



Scottish Information
Commissioner

**Decision 061/2006 – Mr K Ovenstone and the
Student Awards Agency for Scotland**

*Request for the number of students disadvantaged each year by the
incorrect assessment of parental superannuation contributions*

Applicant: Mr K Ovenstone

Authority: The Student Awards Agency for Scotland

Case No: 200502795

Decision Date: 12 April 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 061/2006 – Mr K Ovenstone and the Student Awards Agency for Scotland

Request for details of the number of students disadvantaged each year by the incorrect assessment of parental superannuation contributions – refusal on the grounds of section 17 – information not held

Facts

Mr Ovenstone submitted a request to the Student Awards Agency for Scotland (SAAS) seeking details of the number of students who were “*disadvantaged (each year) by the incorrect assessment and exclusion of parental superannuation contributions.*”

The SAAS issued a refusal notice under section 17 of the Freedom of Information (Scotland) Act 2002 (FOISA), on the grounds that it did not hold information in a form which would allow it to respond to the request.

Outcome

The Commissioner found that the SAAS complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing Mr Ovenstone’s request on the grounds that the requested information was not held.

Appeal

Should either Mr Ovenstone or the SAAS 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 of receipt of this notice.



Background

1. Mr Ovenstone had been involved in lengthy correspondence with the Student Awards Agency for Scotland (SAAS) during 2004, following the incorrect assessment by the SAAS of the level of student support to which two of his children were entitled. This incorrect assessment arose from a fault on the part of the SAAS in calculating Mr Ovenstone's superannuation contributions. This fault was acknowledged by the SAAS in correspondence to Mr Ovenstone of 17 September 2004.
2. On 20 September 2005 Mr Ovenstone wrote to the SAAS to request information under the Freedom of Information (Scotland) Act 2002 (FOISA). In making his request, Mr Ovenstone repeated a question he had put to the SAAS in correspondence of 28 October 2004, shortly before FOISA came into effect. Mr Ovenstone was dissatisfied with the response he received to the earlier correspondence, and sought formal consideration of the request under the terms of FOISA. Mr Ovenstone's request was as follows:

"How many students were disadvantaged (each year) by the incorrect assessment and exclusion of parental superannuation contributions?"
3. On 28 September 2005 the SAAS responded to Mr Ovenstone's request. This response informed him that the SAAS did not hold data in a format that enabled it to respond to his information request.
4. Mr Ovenstone requested that the SAAS review its handling of his information request on 1 October 2005. In this correspondence, Mr Ovenstone also indicated that he would be prepared to accept an '*accurate estimate*' of the figure.
5. A response to this request was issued by the SAAS on 7 October. This response upheld the earlier assessment that no information was held which could be provided.
6. Mr Ovenstone submitted an application for decision to my Office on 8 October 2005, and the case was allocated to an investigating officer.



The Investigation

7. Mr Ovenstone's appeal was validated by establishing that he had made a valid information request under FOISA, and had appealed to me only after asking the public authority to review its response to that request.
8. In his application, Mr Ovenstone stated that he was disappointed with the SAAS's response to his request in 2004 (prior to the implementation of FOISA) because although some general information and statistics were provided, this response did not specifically answer his question. Mr Ovenstone also indicated that he was dissatisfied with the SAAS's subsequent failure to provide this information under FOISA.
9. My investigating officer contacted the SAAS on 25 October 2005 to request information relevant to the consideration of this case. This information was provided by the SAAS, via the Scottish Executive's Freedom of Information Unit, on 2 November 2005.

The Commissioner's Analysis and Findings

The scope of the investigation

10. Before I go on to discuss the substance of this case, I wish to first briefly clarify the role of my Office, in order to ensure that my remit with regard to the consideration of this case is clear.
11. Mr Ovenstone application to me stems from the fact that he has, in recent years, seen errors made by the SAAS with regard to the assessment of awards for both of his children. The SAAS have apologised to Mr Ovenstone for these errors, and have indicated that both errors stemmed from the same failure to take Mr Ovenstone's superannuation contributions into account when originally calculating one of the awards. The fact that the error occurred in relation to both of Mr Ovenstone's children appears, however, to have led him to question whether such errors are, in fact, widespread.



12. It is important to stress, however, that the issue of how or why these errors occurred, or whether such errors occur frequently or infrequently, cannot be considered by my Office. In addition, it should also be noted that FOISA provides access only to information which is held by an authority at the time a request is received. It does not, therefore, fall within my remit to assess whether authorities should (or should not) hold particular information, nor can I require authorities to acquire or create information in order to respond to requests.
13. In the consideration of this case, therefore, my role extended only to assessing whether the SAAS dealt with Mr Ovenstone's information request appropriately in terms of FOISA and, consequently, whether the reasons given for the non-disclosure of information were legitimate and appropriate, in terms of that Act.

Is the requested information held by the SAAS?

14. The SAAS informed Mr Ovenstone that it did not hold information in such a way which would facilitate the provision of an accurate figure, or an accurate estimate, in response to his request. As such, the SAAS refused Mr Ovenstone's request on the basis of section 17 of FOISA. Section 17 requires authorities to notify applicants within 20 working days of receipt of a request, if the information to which the request relates is not held.
15. In its submission to this Office, the SAAS has provided more information setting out why the requested information cannot be provided.
16. The SAAS stressed that all student records are held on an internal Electronic Document Management system (EDM system). When the SAAS uncovers, or is informed about, an incorrect assessment of an award, it stated that its current procedure is to directly amend the relevant electronic record and recalculate the award entitlement. The SAAS stated that all amendments are made directly onto the EDM system, overwriting existing data, and, as a result, the EDM system does not record or retain details of the error.
17. The SAAS stated therefore that it would not be possible to extract the information requested by Mr Ovenstone electronically from its systems, as it is not possible to identify such cases once errors have been identified and corrected. The SAAS also asserted that its systems would require significant amendments to allow it to respond to similar requests in future, and that any such amendments would incur a substantial cost. It also pointed out that, regardless of this, any such amendments would only apply to future records, and would not allow the SAAS to retrospectively access the specific information sought by Mr Ovenstone.



18. During the course of the investigation the SAAS was asked to consider whether alternate methods could be used to access relevant information. For example, it was noted that the SAAS had indicated that copies of all written correspondence held in relation to an application were appended to individual records on the EDM system. Such appendages would therefore include correspondence where the SAAS had been either notified in writing of a potential error, or had informed an applicant of the reassessment of an award. The SAAS was therefore asked to comment whether it would be possible to issue a response to Mr Ovenstone based on information accessible through this method. The SAAS concluded, however, that this would not be possible, stating that there were two key reasons for this.
19. Firstly, the SAAS asserted that the collation of relevant information would require a manual review of the documents appended to each of the 130,000 applications received annually. The SAAS stated that any such review would significantly exceed the upper cost limit of £600 for responding to requests set out in the Freedom of Information (Fees for Required Disclosure)(Scotland) Regulations 2004 (the Fees Regulations). Indeed, it was estimated that it would take a minimum of 30 minutes to review each case file and, as a result, at least 65,000 hours to collate relevant information for a single year. It was also noted that Mr Ovenstone's request covered an unspecified number of years.
20. Secondly, the SAAS stated that, even if this work were undertaken, it would not provide accurate information in response to Mr Ovenstone's request. The SAAS pointed out that Mr Ovenstone's request specifically sought details of the number of students disadvantaged as a result of the incorrect assessment of parental superannuation contributions. It was stressed that, even in cases where an error could be identified, any correspondence held would frequently comprise of only an original and a revised award letter, with no explicit information detailing the nature of the error. It was also pointed out that there were many reasons why a second award letter might be issued, and that these were not solely issued in cases of error on the part of the SAAS.
21. In addition, the SAAS also asserted that any incoming correspondence attached to relevant files would commonly not allow it to assess whether any concern related to the incorrect calculation of superannuation contributions. This would be because the student frequently would not be aware of the nature of a particular error when querying the allowance. In such cases, the query would be investigated and, if an error was discovered, the data in the EDM system would be overwritten, and a second award letter issued.
22. Having considered in detail the submissions made to this Office, I am satisfied that the specific information requested by Mr Ovenstone cannot be retrieved from the SAAS's systems and is, therefore not held. As a result, I find that the SAAS acted correctly in refusing Mr Ovenstone's request for information under section 17 of FOISA.



Decision

I find that the Student Awards Agency for Scotland (SAAS) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing Mr Ovenstone's request, on the grounds that the requested information was not held.

Kevin Dunion
Scottish Information Commissioner
12 April 2006