

Decision Notice 088/2022

Corra Foundation: audit dates

Applicant:

Public authority: Scottish Ministers

Case Ref: 202100480



Scottish Information
Commissioner

Summary

The Ministers were asked for the dates they had audited the Corra Foundation. The Ministers told the Applicant they did not hold this information. The Commissioner investigated and was satisfied that the Ministers did not hold the information.

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 1 March 2021, the Applicant made an information request to the Scottish Ministers (the Ministers). He asked:

... what are the recorded dates when the Scottish Government performed an audit on The Corra Foundation to ensure that the recipients of Scottish Government funds relating to unregulated child contact centres were fully compliant with the Data Protection Act 2018 and the (now UK) GDPR (stipulated in Section 5.3 of the contract)?
2. The Ministers responded on 18 March 2021. They explained that the Scottish Government does not formally audit The Corra Foundation but that The Corra Foundation, on behalf of the Ministers, requires organisations in receipt of Children, Young People and Families Early Intervention & Adult Learning and Empowering Communities funding to submit quarterly reports and an annual report to it each year. These reports include a requirement for organisations to confirm that they are following all current statutory requirements and other laws and regulations relating to the grant, including adherence to data protection legislation.
3. On 28 March 2021, the Applicant wrote to the Ministers requesting a review of their decision. He suggested that, if the information was not in fact held, the Ministers should have notified him, under section 17(1) of FOISA, that the information was not held. He also considered that the information should be held by the Ministers and asked for additional searches to be carried out.
4. The Ministers notified the Applicant of the outcome of their review on 8 April 2021. They confirmed that the Scottish Government does not carry out audits of the Corra Foundation, which meant that they did not hold the information.
5. On 15 April 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant remained of the view that the information should be held by the Ministers.

Investigation

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 5 May 2021, the Ministers were notified in writing that the Applicant 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 to answer specific questions.

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 him by both the Applicant and Ministers. He is satisfied that no matter of relevance has been overlooked.

Whether information was held

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) of FOISA. This is not necessarily to be equated with the information an applicant believes an 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 this effect.
12. The standard of 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 the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reasons offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations as to what information the authority should hold, ultimately the Commissioner's role is to determine what information is actually held by the public authority (or was, at the time the request was received).

Submissions from the Applicant

13. In his application, the Applicant argued that the Ministers should hold the information. He explained why.

Submissions from the Ministers

14. A copy of the application was provided to the Ministers to allow them to comment on the concerns raised by the Applicant.
15. The Ministers noted that responsibility for ensuring compliance with the contract referred to by the Applicant, including data protection compliance, is a function of the Corra Contract Manager, and not of the Ministers.
16. The Ministers confirmed that they had searched their electronic management system. They specified the key words used. The search results were assessed, but the case handler determined that no information falling within the scope of the request was held.

17. Given the wider concerns raised by the Applicant, the Ministers commented that there was confidence that the Corra Foundation would inform the Ministers should any data protection issues be identified, and provided further confirmation that no such breach had been notified to the Ministers.

The Commissioners' findings

18. As stated above, the standard of 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 will consider the scope, quality, thoroughness and results of the searches carried out by the authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
19. The Applicant clearly believes that the Ministers should hold the information.
20. The Ministers have specified the searches they have carried out to locate any information falling within the scope of the request. The Commissioner is satisfied that the searches were reasonable and would have been sufficient to locate and identify any information, if held.
21. The Commissioner also accepts the arguments from the Ministers as to why they would not expect to hold this information.
22. In the circumstances, the Commissioner is satisfied, on the balance of probabilities, that the Ministers did not (and do not) hold the information falling within the scope of the Applicant's request.

Decision

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

Should either the Applicant or the Scottish 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.

Daren Fitzhenry
Scottish Information Commissioner

25 July 2022

Appendix 1: 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.

...

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