

Decision Notice

Decision 155/2018: Dr Q and the Scottish Ambulance Service Board

Tracking BASICS responders using Airwave radios

Reference No: 201800660

Decision Date: 5 October 2018



Scottish Information
Commissioner

Summary

The SASB was asked for information relating to its decision not to track BASICS responders using Airwave radios. The SASB failed to respond to the initial request. In its review outcome, it explained how it tracks the location of BASICS responders.

Following investigation, the Commissioner found that the SASB failed to respond to the request in terms of FOISA. He accepted, however, that the SASB did not hold the requested information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) and (2) (Notice that information is not held); 19(b) (Content of certain notices); 73 (Interpretation) (definition of “information”)

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 12 January 2018, Dr Q made a request for information to the Scottish Ambulance Service Board (the SASB). He asked to be supplied with details of why the SASB was not using Airwave radios to track BASICS [British Association of Immediate Care Schemes] responders.
2. The SASB failed to respond to this information request.
3. On 13 February 2018, Dr Q wrote to the SASB requesting a review of its decision on the basis that it had failed to respond to his information request.
4. The SASB notified Dr Q of the outcome of its review on 5 March 2018. It simply advised Dr Q that its Ambulance Control Centres use Automatic Vehicle Location System (AVLS) to track the location of BASICS responders.
5. On 7 March 2018, the SASB wrote again to Dr Q and apologised for failing to respond to his initial request.
6. On 16 April 2018, Dr Q applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the SASB’s review because it did not provide him with a response to his request.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Dr Q made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
8. On 14 May 2018, the SASB was notified in writing that Dr Q had made a valid application and the case was allocated to an investigating officer.

9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SASB was invited to comment on this application and to answer specific questions, including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Dr Q and the SASB. He is satisfied that no matter of relevance has been overlooked.

Whether information was held

11. Under 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.
12. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not generally require a public authority to create recorded information in order to respond to a request, or to provide information which is not held in a recorded form (e.g. about a person's opinion). The definition excludes unrecorded information.
13. In his application, Dr Q submitted that he considered the SASB's reference to AVLS to refer to the largely defunct Terrafix system. Dr Q explained that the reason for his information request was that there had been no replacements provided for VLS units that were previously in use by BASICS doctors. Dr Q argued that the decision not to replace Terrafix units as they fail has left BASICS doctors without any tracking facility, which has resulted in critical incidents in which the nearest resource has not been tasked to patients. Dr Q noted that, in one particular incident, a patient death may have been linked to the delay.
14. Dr Q reiterated that his request was seeking information on the reasons why the SASB had not chosen to switch on the GPS facility for BASICS doctors in their Airwave radios as they had done so for SASB officers, and he argued that the SASB had failed to answer this question.
15. In its submissions to the Commissioner, the SASB explained that it does not use Airwave radios to track BASICS responders as most BASICS responders do not have Airwave radios. The SASB noted that BASICS had supplied a limited number of Airwave radios to its members and it referred the Commissioner to a factsheet¹ on the BASICS website.
16. In later correspondence, the SASB reiterated that BASICS Scotland decides what equipment its members have. The SASB noted that BASICS Scotland are currently trialling Airwave with some of their members and that it had recently obtained minutes of BASICS meetings at which Airwave radios were discussed. The SASB noted that it had provided Dr Q with copies of these minutes, in response to another request. The SASB submitted that the officer with responsibility for coordinating volunteer responders had confirmed that the SASB did not hold any other relevant information, apart from these minutes.

¹ <https://basics-scotland.org.uk/wp-content/uploads/2016/01/New-Responder-Factsheet-large-Update-Dec-16-web.pdf>

17. The SASB was questioned further about the information it held and the searches it had carried out. It explained that, while it had carried out some small scale testing of Airwave radios, it had found it was more efficient to contact BASICS responders via their mobile phones. The SASB submitted that the testing it had carried out had not been formally recorded and that it did not hold any recorded information about this testing. The SASB described the outcome of the testing it had conducted: it noted that when some GPs were using the Airwave radios, some of the time the radio was not updated: therefore, the GPs were showing as available when in fact they were not.
18. The SASB explained that it also had a number of Airwave radios out with BASICS responders and the majority had not been used in months; in fact, only a few responders were using them regularly. The SASB explained that, when it had experienced instances of Airwave radios being turned off, it had been able to make contact via the responder's mobile phone instead. The SASB noted that the Airwave radio is not as discreet as a mobile phone and, if it is on all the time, it is constantly making noises as other users receive and send information. This can occur when other users press certain buttons, which means it can be quite burdensome if responders are trying to sleep or are out socialising with family or friends.
19. The Commissioner has considered the submissions from the SASB and the comments made by Dr Q. The SASB has provided the Commissioner with submissions based on the corporate memory and knowledge of the SASB, which go some way towards answering Dr Q's request for information, as they demonstrate the reasons why it does not use Airwave radios for tracking BASICS responders.
20. However, the submissions and explanation from the SASB were not based on recorded information held by the SASB. The SASB is not required to provide such information in response to a request made under FOISA, as FOISA only applies to recorded information. The Commissioner considers the submissions to be helpful, but the SASB was not required to provide such information to Dr Q; it is only required to provide him with recorded information.
21. Given the explanations provided by the SASB, the Commissioner is satisfied that - on the balance of probabilities, and after repeated questioning - it does not hold any recorded information falling within the scope of Dr Q's request for information. He accepts that the informal testing of Airwave radios was not a process which generated recorded information, and information about the testing exists only in the recollections of SASB staff.
22. Section 17(1) of FOISA requires that an authority must give notice to an applicant where it does not hold the information requested. Under section 17(2), any such notice must contain certain information about the rights of appeal, as set out in section 19 of FOISA.
23. Taking account of all of the correspondence between the SASB and Dr Q, the Commissioner does not accept that the SASB provided Dr Q with proper notice that it did not hold any information falling within the scope of his request, and therefore failed to comply with section 17(1) of FOISA.
24. The SASB also failed to provide Dr Q with details of his right to apply to the Commissioner for a decision, in its response to his request for review. The Commissioner therefore finds that the SASB failed to comply with the requirements of section 19(b) of FOISA.

Decision

The Commissioner finds that the Scottish Ambulance Service Board (the SASB) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Dr Q.

The Commissioner finds that the SASB failed to give Dr Q notice, under section 17(1) of FOISA, that it did not hold any recorded information falling within the scope of his request. The SASB also failed to provide information about Dr Q's right of application to the Commissioner, as required by section 19(b) of FOISA.

As that the Commissioner is satisfied that the SASB does not hold any relevant recorded information, he does not require the SASB to take any action in respect of these failures in response to Dr Q's application.

Appeal

Should either Dr Q or the SASB 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

5 October 2018

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.

(2) Subsection (1) is subject to section 19.

...

19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

...

(b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

73 Interpretation

In this Act, unless the context requires a different interpretation –

...

“information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info