

Decision Notice



Decision 215/2010 Ms X and the Scottish Public Services Ombudsman

Accuracy and extent of information provided

Reference No: 201001657

Decision Date: 21 December 2010

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Scottish Information Commissioner

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Summary

Ms X requested from the Scottish Public Services Ombudsman (the SPSO) information relating to complaints. The SPSO responded by providing the information requested. However, Ms X disputed the accuracy and extent of the information provided, having compared it to information received from the SPSO in response to a previous request. Following a review, Ms X remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPSO had dealt with Ms X's request for information in accordance with Part 1 of FOISA, by providing the information it held corresponding with the scope of her request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (6) (General Entitlement)

Scottish Public Services Ombudsman Act 2002 section 5 (Matters which may be investigated)

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 30 June 2010, Ms X wrote to the SPSO, requesting the following information:
 - a) The reference numbers of all the complaints submitted to the SPSO using the online complaint form during the period 26 April 2010 until 2 May 2010, clearly indicating:
 - i) The exact time each one of them was submitted;
 - ii) The public service bodies those complaints were made against
 - b) The stage each complaint has reached at the time of [the SPSO's] response;
 - c) The SPSO's target time to make preliminary assessment for submitted complaints;



- d) A copy of those submitted complaints and the SPSO's response to them (if such a response had been made by the time of the SPSO's response to Ms X's information request).
2. On 1 July 2010, Ms X again wrote to the SPSO, adding a number of additional points to her request, to include a range of statistical, procedural and performance information. However, this decision notice is concerned only with the original request as set out above.
 3. The SPSO responded on 29 July 2010. It provided a range of information to Ms X in response to her requests of 30 June and 1 July 2010. In particular, this included a table containing 16 entries purporting to provide details of complaints received, as requested in parts a) i), and b) of Ms X's request. The SPSO also provided details of relevant performance indicators in response to part c) of the request.
 4. The SPSO refused to supply the information in parts a) ii) and d) of the request as it considered this information to be exempt in terms of section 26(a) of FOISA. It also refused to supply the reference numbers for complaints received, as it considered them to be personal information exempt in terms of section 38(1)(b) of FOISA.
 5. On 29 July 2010, Ms X wrote to the SPSO, requesting a review of its decision. Ms X drew the SPSO's attention to a perceived anomaly between the number of complaints detailed in the table mentioned above and the number suggested by the response to an earlier FOI request (which had asked for the number of complaints received on three specific dates). Ms X also identified an erroneous date in the table and suggested that there appeared to be information missing from the table. She also requested that the reference number to a complaint she considered to have been made by her on a specific date be provided in accordance with her subject access rights under the Data Protection Act 1998.
 6. The SPSO notified Ms X of the outcome of its review on 18 August 2010. It provided the correct date for one entry in the table previously provided to, and questioned by, Ms X. In response to Ms X's concerns about the discrepancy between the details in the table and the information supplied in response to a previous information request, the SPSO noted that her current request was limited to complaints received via the SPSO's online complaint form. It highlighted that the numbers provided previously referred to *all* complaints received on the specified dates, and so they would not correlate exactly with information in the table.
 7. To illustrate this point, the SPSO provided a more detailed breakdown of the information provided in response to her previous request in order to indicate the contact method for each recorded complaint.
 8. In response to the request for a reference number relating to a complaint Ms X considered she had made on a specific date, the SPSO indicated that her communication of that date had not been recorded as a complaint and therefore, in accordance with section 17 of FOISA, confirmed that it did not hold this information.



9. On 19 August 2010, Ms X wrote to the Commissioner, stating that she was dissatisfied with the outcome of the SPSO's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10. The application was validated by establishing that Ms X 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

11. The investigating officer subsequently contacted the SPSO, 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, the SPSO was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested and to confirm the status of the communication which Ms X considered to be a complaint made by her on a specific date. The SPSO was also asked to confirm that it had identified all of the information falling within the scope of Ms X's request.
12. The SPSO responded, providing the information requested and a further explanation of the circumstances surrounding its handling of Ms X's request, including its references to section 17 of FOISA in its response to Ms X's request for review.
13. The submissions provided by Ms X and the SPSO, insofar as relevant, are considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Ms X and the SPSO, and is satisfied that no matter of relevance has been overlooked.
15. Ms X's dissatisfaction with the SPSO's handling of her request relates to the accuracy and extent of the information supplied to her. She has indicated that she considers there to be anomalies between the data supplied to her in response to her request of 30 June 2010 and a previous request, and questioned, as a result, whether the SPSO has identified and provided all relevant information to her.



16. This decision is consequently unusual in that it is necessary for the Commissioner to consider the nature and extent of information provided to Ms X in response to a previous request for information, although that previous request is not the subject of Ms X's application for a decision.
17. In that previous request (made in May 2010), Ms X requested, and was provided with, details of complaints submitted to the SPSO during a specific three day period. She also requested, and was provided with, the exact time of submission of the on line complaint forms immediately preceding and following a submission she had made to the SPSO during the specific three day period. This will be referred to in the remainder of this notice as the "May request".
18. In its submissions to the Commissioner, the SPSO clarified that the information provided to Ms X in response to the May request related to the number of submissions received by the SPSO during the specific three day period. It also clarified that "a complaint" had a specific status in terms of section 5 of the Scottish Public Services Ombudsman Act 2002 and that only some of the submissions made via the online complaints submission system resulted in a new complaint being recorded by the SPSO.
19. The SPSO confirmed that it had received a submission from Ms X via the online complaint submission system during the specific three day period and that this submission had been used as a reference point for some of the information supplied in relation to the times that certain online submissions had been received. The SPSO also clarified that, as Ms X's submission had been assessed as an item of correspondence relating to an existing complaint, no new complaint number had been generated and the correspondence had been filed with the existing complaint. The SPSO further clarified that, as this submission was not recorded as a new complaint, it would not appear in related statistics.
20. The SPSO explained that, in dealing with Ms X's request of 30 June 2010, the subject of this decision notice (the June request), it had provided her with details of new complaints which had been recorded between 19 April and 15 May 2010, having been initially notified to it using the online complaints submission system. Accordingly, Ms X's submission made via the online complaint submission system was not included in the statistics provided to her.
21. Ms X submitted that there was a further anomaly between the statistics provided in response to the May request and those provided in response to the June request, in particular, the accuracy of the statistics provided relating to 29 April 2010. The information provided in response to the May request indicated that two complaints had been received; however, the information provided in response to the June request did not include these complaints against that date. Ms X indicated that she believed that her submission of 29 April 2010 had originally been included in the statistics provided in response to the May request, but for some reason was not included in the information provided in response to the June request.



22. The SPSO was asked to provide an explanation for this apparent anomaly. Its response clarified that the information provided in response to the May request was extracted from the complaint handling database, although it had also been necessary to interrogate a further database holding information received via the online complaint submission system to establish the relevant information relating to the timing of online submissions received before and after Ms X's online submission of that date. The SPSO further explained that, as the complaint handling system was the key system involved in the management of complaint handling, the relevant date for identifying when a complaint was recorded was the date of the complaint record being created on this database.
23. In relation to the June request, the SPSO explained that the key element of this request was the exact time at which each recorded complaint was submitted to the SPSO, and not the date when a complaint was recorded on the complaint handling database. Although, under normal circumstances, complaints would be recorded on the same day as they were received, occasionally complaints might not be recorded on the complaints handling database until the next working day. As an example, the SPSO indicated that a complaint received electronically outside working hours would not be recorded until the next working day.
24. The SPSO explained that the two disputed complaints were received via the online complaint submission system on 29 April 2010 at 1536hours and 2104 hours respectively and, accordingly, were included in the statistical information relating to 29 April 2010 provided to Ms X in response to the June request. However, as both complaints were not recorded on the complaint handling database until the following day, these complaints were included in the statistical information relating to 30 April 2010 provided to Ms X in relation to the May request.
25. The Commissioner notes that, in its response to the May request, the SPSO indicated that a total of 45 complaints had been received by it during the three day period, of which three, recorded on the complaint handling database on 30 April 2010, were identified as having been received via the online complaint submission system. He also notes that, in response to the June request, three complaints were shown as received during the three day period, two as indicated in paragraph 24 above and the third on 30 April 2010. The Commissioner further notes that in both the summary response and the more detailed breakdown of statistics provided to Ms X, the total number of complaints remains the same.
26. Accordingly, the Commissioner is satisfied that the SPSO identified all the relevant information it holds falling within the scope of Ms X's request and provided that information to her as specified in the June request. The Commissioner is satisfied that the concerns identified by Ms X arose due to the fact that she had requested slightly different information in her June request to that requested and provided in response to her May request, resulting in the issue she encountered in reconciling the two sets of information supplied.
27. The Commissioner therefore finds that the SPSO complied with Part 1 of FOISA in responding to the aspects of Ms X's request considered in this decision notice.



DECISION

The Commissioner finds that the Scottish Public Services Ombudsman complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms X.

Appeal

Should either Ms X or the SPSO 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
21 December 2010



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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

Scottish Public Services Ombudsman Act 2002

5 Matters which may be investigated

- (1) The matters which the Ombudsman is entitled to investigate are –
- (a) in relation to a listed authority other than one to whom paragraph (b), (d) or (e) applies, any action taken by or on behalf of the authority (other than action consisting of a service failure) in the exercise of administrative functions of the authority,
 - (b) in relation to a health service body or an independent provider, any action taken by or on behalf of the body or provider (other than action consisting of a service failure),
 - (c) in relation to a listed authority other than one to whom paragraph (d) or (e) applies, any service failure,
 - (d) in relation to a family health service provider, any action taken by or on behalf of the provider in connection with any family health services provided by that provider,
 - (e) in relation to a registered social landlord, any action taken by or on behalf of the landlord.
- (2) In subsection (1), “service failure” in relation to a listed authority, means –
- (a) any failure in a service provided by the authority,
 - (b) any failure of the authority to provide a service which it was a function of the authority to provide.



- (3) The Ombudsman may investigate a matter falling within subsection (1) pursuant to a complaint only if a member of the public claims to have sustained injustice or hardship in consequence of –
 - (a) where the matter is such action as is mentioned in paragraph (a), (b) or (e) of that subsection, maladministration in connection with the action in question,
 - (b) where the matter is such failure or other action as is mentioned in paragraph (c) or (d), the failure or other action in question.
- (4) The person making such a claim is referred to in this Act as the “person aggrieved”.
- (5) The Ombudsman may investigate a matter falling within subsection (1) pursuant to a request only if the Ombudsman is satisfied that –
 - (a) it has been alleged publicly (whether or not by a person aggrieved) that one or more members of the public have sustained injustice or hardship as mentioned in subsection (3), and
 - (b) the listed authority has taken all reasonable steps to deal with the matter to which the allegation relates.
- (6) In this section “member of the public” means any individual or body of persons (whether incorporated or not) other than –
 - (a) the Parliamentary corporation,
 - (b) a local authority or other authority or body constituted for purposes of the public service or of local government,
 - (c) an authority or body constituted for the purposes of carrying on under national ownership an industry or undertaking or part of an industry or undertaking,
 - (d) any other authority or body –
 - (i) whose members are appointed by Her Majesty or by any Minister of the Crown or governmental department or by a member of the Scottish Executive, or
 - (ii) whose revenues consist wholly or mainly of money provided by the Parliament of the United Kingdom or sums payable out of the Scottish Consolidated Fund (whether directly or indirectly).
- (7) This section is subject to sections 6 to 8.