

Decision Notice



Decision 176/2013 Mr Henry Hepburn and Education Scotland

Internet bandwidths available to schools

Reference No: 201301380

Decision Date: 16 August 2013

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Rosemary Agnew

Scottish Information Commissioner

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



Summary

On 20 March 2013, Mr Hepburn asked Education Scotland for information about the internet bandwidths available to Scottish schools. Mr Hepburn was informed that Education Scotland did not hold the information. Following an investigation, the Commissioner found that this was incorrect and required Education Scotland to respond on the basis that it did hold information falling within the scope of the request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Information 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 20 March 2013, Mr Hepburn wrote to Education Scotland and (in relation to internet capability) requested the following information:
 - a. Details of the bandwidth available to each individual school in Scotland;
 - b. For each school, details of whether the bandwidths cited is contended or uncontended, i.e. whether or not bandwidth is shared with other schools, other council facilities etc.
2. Education Scotland responded on 5 April 2013, informing Mr Hepburn that it did not hold the information he sought. He was advised to contact individual schools or local authorities.
3. On 12 April 2013, Mr Hepburn wrote to Education Scotland, requesting a review on the basis that he understood that the data requested did in fact exist around two years previously.
4. Following the intervention of the Commissioner, Education Scotland notified Mr Hepburn of the outcome of its review on 29 May 2013. It adhered to its position that it did not hold the information.



5. On 11 June 2013, Mr Hepburn wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of Education Scotland's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Hepburn made a request for information to a Scottish public authority and 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

7. Education Scotland is an agency of the Scottish Ministers (the Ministers). On 15 July 2013, in line with agreed procedures, the investigating officer notified the Ministers in writing that an application had been received from Mr Hepburn. The Ministers were given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and were asked to respond to specific questions. In particular, they were asked to justify Education Scotland's view that it did not hold the information requested.
8. Subsequent references to contact with or submissions from Education Scotland are therefore references to contact with or submissions made by the Ministers on behalf of Education Scotland.
9. Education Scotland responded, providing submissions in support of its position that it did not hold the information requested by Mr Hepburn.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to her by both Mr Hepburn and Education Scotland. She is satisfied that no matter of relevance has been overlooked.

Information held by Education Scotland

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to certain restrictions which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The restrictions contained in section 1(6) are not applicable in this case. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.



12. In his requirement for review, Mr Hepburn informed Education Scotland that he had been advised informally that the data requested had been collected around two years prior to his request. He also informed the Commissioner that he had been informed by a number of reliable individuals that such information was held by Education Scotland and was surprised to be told otherwise.
13. During the investigation, Education Scotland explained that the information that it did hold was compiled as a result of a survey of local authorities, carried out in 2012. It explained that the information did not cover all authorities, varied in age (and therefore was potentially out of date as bandwidths changed all the time). It also knew that that some of the figures held were only indicative, and therefore unlikely to be inaccurate.
14. Education Scotland further explained that it held some information on broadband widths to help it in its management of INTERCONNECT 2 (which provides high bandwidth communications between local authorities and certain national education bodies) at national level. This included information on individual school bandwidths, but Education Scotland believed this to be incomplete, inaccurate, dated and patchy in quality. It did not include any information on the number of schools and authorities. Education Scotland submitted that it did not believe any of the information held fell within the scope of Mr Hepburn's request, as none of it was likely to provide a sufficiently accurate reflection of the bandwidths available in schools as at the date of his request.
15. The Commissioner notes that information held by a Scottish public authority and otherwise falling within the scope of a request received by that authority does not cease to be so held because of concerns about its accuracy or completeness. In such circumstances, assuming that no exemption or other relevant provision of FOISA applies, an authority should disclose the information with such explanation of the context as it considers appropriate. Having considered Education Scotland's submissions and the terms of Mr Hepburn's request, the Commissioner is not satisfied that it was possible for Education Scotland to dismiss the information as irrelevant because of its age – particularly when, in his requirement for review, Mr Hepburn acknowledged that the information might have been gathered some time before his request.
16. In all the circumstances, the Commissioner does not accept that Education Scotland was entitled to notify Mr Hepburn that it held no relevant information. She now requires it to respond to Mr Hepburn on the basis that information is held.



DECISION

The Commissioner finds that Education Scotland failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hepburn, by incorrectly stating that no information was held and therefore failing to comply with section 1(1).

The Commissioner therefore requires Education Scotland to respond to Mr Hepburn's request for information in accordance with Part 1 of FOISA, other than in terms of section 17(1), by 30 September 2013.

Appeal

Should either Mr Hepburn or Education Scotland 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
16 August 2013



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.
- ...