

Decision Notice



Decision 034/2013 Mr O and the Office of the Scottish Charity Regulator

Hamilton Citizens Advice Bureau

Reference No: 201202616
Decision Date: 4 March 2013

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
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Summary

Mr O asked the Office of the Scottish Charity Regulator (OSCR) for information about complaints or other matters relating to Hamilton Citizens Advice Bureau (Hamilton CAB). He did not accept OSCR's assertion that it did not hold the information requested. Following an investigation, the Commissioner accepted that OSCR did not hold the information requested by Mr O.

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 16 October 2012, Mr O wrote, using a pseudonym, to OSCR requesting the following information¹:

"All and any complaints or other data sent by persons to OSCR concerning Hamilton Citizens Advice Bureau between 2002 and this date on 2012."
2. OSCR responded on 18 October 2012 and asked Mr O for his true name (in terms of section 8(1)(b) of FOISA, an information request must state the name of the applicant for it to be valid). OSCR also sought clarification of what Mr O meant by "other data" and "persons." OSCR pointed out that it was established under the Charities and Trustee Investment (Scotland) Act 2005, and therefore its records did not date back to 2002 (that is, in terms of the time period for which Mr O had requested information).
3. On 23 October 2012 Mr O provided his name to OSCR and clarified his request. He explained that by "other data", he meant information about any matter relating to Hamilton CAB other than a complaint.

¹ http://www.whatdotheyknow.com/request/hamilton_citizens_advice_bureau#comment-34927



4. OSCR responded to Mr O on 23 October 2012. It explained that the only information that it held in respect of Hamilton CAB (SC007443) was information that had been supplied to OSCR by that charity, such as its annual accounts. It informed Mr O that certain information about the charity could be ordered and downloaded from Companies House, and provided a link to the Companies House website. OSCR concluded by telling Mr O that if he wished the information that Hamilton CAB had provided, he should let OSCR know.
5. On 24 October 2012 Mr O wrote again to OSCR and asked:
“Have there been any official OSCR contact or investigation or action taken against this charity [Hamilton CAB]?”
6. On 25 October 2012, OSCR responded that it had no record of any complaint or concern regarding Hamilton CAB, and that there had been no investigation or action taken by OSCR about that charity. By way of providing advice and assistance, OSCR listed the information it held about Hamilton CAB.
7. Later the same day, Mr O wrote to OSCR requesting a review of its decision. In particular, Mr O drew OSCR’s attention to a specific incident, and expressed surprise that there had been no complaints or concerns sent to OSCR regarding this. He asked that OSCR verify that there had been no complaint against Hamilton CAB.
8. Although a subsequent email from Mr O seemed to indicate that he no longer wished to have a review, OSCR – whilst indicating that it was unsure if Mr O actually wished to have his review withdrawn – conducted a review and notified Mr O of the outcome. On 6 December 2012, OSCR communicated its review finding to Mr O. This review upheld OSCR’s initial response that, in terms of section 17(1), it held no information that fell within Mr O’s request.
9. On 9 December 2012, Mr O wrote to the Commissioner, stating that he was dissatisfied with the outcome of OSCR’s review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10. The application was validated by establishing that Mr O had made a request for information to a Scottish public authority and had 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

11. The investigating officer subsequently contacted OSCR, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. OSCR was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested and to explain the steps it had taken to identify and locate the information Mr O had requested.



12. The relevant submissions received from both OSCR and Mr O will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered all the submissions made to her by both Mr O and OSCR and is satisfied that no matter of relevance has been overlooked.
14. OSCR confirmed that it wished to rely on section 17(1) of FOISA and that it does not, and did not, hold the information requested.
15. 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, subject to certain qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect, as OSCR did in response to Mr O's request.
16. OSCR explained that all its records are held on its records management system, known as Objective 8.1. OSCR provided the Commissioner with a copy of its search results from 17 October 2012, which had used the search term "SC007443" (the reference number for Hamilton CAB). The search had retrieved all files linked with that unique charity number and was a metadata search of the entire Objective database.
17. OSCR also provided the Commissioner with a copy of the search results from 24 October 2012, which had used the search term "Hamilton citizens", and explained that this had brought up the same results as the charity number search described above. Again, the contents of the entire Objective database had been searched.
18. Further, a manual search of restricted Compliance and Investigations files (restricted in Objective) was conducted by OSCR on 24 October 2012 and no files relating to Hamilton CAB were found.
19. OSCR provided details of the staff who had carried out the searches. In terms of where information would be held, or how it would be classified, OSCR explained that when it receives a complaint or concern about a charity it creates a new Investigation and compliance casework file and all relevant information and documents are then stored in that file.
20. OSCR concluded by stating that it was confident that any complaints about Hamilton CAB would be caught by the searches described. OSCR also provided the Commissioner with the results of a more recent search it had conducted on 5 February 2013, again using the search term "SC007443".



21. In addition, OSCR provided the Commissioner with a copy of its Records Management Policy and Retention Schedules. Annex D of that Policy related to OSCR Retention Schedules, and the table below shows that Investigation and compliance casework is kept for 10 years.
22. As Mr O had referred to a specific incident in respect of the charity in question (about which there was information in public domain), OSCR was asked whether its searches had taken this incident into account.
23. OSCR responded that the searches did not take into account the incident referred to by Mr O, but information about it would have been captured in the search results already conducted.
24. OSCR were invited to comment on Mr O's comment in his application to the Commissioner that, given certain information in the public domain about Hamilton CAB, he was concerned to find OSCR had no record of any complaints or concerns being raised or any reports relating to the incident. OSCR commented that it was not aware of the matter Mr O had pointed out and that there is currently no requirement under the Charities and Trustee Investment (Scotland) Act 2005 for a Scottish Charity to report an incident to OSCR.
25. Having carefully considered all of the above, the Commissioner considers that the information requested in this instance (should – given OSCR's statutory duties - be readily identifiable by it, if held. OSCR has explained the searches and enquiries it undertook to establish whether it held the information. The Commissioner accepts that the searches were reasonable and appropriate in the circumstances, and notes that OSCR has clearly identified to Mr O the information that it holds about Hamilton CAB.
26. The Commissioner accepts that it was reasonable in all the circumstances for OSCR to conclude that it did not hold any information sought by Mr O. She is therefore satisfied that OSCR was correct to give Mr O notice, in terms of section 17(1) of FOISA, that it held no information falling within the scope of his request.

DECISION

The Commissioner finds that the Office of the Scottish Charity Regulator (OSCR) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr O.



Appeal

Should either Mr O or the Office of the Scottish Charity Regulator wish to appeal against this decision, there is an 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 notice.

Margaret Keyse
Head of Enforcement
4 March 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.
- ...