

Scottish Parliament Region: Mid Scotland and Fife

Case 200502906: The Scottish Information Commissioner

Summary of Investigation

Category

The Office of the Scottish Information Commissioner

Overview

The complainant (Mr C) complained that the Scottish Information Commissioner (the Commissioner) had breached a deadline for issuing a decision notice on a number of Freedom of Information requests.

Specific complaint and conclusion

The complaint which has been investigated is failure to issue various decision notices within a period of four months (*not upheld*)

As the investigation progressed, I identified issues concerning the complaints procedure of the Office of the Commissioner. I, therefore, informed the Office of the Commissioner and Mr C that the investigation would additionally consider whether the complaints procedure was adequate for handling the circumstances surrounding Mr C's complaint.

Redress and recommendations

The Ombudsman recommends that the Commissioner:

- (i) streamline their complaints procedure; and
- (ii) consider whether or not to implement an unacceptable actions policy for service users.

Main Investigation Report

Introduction

1. On 25 January 2006 the complainant (Mr C) brought his complaint to the Ombudsman's office. Mr C had raised a number of Freedom of Information applications to the Scottish Information Commissioner (the Commissioner). Mr C was under the impression that the Commissioner is under a statutory obligation to issue a decision notice on a Freedom of Information application within four months, however, there is no such statutory requirement. Mr C had raised a number of complaints with the Commissioner regarding the fact that a number of his requests had taken longer than four months to have a decision notice issued for them. The complaints had exhausted the complaints procedure of the Commissioner's office and were, therefore, eligible to be investigated by the Ombudsman.

2. The complaint from Mr C which I have investigated is that there was a failure to issue various decision notices within, what Mr C believed, was a statutory period of four months.

As the investigation progressed, I identified issues concerning the complaints procedure of the Scottish Information Commissioner's Office. I, therefore, informed the Scottish Information Commissioner's Office and Mr C that the investigation would additionally consider whether the complaints procedure was adequate for handling the circumstances surrounding Mr C's complaint.

Investigation

3. In the course of my investigation, I obtained information and correspondence relating to the complaint from Mr C and the Commissioner including the correspondence between Mr C and the Commissioner and relevant policies and procedures. In doing so, I gathered all the information that was necessary for an investigation of Mr C's complaint.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Commissioner were given an opportunity to comment on a draft of this report.

Complaint: Failure to issue various decision notices within a statutory period of four months

5. Mr C's assumption regarding the obligation on the Commissioner to report on each Freedom of Information application within four months is inaccurate. The obligation on the Commissioner is to lay an annual report before the Scottish Parliament and within this report record every occasion that it has taken longer than four months to issue a decision notice. Evidence shows that this fact was pointed out to Mr C by the Commissioner on a number of occasions. However, evidence also shows that Mr C was unable to accept this factual information.

Conclusion

6. Mr C's complaint about alleged delay was based on his wrong assumption about the commissioner's statutory duties. Consequently, I do not uphold this complaint. Essentially, the complaint was unfounded. It is unfortunate that, despite considerable correspondence from the Commissioner making the point, Mr C failed to accept that there is not a statutory four month limit for issuing a decision notice.

Inadequacy of complaints procedure

7. In my investigation of Mr C's complaint, I obtained a copy of the Commissioner's complaints procedure. The complaints procedure is detailed in a 50 page document entitled 'Enquiries Procedure', which also advises on handling general enquiries and information requests. The complaints procedure is detailed over three pages within this 50 page document.

8. It is clear from the evidence I have obtained that, in dealing with the Commissioner, Mr C would frequently contact the office without properly referencing or addressing his correspondence including his complaints correspondence. Essentially, I consider Mr C's actions, at times, proved to be unacceptable with regards to the manner in which he communicated with the Commissioner's office.

Conclusion

9. Having reviewed the complaints procedure, I have found that the fact that the procedure is located within a 50 page document may cause difficulty in accessing the procedure for both staff and service users. The complaints procedure does not

detail the way in which staff should manage unacceptable actions by a complainant. Mr C's actions and the manner in which he communicated with the Commissioner, could have been considered under such a policy.

10. I believe that a provision within the complaints procedure, detailing the ways in which such actions should be managed, would have allowed staff to correspond and deal with Mr C more effectively. I must stress that the problems of communication were, in my view, a direct result of Mr C's excessive and inappropriately addressed correspondence. The manner in which this was managed simply helped to make things more difficult for staff. As a result, I must conclude that the complaints procedure was inadequate. I would add, however, that staff worked within the remit of the existing procedure in dealing with a very difficult complainant.

Recommendation

11. I recommend that the complaints procedure be streamlined into an individual document and amended to include provisions for dealing with unacceptable actions of complainants. The Ombudsman is happy to provide advice and guidance on how to carry out this recommendation.

12. I am pleased to note that the Commissioner has accepted this recommendation and has indicated that they will streamline their complaints procedure for distributing to the public when requested. The Commissioner and I have also started work on developing an unacceptable actions policy for their office.

30 January 2007

Explanation of abbreviations used

Mr C

The complainant

The Commissioner

The Office of the Scottish Information
Commissioner