

Decision Notice



Decision 164/2012 Mr G and the Scottish Parliamentary Corporate Body

First aid certificates for MSPs

Reference No: 201200872

Decision Date: 8 October 2012

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Rosemary Agnew

Scottish Information Commissioner

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Summary

Mr G asked the Scottish Parliamentary Corporate Body (the SPCB) for information relating to First Aid certificates for MSPs. The SPCB explained that first aid cover was generally provided by MSPs' staff. Following an investigation, the Commissioner found that the SPCB should have notified Mr G that it did not hold the information.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 13 March 2012, Mr G wrote to the SPCB as follows:
"FOI request. First Aid qualifications allow self employed MSP's [sic], carry out their duty lawfully within Scottish Parliament. Copy PDF of every certificate."
2. The SPCB responded on 29 March 2012. It advised Mr G that, while it was not compulsory for MSPs or their staff to have a first aid qualification, it encouraged a level of first aid cover within the MSP block and this was generally undertaken by MSPs' staff. The SPCB advised that, consequently, first aid certificates generally referred to MSPs' staff.
3. On 10 April 2012, Mr G wrote to the SPCB requesting a review of its decision. He drew the SPCB's attention to the Health and Safety (First Aid) Regulations 1981 (the 1981 Regulations) in relation to self-employed workers, noting that "section six of that Act does allow for exemptions, however, found none for any Member of a Scottish Parliament."
4. Mr G also commented that:
"section three and sub sections of the named Act, does so make necessary for the provision of a trained person. Where employees are a concern that trained person should minimum be a self employed person, those self-employed whom employ."



5. The SPCB notified Mr G of the outcome of its review on 2 May 2012. It reaffirmed that it was not mandatory for each MSP to hold a first aid certificate. However, as in its initial reply, the SPCB advised that first aid cover was generally provided by those MSP staff who had trained as first aiders.
6. On 3 May 2012, Mr G wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPCB's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr G 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

8. On 7 June 2012, the SPCB was notified in writing that an application had been received from Mr G and was invited to provide comments on the application (as required by section 49(3)(a) of FOISA). The SPCB was also asked a number of specific questions, focusing mostly on establishing whether it held the requested information.
9. The SPCB responded on 25 June 2012, confirming that it did not hold the information in support of this position. The SPCB also provided comments on specific points raised by the investigating officer in relation to Mr G's application
10. The relevant submissions received from both the SPCB and Mr G will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

Does/did the SPCB hold information which would fulfil Mr G's request?

12. In terms of section 1(4) of FOISA, the information to be provided in response to a request made under section 1(1) is, subject to limited provisions which are not relevant here, that held at the time the request is received.
13. Section 17(1) of FOISA requires that, where an authority receives a request for information that it does not hold, it must give the applicant notice in writing to that effect.



14. As mentioned previously, in its response to both Mr G's request and requirement for review, the SPCB advised that it was not mandatory for each MSP to hold a first aid certificate, that first aid cover in the MSP block was generally undertaken by MSPs' staff, and as a consequence first aid certificates generally referred to MSP staff. It did not at any time advise Mr G that it did not hold the information he was seeking, although this was the position it adopted in its submissions to the Commissioner.
15. In its submissions, the SPCB advised that it did not hold the information requested by Mr G and never had held it.
16. The SPCB explained that MSPs were elected representatives and as such were autonomous. While they were required to adhere to standards of behaviour (enforceable by the Presiding Officer or the Scottish Parliamentary Standards Commissioner) and were bound by employment and health and safety law as any other employer, they were not (it advised) under the control or supervision of the SPCB.
17. The SPCB went on to explain that MSPs employed their own staff directly, and ran their own offices, and although they were reimbursed from the Reimbursement of Members' Expenses Scheme (administered by the SPCB) for the cost of employing their staff and running their offices, the SPCB had no role other than financial in the set up or running of an MSP's office. It is the SPCB's submission that responsibility for ensuring that an MSP complied with his or her responsibilities as an employer lay with that MSP alone.
18. As a consequence, the SPCB advised that it had no knowledge of, and no need to know, what arrangement any MSPs might have in place to implement their obligations as employers under the 1981 Regulations. The SPCB advised that if an individual MSP had a first aid certificate then it would presumably be held by that MSP.
19. The SPCB explained that, as it did not hold the requested information, and there was no expectation or legal requirement that it should do so, it had not carried out any searches.
20. In his application, Mr G made various comments about why he believed the SPCB should hold the first aid certificates. The SPCB was made aware of these comments and was invited to respond to them.
21. The Commissioner can only take these comments, and the SPCB's responses to them, into account in considering whether the matters raised by Mr G created an expectation that the first aid certificates should have been held by the SPCB at the time it received his request for information. The Commissioner cannot, and will not, make a determination on whether the SPCB had a duty or responsibility to hold these certificates, as this is not within her jurisdiction.
22. In his application, Mr G commented that for any insurance certificate (covering MSPs) to be valid, all mandatory requirements must be met, one of these being compliance with First Aid Regulations. He did not understand MSPs to be exempt from this particular requirement.



23. The SPCB accepted that all mandatory requirements, including those under the 1981 Regulations, must be met for an insurance certificate to be valid. It went on to submit that under the Employer's Liability (Compulsory Insurance) Act 1969, every employer must maintain an insurance policy with an authorised insurer against injury or ill health suffered in the course of employment. It explained that an employer's liability insurance policy must not, by law, contain any exemption clause which would exclude liability if an employer failed to perform any statutory duty (including, for example, failing to provide adequate first aid cover).
24. The SPCB did not, however, agree with Mr G in his interpretation of the requirements of the 1981 Regulations, if his interpretation was that an MSP must hold a first aid certificate. In its view, the 1981 Regulations required an employer to ensure that adequate and appropriate first aid equipment and facilities were provided to enable first aid to be provided to employees if they were injured or become ill while at work so that:
- an adequate number of suitable persons (trained first aiders or appointed persons) were available to provide first aid
 - employees were informed of first aid arrangements
 - first aid rooms were accessible and signposted appropriately

There was, the SPCB submitted, no absolute requirement for any employer to hold a first aid training certificate.

25. Mr G also commented in his application to the Commissioner that the responses from the SPCB refused to acknowledge that MSPs' work involved working outside the Parliament building.
26. In response, the SPCB confirmed that constituency and other work carried out by MSPs in their local offices and in the community outside Holyrood was an integral and essential element of the role of any MSP.
27. The Commissioner has considered the submissions from the SPCB and accepts that MSPs are, in law, autonomous from the SPCB: individual MSPs are not, for example, subject to FOISA by virtue of the SPCB being subject to that legislation. The Commissioner's understanding of the relationship between the SPCB and MSPs corresponds to that described by the SPCB in this case. In the circumstances, she accepts that there should be no expectation that the SPCB would hold copies (in any format) of any first aid certificate awarded to an MSP. Having considered all of the submissions and the explanations provided by the SPCB, she is satisfied that it does not (and did not at the time of receiving Mr G's request) hold any recorded information which would fall within the scope of his request.
28. While she is not in a position to (or required to) reach a conclusion on the correct interpretation of the 1981 Regulations, the Commissioner would observe that the SPCB's interpretation (as outlined above) would appear to correspond generally with relevant guidance issued by the Health and Safety Executive¹.

¹ See, for example: <http://www.hse.gov.uk/pubns/indg214.pdf>



29. In his application, Mr G expressed dissatisfaction that the SPCB failed to give legal reference (in responding to either his request or his requirement for review) as to why his request was refused
30. Although the Commissioner is satisfied that no relevant recorded information is (or was) held by the SPCB, she is concerned that the SPCB did not make this clear to Mr G in either response. The SPCB should have given Mr G notice, in line with section 17 of FOISA, that it did not hold any recorded information which would fulfil his request. By failing to do so, the Commissioner finds that the SPCB failed to comply with Part 1, and in particular section 17(1), of FOISA.

DECISION

The Commissioner finds that the Scottish Parliamentary Corporate Body (the SPCB) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr G.

The Commissioner finds that the SPCB failed to notify Mr G, in line with section 17(1) of FOISA, that it did not hold any relevant recorded information which would address his request.

As it is clear that the SPCB does not (and did not at the time of receiving the information request) hold recorded information which would fulfil Mr G's request, she does not require the SPCB to take any action in response to this failure.

Appeal

Should either Mr G or the Scottish Parliamentary Corporate Body 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.

Margaret Keyse
Head of Enforcement
8 October 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.

...

- (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.

...