

Decision Notice



Decision 289/2013 Mr Paul Jakma and Transport Scotland

Nice way code

Reference No: 201302465

Decision Date: 16 December 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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Summary

On 7 August 2013, Mr Jakma asked Transport Scotland for information about the commissioning of the recently launched “Nice way code”. Transport Scotland told Mr Jakma that it did not hold the information requested. Following investigation, this was accepted by the Commissioner.

Relevant statutory provisions

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 7 August 2013, Mr Jakma wrote to Transport Scotland with the following request:
I am looking for information on how the recently launched "Nice Way Code" [the Code] was commissioned. I am particularly interested in the brief for the campaign, and any other guidance as to what the campaign was meant to cover or not cover. I would also like to know what studies or surveys, if any, informed the brief or guidance.
2. Transport Scotland responded on 4 September 2013. It notified Mr Jakma that it did not hold any of the information he sought, because the campaign in question was commissioned and developed by Cycling Scotland (which also prepared the brief and tender documents). It provided Mr Jakma with contact details for Cycling Scotland.
3. On 4 September 2013, Mr Jakma wrote to Transport Scotland requesting a review of its decision. He stated that it was clear from the reply that Transport Scotland was well informed as to how the Code was commissioned and developed, and so must have been kept apprised on these matters. He emphasised his request would cover all such material given by Cycling Scotland to Transport Scotland.



4. Mr Jakma further informed Transport Scotland that his request had intended to include any and all direction Transport Scotland gave to Cycling Scotland when the funding for the campaign was provided.
5. Transport Scotland notified Mr Jakma of the outcome of its review on 2 October 2013. It confirmed that it was not involved in any of guidance, or the studies and tendering, regarding the Code and confirmed that it held no information. However, Transport Scotland provided Mr Jakma with information relating to Cycling Scotland's initial funding proposal.
6. On 22 October 2013, Mr Jakma wrote to the Commissioner, stating that he was dissatisfied with the outcome of Transport Scotland's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Jakma 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

8. Transport Scotland is an agency of the Scottish Ministers (the Ministers). On 5 November 2013, in line with agreed procedures, the investigating officer notified the Ministers in writing that an application had been received from Mr Drury, giving Transport Scotland the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). Transport Scotland was asked to justify its reliance on any provisions of FOISA it considered applicable, and in particular to explain the steps it had taken to identify and locate the information requested.
9. Subsequent references to contact with or submissions from Transport Scotland are therefore references to contact with or submissions made by the Ministers on behalf of Transport Scotland.
10. Transport Scotland responded, providing submissions in support of its position that it did not hold any further information.

Commissioner's analysis and findings

11. 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 Jakma and Transport Scotland. She is satisfied that no matter of relevance has been overlooked.



Information held by Transport Scotland

12. 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 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.
13. 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 the applicant notice in writing to that effect.
14. The Commissioner notes the submissions provided by Mr Jakma, in which he provided reasons why he considered Transport Scotland should hold information relative to the Code as requested. Mr Jakma noted how well informed Transport Scotland was in relation to the campaign, and also that it provided funding to Cycling Scotland: therefore, he believed the authority would have been kept apprised of any developments in relation to the Code and would have retained any such information it received.
15. Transport Scotland confirmed to the Commissioner that the Code and related campaign were developed by Cycling Scotland. It explained the background to its funding of the Code and campaign, noting that it understood the relevant tendering and commissioning to have been done before it was approached for funding. In the circumstances, Transport Scotland did not consider Cycling Scotland's funding proposal to fall within the scope of the request, although Mr Jakma was supplied with a copy following his request for review.
16. While Cycling Scotland receives funding from Transport Scotland, it is not a Scottish public authority subject to FOISA. Transport Scotland informed the investigating officer that Cycling Scotland had confirmed it would consider any related request made by Mr Jakma and try to be as helpful and open as possible. Mr Jakma was informed of this during the investigation.
17. Transport Scotland also explained the searches and enquiries it undertook to ascertain whether it held information falling within the scope of Mr Jakma's requests. It provided an explanation of the outcomes of these. Transport Scotland acknowledged that it had been involved in the stakeholder consultation relative to the Code and campaign, but understood any contribution to have been verbal and unrecorded.
18. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that Transport Scotland interpreted Mr Jakma's request reasonably and took adequate, proportionate steps in the circumstances to establish what information it held and which fell within the scope of the request. Given the explanations provided, she is satisfied that Transport Scotland did not hold the information requested by Mr Jakma.



19. The Commissioner is therefore satisfied that Transport Scotland was correct to give Mr Jakma notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request. In providing such information as it did, she is satisfied that it dealt with the request in accordance with section 1(1) of FOISA.

DECISION

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

Appeal

Should either Mr Jakma or Transport 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 December 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.
- ...