

Decision Notice

Decision 062/2018: Scottish Friends of Palestine and Education Scotland

Deletion of a cartoon

Reference No: 201702003
Decision Date: 2 May 2018



Scottish Information
Commissioner

Summary

Education Scotland was asked about the deletion of a cartoon, described as racist, from a learning and teaching resource.

Education Scotland responded by explaining that it had been decided the cartoon should be removed as there was a risk it might be misconstrued. Following a review, Education Scotland confirmed that there was no suggestion the cartoon had actually been deemed racist, and therefore it did not hold information falling within the scope of the request.

The Commissioner investigated and found that Education Scotland did not hold any information falling within the scope of the request.

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 18 August 2017, Scottish Friends of Palestine (SFOP) made a request for information to Education Scotland. The information requested was as follows:

“Please provide full details surrounding the deletion of an alleged racist cartoon from the Israel-Palestine Learning & Teaching Resource as indicated in the email exchange described above. In particular who within Education Scotland and /or Scottish Govt took the decision to order its deletion? At whose behest was this done? Was it a consequence of the meeting that day with the pro-Israel lobby group? What aspect of the cartoon was deemed to be racist? Please provide full details of any other similar deletions from the Resource.”

[The pertinent part of the email exchange in question is noted at paragraph 8 below.]
2. Education Scotland responded on 6 September 2017. The response stated:

“The Deputy First Minister viewed the cartoon and, along with a range of officials, recognised it might be misconstrued outwith the wider context of the related materials, resulting in a risk of unbalanced messages being given to children and young people. In light of this risk, it was agreed that the cartoon should be removed. A second cartoon which was there to provide a balancing view was also subsequently removed.”
3. On 12 September 2017, SFOP wrote to Education Scotland, requesting a review of its decision, on the basis that they did not consider the request had been answered in its entirety. SFOP believed Education Scotland held further information which had not been supplied to them, and noted that no FOISA exemptions had been applied to justify the failure to provide any information.

4. SFOP reiterated:

“At whose behest was [the deletion] done?”

Was it a consequence of the meeting that day with the pro-Israel lobby group?

Which aspects of the cartoon were deemed to be racist?”

5. Education Scotland notified SFOP of the outcome of its review on 4 October 2017. Education Scotland stated that it had not applied any FOISA exemptions because no information was being withheld. Education Scotland stated that the decision to remove the cartoon was taken following a meeting between the Deputy First Minister (DFM), his officials and the Scottish Council of Jewish Communities on 11 May 2017. The decision was taken by the DFM and his officials.
6. Education Scotland stated that there was no suggestion that the cartoon was deemed racist and so it did not hold any information relating to which aspects of the cartoon were deemed racist. Education Scotland therefore gave SFOP notice under section 17(1) (Notice that information is not held) of FOISA.
7. On 9 November 2017, SFOP wrote to the Commissioner’s office. They applied to the Commissioner for a decision in terms of section 47(1) of FOISA. SFOP stated they were dissatisfied with the outcome of Education Scotland’s review because they believed the cartoon had in fact been deemed racist.
8. SFOP also provided the Commissioner with a copy of the Education Scotland email exchange dated 11 May 2017, referred to in its information request, which showed a conversation between staff members including the following statement:
- “There’s a highly racist film placed recently [and] it needs to be deleted.”*
- SFOP reiterated that they required to know which aspects of the cartoon were deemed racist.
9. The application was accepted as valid. The Commissioner confirmed that SFOP made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
10. On 5 December 2017, Education Scotland was notified in writing that SFOP had made a valid application. The case was allocated to an investigating officer.
11. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Education Scotland was invited to comment on this application, with questions focusing on the steps taken to establish whether it held any information which would explain which, if any, aspects of the cartoon were deemed racist.
12. Education Scotland responded and the investigating officer subsequently asked for – and was provided with – further evidence of the searches carried out.

Commissioner’s analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both SFOP and Education Scotland. He is satisfied that no matter of relevance has been overlooked.

Section 17 - Notice that information is not held

14. 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. This is subject to qualifications, but these are not applicable in this case. If no such information is held by the authority, section 17(1) of FOISA requires the public authority to give the applicant notice in writing to that effect.
15. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.

Submissions from Education Scotland

16. It was explained by Education Scotland that the person who described the cartoon as “racist” had not actually seen it, but was commenting while out of the office following discussions with colleagues. In the circumstances, Education Scotland did not consider the description to represent a considered evaluation of the cartoon by Education Scotland or the Scottish Ministers.
17. Education Scotland confirmed that no notes or minutes were taken in the meeting with the DFM on 11 May 2017. Telephone conversations took place between the DFM’s Private Office, Scottish Government policy officials and Education Scotland staff, to establish that no notes or minutes were taken.
18. The Commissioner was provided with copies of emails and screenshots, confirming the outcomes of the searches undertaken to establish if any information was held. Education Scotland also provided details of the staff involved and why they were considered relevant in this case. It was noted, with an explanation, that the person who actually removed the cartoon was a temporary worker with no access to Education Scotland’s records management systems. The searches confirmed that no relevant information was held.

The Commissioner’s conclusions

19. Having considered all the relevant submissions, the Commissioner accepts that Education Scotland took adequate and proportionate steps to establish whether it held any information that fell within the scope of SFOP’s request. In the circumstances described by Education Scotland, he accepts – on the balance of probabilities – that it did not hold any such information. Given that it does not appear to have been the considered view of Education Scotland that the material in question was racist, it is unlikely that it would have held any information on the aspects considered racist (which is the focus of SFOP’s application).
20. The Commissioner is therefore satisfied that Education Scotland was correct to give SFOP notice, in terms of section 17(1) of FOISA, that it did not hold any information falling within the scope of this request.

Decision

The Commissioner finds that Education Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Scottish Friends of Palestine.

Appeal

Should either Scottish Friends of Palestine 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

2 May 2018

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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