

Decision Notice

Decision 161/2015: Applicant A and the Office of the Scottish Charity Regulator

Number of complaints made concerning a specified address

Reference No: 201501623

Decision Date: 20 October 2015



Scottish Information
Commissioner

Summary

On 26 July 2015, Applicant A asked the Office of the Scottish Charity Regulator (OSCR) for the number of referrals or complaints made by Police Scotland or other bodies to OSCR concerning charity events at a specified address.

OSCR informed Applicant A that it did not hold the requested information.

Following an investigation, the Commissioner upheld OSCR's response.

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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 26 July 2015, Applicant A made a request for information to OSCR. The information requested was the number of referrals or complaints made by Police Scotland or any other bodies to OSCR concerning charity events and activities at a specified address between two specified dates.
2. OSCR responded on 5 August 2015. OSCR informed Applicant A (in terms of section 17(1) of FOISA) that it did not hold the requested information.
3. On 5 August 2015, Applicant A wrote to OSCR requesting a review of its decision, in order to be sure that OSCR's initial response was correct.
4. OSCR notified Applicant A of the outcome of its review on 6 August 2015. OSCR upheld its previous decision and confirmed that it did not hold any information falling within the scope of the request.
5. On 31 August 2015, Applicant A applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Applicant A neither believed nor disbelieved that OSCR did not hold the information, but considered there were wider issues involving the subject matter under consideration.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Applicant A made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 30 September 2015, OSCR was notified in writing that Applicant A had made a valid application. The case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. OSCR was invited to comment on this

application and to answer specific questions. OSCR was asked to explain the steps taken to establish that it did not hold any information falling within the scope of the request.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Applicant A and OSCR. She is satisfied that no matter of relevance has been overlooked.

Section 17 – Notice that information is not held

10. In terms of 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, subject to qualifications which are not applicable in this case. Under section 17(1), where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that effect.
11. OSCR informed Applicant A that it did not hold any information falling within the scope of the request.
12. In its submissions to the Commissioner, OSCR explained that all of its records are held within its records management system known as Objective 8.1. OSCR provided the Commissioner with a copy of its search results which had used the address specified by Applicant A as its search term, and explained why these search terms would be likely to retrieve any relevant information. This search did not identify any information falling within the scope of the request.
13. OSCR also carried out a search of its Compliance and Investigations files. This search did not identify any relevant information.
14. OSCR provided details of how information of the type sought by Applicant A – if held – would have been recorded and stored. OSCR confirmed that any information falling within the scope of Applicant A's request would have been located and retrieved as a result of the searches it had carried out.
15. The Commissioner has considered carefully all of OSCR's submissions and its explanations of why the searches it conducted would have located any information falling within the scope of Applicant A's request.
16. The Commissioner accepts that OSCR carried out adequate, proportionate searches to ascertain whether it held any information falling within the scope of Applicant A's request. She accepts that any information relevant to the request would have been identified using the searches described by OSCR. She is satisfied therefore that OSCR does not (and did not on receiving the request) hold the information requested. For that reason, the Commissioner accepts that OSCR was correct to give notice, in terms of section 17(1) of FOISA, that it did not hold the information requested by Applicant A.

Decision

The Commissioner finds that the Office of the Scottish Charity Regulator complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Applicant A.

Appeal

Should either Applicant A or the Office of the Scottish Charity Regulator 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

20 October 2015

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.

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