

Decision Notice

Decision 211/2016: Mr Tommy Kane and the Scottish Ministers

Meetings attended by Nicola Sturgeon, John Swinney and Alex Salmond

Reference No: 201600672

Decision Date: 5 October 2016



Scottish Information
Commissioner

Summary

On 26 November 2015, Mr Kane made three requests, asking the Scottish Ministers (the Ministers) for information about meetings attended by Nicola Sturgeon, John Swinney and Alex Salmond, on specified dates.

The Ministers failed to respond to the requests. Following a review (7 April 2016), they disclosed some information with parts redacted under specified FOISA exemptions. While not challenging the decision to withhold some information, Mr Kane expected that other information should be held by the Ministers and applied to the Commissioner for a decision on this basis.

The Commissioner investigated and found that the Ministers had properly responded to Mr Kane's requests for information in accordance with Part 1 of FOISA, and did not hold any further information falling within the scope of his requests. She was critical of the time taken by the Ministers to respond to Mr Kane's requests.

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 26 November 2015, Mr Kane made three requests for information to the Ministers about meetings which Alex Salmond, Nicola Sturgeon and John Swinney attended with Sir Angus Grossart on specified dates. The full text of the requests is contained in Appendix 2 to this decision. The Appendix forms part of this decision
2. The Ministers did not respond to Mr Kane and, on 18 March 2016, he wrote to them requesting a review of their decision not to respond.
3. The Ministers notified Mr Kane of the outcome of their review on 7 April 2016. They apologised for the failure to respond and explained that the information had taken longer than expected to gather. They provided some information to Mr Kane (pre-meeting briefings) but redacted parts of it under sections 30(c) and 38(1)(b) of FOISA. The Ministers stated that because the meetings were mainly informal, agendas, notes/minutes, post meeting briefings etc. had not been produced and they gave notice under section 17(1) of FOISA that they did not hold this information.
4. On 7 April 2016, Mr Kane applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the Ministers' review because he felt that further information should be held by the Ministers. He was also unhappy with the length of time taken to respond to his request.

Investigation

5. The application was accepted as valid. The Commissioner confirmed that Mr Kane made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to her for a decision.
6. On 13 May 2016, the Ministers were notified in writing that Mr Kane had made a valid application. The case was then allocated to an investigating officer.
7. 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 provide details of the searches they had carried out to locate any information falling within the scope of Mr Kane's requests.
8. Both the Ministers and Mr Kane provided submissions to the Commissioner.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both Mr Kane and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Section 17(1) of FOISA

10. 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 it to give the applicant notice in writing to that effect.

Submissions from the Ministers

11. The Ministers explained that because Mr Kane's requests were very specific as to particular meetings on particular dates, it gave them a fairly specific timeline in which to conduct searches for relevant information. The Ministers provided the Commissioner with evidence of their searches of the Scottish Government electronic Records and Document Management system (the eRDM) including the keywords used, a list of the documents that were identified and a computer screen snapshot of the search results.
12. As the requests related to meetings on specific dates, the searches included information from two weeks either side of the date of each of the meetings. This allowed time for the provision of briefing notes before the meeting and any follow up information after the meeting. Searches were conducted for all the time periods identified by Mr Kane from November 2011 up until the end of August 2015.
13. Staff members from the Ministerial Private Office area were also asked to conduct searches at the time the requests were received and then to repeat searches of their records on 29 January 2016, but these searches did not identify any information falling within the scope of Mr Kane's requests. The explanation was that the Ministers' offices do not retain information within their mailboxes after a period of 3 months, due to the volume they receive. If the information is relevant to the public record it is either passed to the relevant policy area to save into the eRDM or is saved directly by Private Office staff. Therefore, the Ministers would not have expected Ministerial Private Offices to have retained any relevant information in relation to Mr Kane's requests due to the dates of the meetings in which he was interested.

Submissions from Mr Kane

14. It was Mr Kane's view that the Ministers should have retained further information relating to the meetings in question. He submitted that if it transpired that no records of meetings attended by senior Ministers were kept, then it was in the public interest for this to be known.

The Commissioner's conclusions

15. The Commissioner notes Mr Kane's contention that further information should be held by the Ministers. She also notes that Ministerial Private Offices would not retain information of this kind for longer than three months, it being the responsibility of the policy area concerned to save records in the eRDM, where necessary.
16. There is no evidence that information has been destroyed other than routinely, in accordance with the Ministers' information retention schedules. There is no suggestion that information has been destroyed after the Ministers received Mr Kane's requests. The Commissioner does not consider the routine destruction of information that may have fallen within the scope of the requests to be a failure to comply with FOISA.
17. The Commissioner is satisfied that the searches and enquiries undertaken by the Ministers were adequate in the circumstances, bearing in mind the specific scope of the requests and having considered all the relevant submissions. In all the circumstances, therefore, the Commissioner is satisfied that the Ministers were entitled to conclude that they held no information falling within the scope of Mr Kane's requests.

Time taken to respond to Mr Kane's requests

18. The time taken to respond to Mr Kane's requests (from receipt of the requests on 26 November 2016 until the review response on 7 April 2016) is unacceptable and an example of extremely poor practice by the Ministers. The Ministers have not provided the Commissioner with any reason for this delay, simply stating that it was "unfortunate".
19. FOISA requires public authorities to respond to information requests in a maximum of 20 working days. The Commissioner notes that Ministers apologised to Mr Kane in their review response and explained to him that it was taking longer than they had expected to gather the information. However, it is unacceptable that Mr Kane had to wait 19 weeks before being provided with a substantive response. The Commissioner notes that the Ministers have stated that they will endeavour to avoid any repetition of this and ensure they respond timeously to requests and review requirements in future.

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 requests made by Mr Kane.

Appeal

Should either Mr Kane 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

5 October 2016

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.

...

Appendix 2: The information requests

Request 1

In relation to the following meetings that the then First Minister, Alex Salmond, attended with:

Sir Angus Grossart on 29 July 2013

Sir Angus Grossart 21 October 2013

Sir Angus Grossart 6 March 2014

I would like:

To know the purpose of the meeting, the names of all those that attended the meeting, a copy of the agenda of the meeting, a copy of any pre meeting briefing, note or minute taken from the meeting and any action points/post meeting briefing that was produced as a result of the meeting.

Request 2

In relation to the following meetings that Nicola Sturgeon attended with:

Sir Angus Grossart on 19 September 2012

Sir Angus Grossart on 12 June 2014

I would like:

To know the purpose of the meeting, the names of all those that attended the meeting, a copy of the agenda of the meeting, a copy of any pre meeting briefing, note or minute taken from the meeting and any action points/post meeting briefing that was produced as a result of the meeting.

Request 3

In relation to the following meetings that John Swinney attended with:

Sir Angus Grossart on 17 November 2011

Sir Angus Grossart on 9 June 2011

Sir Angus Grossart on 15 May 2014

Sir Angus Grossart and Lionel Barber on 2 June 2015

Sir Angus Grossart on 3 August 2015

I would like:

To know the purpose of the meeting, the names of all those that attended the meeting, a copy of the agenda of the meeting, a copy of any pre meeting briefing, note or minute taken from the meeting and any action points/post meeting briefing that was produced as a result of the meeting.

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