

Decision Notice

Decision 075/2018: Mrs June Quinn and the Scottish Ministers

Contact details of person dealing with Ministerial accountability/scrutiny

Reference No: 201800313

Decision Date: 31 May 2018



Scottish Information
Commissioner

Summary

The Ministers were asked for the contact details of the person or office dealing with Ministerial accountability and scrutiny.

The Ministers provided a weblink to contact details on the Scottish Parliament website. Following a review, as a result of which the Ministers also provided information on the Scottish Ministerial Code, Mrs Quinn remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Ministers held no further information falling within the scope of this request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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 7 December 2017, Mrs Quinn made a request for information to the Scottish Ministers (the Ministers) in which she asked for “the contact details of the person/office that deals with ministerial accountability, along with the contact details of the person/office/committee that deals with the failure of Parliament to scrutinise the work of ministers”.
2. The Ministers responded on 4 January 2018, providing a link to the Scottish Parliament’s website. The Ministers also cited section 25(1) of FOISA (Information otherwise accessible), advising Mrs Quinn that she could contact them again for paper copies if she had no internet access.
3. On 10 January 2018, Mrs Quinn wrote to the Ministers requesting a review of their decision. She did not believe the request had been fully addressed, referring to the principles in the Scottish Ministerial Code (the Code¹ - the link is to the version in force at the time of the review and subsequently).
4. The Ministers notified Mrs Quinn of the outcome of their review on 18 January 2018, giving fuller explanations on the Code, the First Minister’s role as the ultimate judge of the standards of behaviour for Ministers, and how Parliament is held to account. The Ministers also invited Mrs Quinn to draw any allegations she may have of a breach to the First Minister’s attention.
5. On 14 February 2018, Mrs Quinn wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mrs Quinn stated she was dissatisfied with the outcome of the Ministers’ review because she had been left not knowing to whom she should forward all her evidence. She believed there must be someone independent to exercise the scrutiny she expected.

¹ <http://www.gov.scot/Resource/0053/00531094.pdf>

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mrs Quinn 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.
7. On 6 March 2018, the Ministers were notified in writing that Mrs Quinn 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. The Ministers were invited to comment on this application and answer specific questions, including describing their searches and providing any supporting documentation.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Mrs Quinn and the Ministers. He is satisfied that no matter of relevance has been overlooked.

Information held

10. Under 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.
11. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not generally require a public authority to create recorded information in order to respond to a request, or to provide information which is not held in recorded form (e.g. to elicit an opinion from an official). The definition excludes unrecorded information and it is not necessarily to be equated with information an applicant believes the authority should hold, although the applicant's reasons may be relevant to the investigation of what is actually held.
12. In her application, Mrs Quinn submitted that her request has not been fully addressed. She believed there should be someone independent to exercise the scrutiny she expected.

Searches

13. The Ministers explained how they identified the recorded information which they believed was capable of addressing Mrs Quinn's request. They provided copies of internal communications relevant to the request, noting that the relevant procedures – relating to the application of the Code – were well known and publicly available. They also set the request in the context of frequent contact with Mrs Quinn on related issues over more than a decade, in the course of which she had been provided with the requested information on a number of occasions. In all the circumstances, detailed searches were not considered necessary.
14. The Ministers noted that Mrs Quinn refused to accept that she had been provided with all relevant information on the correct procedure. In their view, she appeared to expect a non-Ministerial point of contact, such as a civil servant or department or ombudsman, but they re-iterated that there is a set procedure for complaints regarding Ministers, who are also accountable to the Scottish Parliament (and to the courts, if they break the law). Parliament, in turn, is accountable to the electorate. The Ministers did not consider there was any more they could do to address her request.

15. The Commissioner has considered the terms of Mrs Quinn's request and its interpretation by the Ministers. It is not entirely clear how the request could have been interpreted or handled differently in the circumstances. Basically, in the context set by Mrs Quinn, the request is about adherence to the standards set for Ministers in the Code. The Code is clear as to the First Minister being the ultimate judge of whether these standards have been complied with, and as to the consequences of any breach. Beyond that, Ministers are accountable to Parliament and, in turn, to the electorate. They are also subject to the civil and criminal law: Mrs Quinn would have to take legal advice on their compliance with the former, and should inform the police if she believes there has been any breach of the latter.
16. This is an area in which the routes for pursuing compliance will be relatively obvious. Having considered all the relevant submissions in context, the Commissioner accepts that the Ministers interpreted Mrs Quinn's request reasonably and took adequate, proportionate steps to establish what relevant information they held and provide it to Mrs Quinn. It is not for the Commissioner to consider what the procedures should be, but he is satisfied that it is clear enough what they are. He does not believe further inquiry was necessary in the circumstances and is satisfied that Mrs Quinn has been given any relevant information the Ministers hold.

Decision

The Commissioner finds that the Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs Quinn.

Appeal

Should either Mrs Quinn or the Ministers 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

31 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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info