

Decision Notice



Decision 072/2012 Mr Mark Howarth and the Scottish Ministers

Correspondence with a named company and its directors

Reference No: 201102347
Decision Date: 16 April 2012

www.itspublicknowledge.info

Margaret Keyse

Acting Scottish Information Commissioner

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



Summary

Mr Howarth requested from the Scottish Ministers (the Ministers) certain information relating to the company Redeem or its directors, including correspondence between certain Ministerial offices and that company or its directors. The Ministers did not respond, and Mr Howarth wrote to them requiring a review. Following a review, the Ministers responded to the effect that two of the requests were invalid. For the third request, the Ministers explained that they did not hold any information. Following this review, Mr Howarth remained dissatisfied and applied to the Commissioner for a decision on the question of validity.

Following an investigation, the Commissioner found that the requests in question met the requirements of section 8(1) of FOISA and were therefore valid. Consequently, she required the Ministers to review their handling of the requests and notify Mr Howarth of the outcome.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3), and (6) (General entitlement); 8(1) (Requesting information)

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.

All references in this decision to “the Commissioner” are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 12 September 2011, Mr Howarth wrote to the Ministers requesting the following information:
 - All information contained in correspondence (including the contents of any handwritten notes on documents) between the First Minister’s office and the company Redeem (Registration number: SC194216) or its directors, Jamie Rae or David McCabe (request 1);



- All information contained in documents regarding the company Redeem (Registration number: SC194216) or its directors, Jamie Rae or David McCabe in the context of the First Minister's visit to Hong Kong and China in 2009 (request 2); and
 - All information contained in correspondence (including the contents of any handwritten notes on documents) between Scottish Government minister Alex Neil or his offices and the company Redeem (Registration number: SC194216) or its directors, Jamie Rae or David McCabe (request 3).
2. Having received no response, on 13 October 2011, Mr Howarth contacted the Ministers to find out the current status of his information requests.
 3. On 18 October 2011, the Ministers acknowledged the requests and apologised for the delay in replying. They stated that a named official would be in contact with Mr Howarth to confirm when he could expect a response to his requests.
 4. Mr Howarth wrote again on 24 and 31 October 2011, asking the Ministers when he would receive a response to his requests. Finally, he wrote on 10 November 2011, stating that he had still received no communication from the Ministers.
 5. On 10 November 2011, the Ministers acknowledged his correspondence and apologised for their delay in replying.
 6. Following further correspondence from Mr Howarth on 17 and 21 November 2011, he had still not received a response to his requests. Therefore, on 28 November 2011, Mr Howarth wrote to the Ministers specifically requesting a review in respect of their failure to respond. The Ministers acknowledged this communication the same day and confirmed that a review was in hand.
 7. The Ministers notified Mr Howarth of the outcome of their review on 1 December 2011. They apologised that the requests were not properly allocated for action and not dealt with in time. In respect of requests 1 and 3, the Ministers stated that FOISA gave a right to information, not documents, and that information requests must identify the information sought. Accordingly, a request was not valid if it did not (in accordance with section 8(1)(c) of FOISA) describe the information requested. The Ministers considered requests 1 and 3 to be general requests for copies of documents, which did not reasonably clearly identify the particular information Mr Howarth was looking for, and consequently they considered these requests to be invalid.
 8. The Ministers concluded that, should Mr Howarth wish to rephrase these requests to clearly describe clearly the information he was looking for, rather than simply documents, they would be able to consider his request and respond in accordance with FOISA. The Ministers offered to provide further advice and assistance to rephrase the requests, should Mr Howarth wish.
 9. In response to request 2, the Ministers advised that they did not hold the information requested.



10. Further correspondence followed between Mr Howarth and the Ministers. On 12 December 2011, Mr Howarth wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of the Ministers' review in respect of requests 1 and 3 and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
11. On 15 December 2011, the Ministers were notified in writing that an application had been received from Mr Howarth, in accordance with section 49(3)(a) of FOISA. The Ministers were notified that, given that Mr Howarth's application appeared to be otherwise valid, the Commissioner would need to consider whether his request met the requirements for validity in section 8(1) of FOISA.

Investigation

12. The Ministers were invited to provide submissions on the application (as required by section 49(3)(a) of FOISA) to inform the Commissioner's consideration of whether Mr Howarth's requests were valid for the purposes of FOISA.
13. The Ministers responded on 11 January 2012.

Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered all the submissions made to her by both Mr Howarth and the Ministers and is satisfied that no matter of relevance has been overlooked.

Validity of the requests

15. Section 8(1) of FOISA sets down the basic requirements for a valid request for information made in terms of section 1(1). Section 8(1)(c) specifies that a request must describe the information requested.
16. Mr Howarth's application to the Commissioner explained that his request had been made using guidance published by the Commissioner following the Court of Session's decision in the case of *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73¹ (the *Glasgow City Council* case).
17. Mr Howarth disputed the Ministers' conclusion that requests 1 and 3 were general requests for copies of documents. He believed his request could not have been plainer in *not* requesting documents or copies of documents.

¹ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



18. Mr Howarth also disputed the Ministers' contention that requests 1 and 3 did not reasonably clearly identify the particular information he was seeking. He commented that he had "not embarked on a hopeful, imprecise trawl" and that his request clearly identified the two offices of the Scottish Government where the information might be held, and the origin of any correspondence. In the circumstances, without sight of the information itself, he did not believe he could do more to specify the information requested.
19. The Ministers continued to submit that the requests were invalid as they did not specify what information Mr Howarth was seeking, except that it would have been contained in correspondence. They did not consider that a request for "all information contained in correspondence" described the information requested, as required by section 8(1)(c). They stated that such a description provided no assistance to them in locating and retrieving information within the scope of the requests, as they would have no way of identifying relevant information without searches of all information currently held to ascertain whether it contained any reference to a company called Redeem or the two named directors.
20. The Ministers continued that, from a *Google* search, it was apparent that Redeem was a company which dealt in the recycling of non-metal waste and scrap. However, without a topic of interest or identifying a specific incident/meeting or subject matter, they had no way of knowing with what information Mr Howarth considered the First Minister and the named Cabinet Secretary would have been involved with.
21. The Ministers went on to explain that they considered it unlikely that any information relating to the company or its directors would be held by the First Minister's office or the office of the Cabinet Secretary for Infrastructure and Capital investment. They commented that the Scottish Government might hold information about this company in relation to environmental or climate change issues, which would be dealt with by the relevant Directorates in the Scottish Government, but unless Mr Howarth were to be more specific about the information he was seeking they would find it particularly difficult to identify relevant information or which areas of Government might hold that information. The Ministers suggested that that the task might have been made simpler (and the request might therefore have been considered valid) if Mr Howarth had provided them with some context for his assumption that the named company or individuals might have been in contact with the First Minister or the Cabinet Secretary.
22. The Ministers went on to explain how information was held and managed, both by the First Minister's Office and more widely across the Scottish Government.
23. The Commisisoner will now consider whether Mr Howarth's first and third requests complied with section 8(1)(c) of FOISA.



24. The Commissioner has dealt section 8(1)(c) of FOISA before (see, for example, *Decision 096/2010 Mr Rami Okasha and the Scottish Ministers*² - there have also been a number of more recent decisions following the same general reasoning). Previous decisions take into consideration the Commissioner's guidance on the validity of requests, produced in the light of the Court of Session decision in the *Glasgow City Council* case. The Commissioner has taken the view that the purpose of requiring a description of the information is to allow the public authority to identify and locate the information requested. While (as the Court of Session found in the *Glasgow City Council* case) FOISA provides a right to information and not documents, a request which describes information by reference to a document will still be valid when it is reasonably clear from the request that the applicant is seeking the information recorded in that document.
25. In this case, Mr Howarth requested all information contained in a specific type of document (correspondence). The Commissioner finds it reasonably clear that the applicant is seeking the information recorded in that type of document.
26. The Commissioner notes that Mr Howarth also specifies the correspondents he is concerned with: the named company or two named directors, and the First Minister's office or a named Minister (Mr Neil) or his office. The Commissioner considers this, again, to be reasonably clear and specific.
27. The Court of Session decision recognised that there will be cases where a request is made by persons who can be expected to describe precisely what information they wish to receive. Conversely, there will also be cases where requests are made by individuals who cannot be expected to express themselves with precision. The Court's judgement here refers to the facility of a person to express in written language what is being asked for, and identifies solicitors as the paradigm case of persons expected to be able to express themselves with precision.
28. While acknowledging that Mr Howarth, as a professional journalist, might be expected to describe the information he requires with a reasonable degree of precision, the Commissioner does not regard this case as an instance where the requester has not expressed himself with precision. The requests show an attempt to be precise: Mr Howarth has made reference to the Commissioner's guidance; he has provided a company registration number; he has named individuals (the directors and Ministers); and he has made reference to handwritten notes on documents. As Mr Howarth has pointed out, any expectation of precision must be qualified by the fact that the applicant cannot reasonably be expected to have a detailed knowledge of all the information requested.

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/200902059.asp>



29. As has been stated in previous decisions on the question of validity, the Commissioner does not accept that a request must specify what information is sought by reference to the subject matter of that information. She is of the view that this is inconsistent with the plain words of section 8(1)(c) of FOISA. She also considers such an interpretation to be inconsistent with the overall aim of FOISA, which is to achieve openness with a minimum of formal requirements. Accordingly, the only requirement is that the description be clear enough to allow the information to be identified and located.
30. The Commissioner acknowledges that a request which specifies a subject matter may be *easier* for a public authority to deal with in terms of identifying and locating the information requested. That will depend, however, on how the authority has chosen to structure and manage its records. Such choices cannot, in the Commissioner's opinion have any bearing on whether a request is valid. That question must be capable of determination on objective standards (that is, whether a Scottish public authority, acting reasonably, should be capable of identifying the information from the description provided) not subjective ones capable of being influenced by the particular authority which has received the request.
31. As indicated above, there is no suggestion in section 8(1)(c) that a valid request for information must refer to a subject matter. In any event, as noted in paragraph 28, the applicant cannot reasonably be expected to have a detailed knowledge of all the information requested. They may be aware of other parameters which enable the information to be identified and located: if so, as appears to the Commissioner to be the case here, the requirements of section 8(1)(c) will still have been met.
32. The Commissioner has considered Mr Howarth's requests in the light of the relevant submissions he has received, the Court of Session decision in the *Glasgow City Council* case and the related guidance and decisions produced by the Commissioner. In this case, she is satisfied that the descriptions provided by Mr Howarth were reasonably clear in the circumstances. Consequently, the Commissioner cannot accept that the difficulty experienced by the Ministers was one of identification. She finds that it would have been reasonable for any applicant in Mr Howarth's position to believe that they had described the information they were seeking adequately, as required by section 8(1)(c) of FOISA. In all the circumstances, therefore, she is satisfied that the requests (and therefore the subsequent application to the Commissioner) were valid.
33. In light of her finding that Mr Howarth's requests were valid, therefore, the Commissioner requires the Ministers to review their handling of those requests and notify Mr Howarth of the outcome of that review.



DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr Howarth.

In the circumstances, the Commissioner concludes that both requests adequately described the information he was seeking and, fulfilling all other requirements of section 8(1) of FOISA, were valid information requests for the purposes of section 1(1).

Accordingly, the Commissioner concludes that the Ministers were under an obligation to respond to Mr Howarth's information requests, on the basis that they were valid requests for information.

The Commissioner therefore requires the Ministers to conduct a review in relation to Mr Howarth's requests in accordance with section 21(4) of FOISA, and to notify him of the outcome of that review in accordance with section 21(5), all on the basis that the requests were valid, by 1 June 2012.

Appeal

Should either Mr Howarth or the Scottish Ministers 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
Acting Scottish Information Commissioner
16 April 2012



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.

...

- (3) If the authority –
- (a) requires further information in order to identify and locate the requested information; and
 - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

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

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-
- (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) states the name of the applicant and an address for correspondence; and
 - (c) describes the information requested.

...