

# Decision Notice 039/2021

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## Investors in People Accreditation

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**Applicant: The Applicant**

**Public authority: Scottish Ministers**

**Case Ref: 202001216**



Scottish Information  
Commissioner

## Summary

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The Ministers were asked for the number of organisations they work with that were accredited with Investors in People. The Ministers stated that they did not hold the requested information.

Following an investigation, the Commissioner accepted that the requested information was not held.

## Relevant statutory provisions

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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

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1. On 17 September 2020, the Applicant made a request for information to the Scottish Ministers (the Ministers). The Applicant requested the number of organisations the Ministers work with that were accredited with Investors in People (IiP).
2. The Ministers responded on the same day. They explained that they work with a huge range of organisations across Scotland and the rest of the UK, but they do not record who is accredited or use the IiP logo, as there was no business requirement to record such information.
3. On 18 September 2020, the Applicant wrote to the Ministers requesting a review of their decision.
4. The Ministers notified the Applicant of the outcome of their review on 13 October 2020. They explained that the Scottish Government does not monitor IiP status of other organisations. For completeness, searches were conducted of their internal internet which identified one news article regarding an organisation which had been awarded formal accreditation as an Investor in Young People. The Ministers upheld the initial response that the requested information was not held.
5. On 14 October 2020, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the Ministers' review. She did not accept that the information was not held, and considered that the Ministers should know who is accredited.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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 11 November 2020, the Ministers were notified in writing that the Applicant had made a valid application and 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 to answer specific questions, including why they were satisfied that the requested information was not held. They responded on 21 December 2020.

## **Commissioner's analysis and findings**

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9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Ministers. He is satisfied that no matter of relevance has been overlooked.
10. 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 qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give notice in writing to that effect.

### **The Ministers' submissions**

12. The Ministers explained that the case handler who responded to the request had worked for the Scottish Government for over 20 years and has a strong understanding of how the organisation operates many of its corporate functions. Therefore, it was not considered necessary to search the document management system to identify the requested information.
13. The Ministers went on to explain that the case handler has participated in liP assessments in and outwith the Scottish Government, and was aware from that experience that the liP body offers accreditation for organisations that maintain appropriate standards in how they manage and develop their people.
14. It is, the Ministers submitted, entirely a matter for individual organisations to decide whether they seek accreditation and, although the Scottish Government holds liP accreditation, it has no formal connection to the "Investors in People" organisation.
15. The case handler contacted the Head of Organisational Development and Learning (People Development Division) as the business area within the Scottish Government that would be most likely to have an interest in liP information. They confirmed that there was no business need to collect such information, and it was not a matter for Scottish Government whether organisations are accredited for voluntary schemes such as liP.
16. The case handler was directed by the Head of Organisational Development and Learning to another relevant department, the Directorate for Fair Work, Employability and Skills. It was considered that this department may provide support to support "Investors in Young People" (liYP). This Directorate advised development of liYP is supported, but it had no business need to hold information about liYP accreditation.
17. The case handler also carried out a search of the internal Scottish Government website and found a news article (as detailed above: regarding an organisation had been awarded formal

accreditation as an Investor in Young People). The Ministers stated that this is a separate organisation from the Ministers and the information does not fall in scope of the request.

### **The Commissioner's findings**

18. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, the Commissioner's role is to determine what relevant information *is actually held* by the public authority (or was, at the time it received the request).
19. Having considered the submissions provided, taking account of the explanation as to why the requested information is not held, specifically that the Ministers have no formal connection to liP and no formal requirement to document which organisations they work with have accreditation, he is satisfied that the Ministers do not hold the requested information.
20. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities that the Ministers did not (and did not, on receiving the request), hold the information requested by the Applicant in terms of section 17(1) of FOISA.

### **Decision**

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

### **Appeal**

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Should either the Applicant 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**

**18 March 2021**

### 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.

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- (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.

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#### 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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