

Decision Notice

Decision 004/2019: The Applicant and the Scottish Ambulance Service Board

Anti-sexual abuse policy

Reference No: 201801609

Decision Date: 11 January 2019



Scottish Information
Commissioner

Summary

SASB was asked for a copy of its anti-sexual abuse policy and associated complaints procedure.

SASB responded that sexual abuse constitutes a criminal offence and would be dealt with by the Police. At review stage, SASB repeated this statement and provided a copy of SASB's complaints handling procedure.

After investigation, the Commissioner accepted that SASB did not hold the information requested. He found that SASB had failed to give notice of this, as required under section 17 of FOISA. He did not require SASB to take any action.

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 23 May 2018, the Applicant made a request for information to the Scottish Ambulance Service Board (SASB), asking for a copy of its anti-sexual abuse policy and associated complaints procedure.
2. SASB responded on 6 June 2018. SASB stated that sexual abuse would constitute a serious criminal offence and would therefore be dealt with by the Police.
3. On 8 June 2018, the Applicant wrote to SASB requesting a review of its decision on the basis that not all sexual abuse incidents are or can be dealt with in criminal law in Scotland. The Applicant asked again for the information previously requested, adding "...but specifically any internal complaints procedure to deal with such matters towards patients. Regardless of them being female or trans-female."
4. SASB notified the Applicant of the outcome of its review on 3 July 2018. The SASB repeated its original response. It also supplied a copy of SASB's model complaints handling procedure¹. It explained that all complaints to SASB are dealt with in line with this procedure and investigated on an individual basis, escalated or referred as required.
5. On 27 September 2018, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied with the outcome of the SASB's review because its response was only a statement of fact and SASB had provided a copy of the internal complaints procedure but not the anti-rape policy. The Applicant considered that SASB must have an anti-rape policy or anti-sexual abuse policy of some sort and asked the

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<http://www.scottishambulance.com/userfiles/file/TheService/SAS%20Public%20Facing%20Complaints%20Handling%20Procedure.pdf>

Commissioner to compel SASB to supply any information it may hold constituting an anti-rape policy or written prohibition of any sort to their employees not to sexually harm their patients.

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 7 November 2018, SASB was notified in writing that the Applicant had made a valid application. SASB was asked to confirm whether it held any information falling within the scope of the request.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. SASB was 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 withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and SASB. He is satisfied that no matter of relevance has been overlooked.

Whether SASB held any information

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, subject to qualifications which are not applicable in this case.
11. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give the applicant notice in writing to that 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 this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time of the request) actually held by the public authority.
13. In its submissions to the Commissioner, SASB maintained that it did not have a document which could be described as an anti-sexual abuse policy. SASB considered that sexual abuse is a criminal matter and would be referred to Police Scotland, if there ever were any incidents. It had provided the applicant with the SASB complaints procedure and explained that all complaints are dealt with in line with this procedure.
14. SASB provided evidence of the searches it had carried out of the intranet site containing its policies and procedures. It provided details of the officials who had been identified as the most likely to be aware of any anti-sexual abuse policy, should it exist. SASB's HR Manager, Equalities manages all equality policies and procedures for the SASB and its Information

Services, and was approached. The Governance Manager was also approached for advice. Both confirmed that there was no specific anti-sexual abuse policy in place.

15. SASB confirmed that it had not conducted searches on personal computers and emails; instead, a search had been conducted on the system where all SASB policies and procedures are stored.
16. SASB was asked if it would be expected to hold an anti-sexual abuse policy, or had a legal duty to hold such information. SASB stated that it would not expect to hold such information as it considered that all sexual abuse is a criminal act and so any incidents would be reported to Police Scotland.
17. SASB submitted that it was satisfied that all relevant searches had been undertaken and that it did not hold any information falling within the scope of the Applicant's request. SASB provided the Commissioner with a copy of its Dignity at Work policy which covers general behaviours of bullying and/or harassment by staff, but submitted that this could not be considered an anti-sexual abuse policy. It stated that it was willing to provide this document to the Applicant if it would provide reassurance that there were policies in place on acceptable behaviour of staff.

The Commissioner's conclusions

18. The Commissioner has considered the Dignity at Work policy document and accepts that the information does not fall within the scope of the Applicant's request.
19. The Commissioner considers that SASB did not explicitly address the point made by the Applicant in the request for review that not all sexual abuse incidents can be dealt with under criminal law. The Applicant's request for review referred to sexual harassment as well as abuse, and it would have been reasonable for the SASB to have reviewed its narrow interpretation of the request and considered whether it held any information about dealing with or preventing patient complaints of sexual harassment. Although SASB provided a copy of its complaints procedure that could be followed in such circumstances, it did not explain to the Applicant that these complaints procedures would be relevant for complaints of sexual abuse or harassment.
20. However, having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that SASB took adequate, proportionate steps to establish whether it held information which fell within the scope of the Applicant's request. He accepts that any information relevant to the request (including anti-sexual harassment policy information) would have been identified using the searches and enquiries described by SASB. He is therefore satisfied, on the balance of probabilities that the SASB does not (and did not, at the time of the request), hold the information requested by the Applicant.
21. However, in its response and review response, SASB did not state explicitly that it did not hold the information which the Applicant had asked for. By failing to give such notice, which is required by section 17(1), SASB failed to comply with Part 1 of FOISA when responding to the request.

Decision

The Commissioner finds that the Scottish Ambulance Service Board (SASB) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. SASB failed to comply with Part 1 of FOISA in failing to give notice that it did not hold information covered by the request, as required by section 17(1).

Given that the Commissioner accepts that SASB does not hold any information falling within the scope of the request, the Commissioner does not require SASB to take any action in response to this failure in response to the Applicant's application.

Appeal

Should either the Applicant or the Scottish Ambulance Service Board 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

11 December 2019

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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