

Decision Notice

Decision 056/2017: Mr James Duff and the Scottish Ministers

Reports on Complaints

Reference No: 201700287

Decision Date: 19 April 2017



Scottish Information
Commissioner

Summary

The Ministers were asked for reports on complaints made to Tony Blair, Gordon Brown and the Scottish Secretary of State. The Ministers responded, explaining why they did not hold reports on these complaints. The Commissioner upheld the Ministers' response.

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 22 December 2016, Mr Duff made a request for information to the Ministers. The information requested was
“...copies of Ministers' reports on complaints made to Tony Blair, Gordon Brown and the Scottish Secretary of State about [Mr Duff's] sequestration and fake police reports.”
2. The Ministers responded on 10 January 2017, explaining that no such reports were made and therefore they did not hold the requested information.
3. On 11 January 2017, Mr Duff wrote to the Ministers requesting a review of their decision. He believed the reports must be held and provided his reasoning.
4. The Ministers notified Mr Duff of the outcome of their review on 8 February 2017, confirming their original decision without modification.
5. On 10 February 2017, Mr Duff wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Duff stated he was dissatisfied with the outcome of the Ministers' review because he did not believe they did not hold the information.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Duff made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 28 February 2017, the Ministers were notified in writing that Mr Duff had made a valid application. The case was then allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Ministers were invited to comment on this application and answer specific questions, including questions on the searches the Council made for the information.

Commissioner's analysis and findings

9. 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 Duff and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Section 17 – information not held

10. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to qualifications which are not applicable in this case. Under section 17(1), where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
11. In this case, the Ministers gave notice to Mr Duff that they did not hold the information he described in his request.
12. In his application to the Commissioner, Mr Duff stated that it was impossible that there were no reports, given his correspondence with the Prime Minister at 10 Downing Street and also with the Scotland Office (based in Whitehall, London). In support of his application, Mr Duff provided copies of letters he had received from both these offices. One letter informed Mr Duff (16 May 2008) that his complaint had been passed to the then Scottish Executive, “for them to deal as the matter relates to Scots Law and is therefore within their area of responsibility.”
13. Mr Duff commented that the issues he had referred to remained the responsibility of the Ministers and, in his view, if they did not hold the information there was “something far wrong with the Government’s systems”.
14. The Ministers submitted that it would only hold information if action had been taken following the correspondence from Mr Duff and the UK Government. The Ministers stated that no such action was taken, because the complaint was one raised repeatedly over a considerable number of years. The Ministers commented that Mr Duff had been advised on numerous occasions that the Scottish Government would not continue to deal with repeated correspondence on which it had already responded and on which it had made its position clear.
15. The Ministers also stated that “the fact that Mr Duff approached the UK Government, who rightly directed him back to the Scottish Government on matters within the ambit of the Scottish Government, does not automatically mean that the Scottish Government would have carried out an investigation of those matters.”
16. The Ministers provided correspondence (dated 21 December 2016) confirming that they informed Mr Duff that they would not investigate the matters he was describing. The Commissioner notes that the Ministers also advised Mr Duff to seek independent legal advice, or speak to his local Citizens’ Advice Bureau, if he wished to pursue his complaints. In the correspondence with Mr Duff, the Ministers also informed him that if he continued to write to the Scottish Ministers, it would not respond to repeated requests which raised no new matters.

Searches

17. The investigating officer asked the Ministers to detail the searches they had undertaken. The Ministers explained that all the relevant correspondence with Mr Duff was held in the one

place, by the Scottish Government Legal Directorate (SGLD) Litigation Division. Given the nature of the correspondence, no searches were considered necessary outwith the litigation files.

18. Within SGLD, searches were undertaken of paper files covering approximately the last 10 years. These paper files held Mr Duff's correspondence and, where a response was made, the correspondence from the Ministers. Specifically, the files were searched for the period following receipt of the letters from the UK Government referred to in Mr Duff's correspondence.
19. The Ministers also explained that the Litigation Division kept a folder within EDRM (the Ministers' Electronic Records Management system) for Mr Duff's correspondence. This was also searched: as items there could be sorted by date, it was possible to look at each document and see whether it fell within the scope of the request.
20. The Ministers confirmed that no relevant information was located during these searches.
21. The Ministers explained that they had not expected any relevant information to be held, as the information Mr Duff was seeking would only be held if action had been taken. As indicated above, the Ministers confirmed in their submissions that no such action was taken.

Conclusions

22. The Commissioner has considered the Ministers' explanations of their searches and enquiries and why those searches and enquiries would have been likely to identify and locate any relevant information. She has taken into account the Ministers' statement that no action was taken in relation to the correspondence passed on by the UK Government, given that they raised no issues which had not been addressed by the Ministers already.
23. The Commissioner accepts that the Ministers undertook reasonable, proportionate searches and enquiries in the circumstances, with a view to locating and identifying any information falling within the scope of Mr Duff's request. She accepts that any relevant information, if held, would have been identified using the searches and enquiries described by the Ministers. She is satisfied in the circumstances that they did not hold any such information.

Other matters

24. In his application, Mr Duff raises concerns about the Government's systems. His focus appears to be whether the Ministers ought to have created reports in relation to the matters referred by the UK Government. This is based on his understanding of the Ministers' responsibilities and how he believes they ought to handle his complaints. If he wishes to pursue this matter he can, as the Ministers have advised, obtain independent legal advice.
25. As stated in many previous decisions, the Commissioner's remit extends only to consideration of whether a Scottish public authority actually holds the requested information and whether it has complied with Part 1 of FOISA or the Environmental Information (Scotland) Regulations 2004 in responding to a request. The Commissioner cannot comment on whether a public authority should have taken particular action or, if it has, what records it should maintain in relation to that action.

Decision

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

Appeal

Should either Mr Duff or the Scottish Ministers 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

19 April 2017

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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