular way, based on his understanding of Article 6 of the European Convention on Human Rights and his experience of complaints handling by another agency in a case where a conflict of interest had arisen. In the circumstances, he considered the PCCS's response to his request to be "fundamentally unlawful".
13. The submissions provided by the PCCS during the investigation clarified why it did not believe it could not be expected to hold the information Mr Cairns expected it to hold, given that it had no arrangements in place of the type he had in mind and there were appropriate external remedies for those dissatisfied with its service and its decisions. The PCCS also supplied various pieces of its correspondence with Mr Cairns supporting its submissions.
14. Having considered all the submissions made by Mr Cairns and the PCCS, the Commissioner has concluded that the PCCS took adequate steps to identify and locate all of the information it held and which fell within the scope of Mr Cairns' request. He is also satisfied that, at the time the PCCS received the request, no information falling within its scope (in addition to the information it supplied to Mr Cairns at that time) was held.
15. Consequently the Commissioner is satisfied that the PCCS dealt with Mr Cairns' request in accordance with Part 1 of FOISA.

DECISION

The Commissioner finds that the Police Complaints Commissioner for 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 the Police Complaints Commissioner for 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
18 April 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.
- ...