

Decision Notice

Decision 092/2015: Mr Niall MacKinnon and Education Scotland

Information on HMIE Inspection

Reference No: 201500670

Decision Date: 23 June 2015



Scottish Information
Commissioner

Summary

On 28 January 2015, Mr MacKinnon asked Education Scotland for correspondence about a school inspection which had taken place in 2008 and reported on in 2009. Education Scotland informed Mr MacKinnon that it did not hold some of the information. Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 28 January 2015, Mr MacKinnon asked Education Scotland for information relating to the HMIE Inspection of Plockton Primary School in November 2008 and the subsequent report of 10 February 2009. This included a request for:
 - i. The completed "Record of Visit" document as completed by the lead inspector for this inspection,
 - ii. The document(s) constituting the formal response of Highland Council to the draft inspection, and
 - iii. The document(s) constituting the formal response of the Plockton Primary School Parent Council to the draft inspection report.
 - iv. The identity of the lead author(s) of a background document that had been sent to the Cabinet Secretary, and which had been provided to him under a previous request for information.
2. Education Scotland responded on 13 February 2015. It provided Mr MacKinnon with some information, whilst stating that it did not hold the information requested above.
3. On 10 March 2015, Mr MacKinnon asked Education Scotland to conduct a review of its response, expressing his concerns that the information was claimed not to be held.
4. Education Scotland notified Mr MacKinnon of the outcome of its review on 1 April 2015. It upheld its previous response without amendment.
5. On 10 April 2015, Mr MacKinnon wrote to the Commissioner's Office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr MacKinnon did not accept that Education Scotland did not hold the information requested.

Investigation

6. The application was validated by establishing that Mr MacKinnon 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.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application.
8. Education Scotland is an agency of the Scottish Ministers (the Ministers). Subsequent references to contact with or submissions from Education Scotland should be read as references to contact with or submissions made by the Ministers on behalf of Education Scotland.
9. On 18 May 2015, in line with agreed procedures, the investigating officer notified Education Scotland in writing that an application had been received from Mr MacKinnon. Education Scotland was invited to comment on the application and were asked to respond to specific questions. They were asked to explain what steps Education Scotland had taken to identify and locate the information covered by Mr MacKinnon's application.
10. Education Scotland responded, explaining the steps it had taken and the searches carried out to identify and locate the information requested.
11. During the investigation, Mr MacKinnon withdrew his application as it pertained to part ii. of his request above, indicating that he had sourced that information elsewhere.

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 MacKinnon and Education Scotland. She is satisfied that no matter of relevance has been overlooked.
13. 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 that information by the authority. This obligation is subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
14. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
15. In providing submissions to the Commissioner, Education Scotland explained that the information requested in parts i. to iii. (inclusive) of his request related to a school inspection which had taken place in November 2008. It explained that there was no organisational need to retain information, other than core documents such as the inspection report itself. The information had been routinely destroyed, in line with Education Scotland's records.

management policy. It explained the searches carried out to confirm that it did not hold the information requested, with supporting evidence.

16. In relation to part iv. of Mr MacKinnon's request, for the identity of the author(s) of the background document, Education Scotland explained that at that time the document in question would have been written by someone in HMIE (now Education Scotland). However, it was unable to confirm whether this was written by an HMIE Inspector or someone else within the inspection team, as this has not been documented.
17. Education Scotland explained that whilst it would have been known who had written the document at the time it was sent to the Cabinet Secretary, the individuals involved no longer worked with Education Scotland and it was not possible to check their recollection.
18. Having considered all relevant submissions and the terms of the request, and taking into account the time that has passed since any relevant information would have been created, the Commissioner accepts that Education Scotland carried out adequate searches and other enquiries to ascertain whether it held any information falling within the scope of Mr MacKinnon's request. In the circumstances, the Commissioner accepts there would no reasonable expectation that further information would have been retained by the time of Mr MacKinnon's request.

Decision

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

Appeal

Should either Mr MacKinnon or Education 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

23 June 2015

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.

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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info