



Scottish Information
Commissioner

Decision 188/2006 Mrs X and the Scottish University for Industry
<i>Request for internal guidance on assessing 'Nil income' applications for funding</i>

Applicant: Mrs X

Authority: Scottish University for Industry

Case No: 200600700

Decision Date: 19 October 2006

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 188/2006 Mrs X and the Scottish University for Industry

Request for internal guidance on assessing 'Nil income' applications for funding – whether request dealt with in line with the Freedom of Information (Scotland) Act 2002

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 section 1(1) (General entitlement); section 6(1)(a) (Publicly-owned companies); section 19 (Content of certain notices) and section 21(10) (Review by Scottish public authority).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mrs X wrote to the Scottish University for Industry (SUFI) requesting a copy of its revised income assessment model and any other internal guidance it uses for assessing non-earners, or 'Nil Income', applications for Individual Learning Accounts. SUFI replied by providing a copy of its internal guidance on the matter specified by Mrs X, which included the revised income assessment model, and further details of the appeals process.

Mrs X was dissatisfied with this response as she felt the documents provided by SUFI lacked precise information on how a claim should be assessed once the required pieces of information had been received. She asked SUFI to review its actions in its response to her request. It replied stating that it had provided all of the information requested, and that the appeals process had been exhausted.

Mrs X then appealed to the Commissioner for a decision in relation to SUFI's handling of her request.



Following an investigation, the Commissioner found that SUFI had failed to deal with Mrs X's request for information in accordance with certain technical aspects of Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. On 1 March 2006 Mrs X wrote to SUFI requesting a copy of its revised income assessment model and any other internal guidance it uses for assessing non-earners, or 'Nil Income', applications for Individual Learning Accounts. Mrs X also requested other information, which she later specified was not relevant to her appeal.
2. SUFI responded on 22 March 2006 providing a copy of its internal guidelines on assessing applications (which included guidance on handling claims from applicants claiming nil income). This letter did not provide information about Mrs X's right to request a review of SUFI's actions in its response to her request or her right of appeal to the Scottish Information Commissioner.
3. Mrs X wrote to SUFI again on 27 March 2006, stating that the documentation that had been provided to her was lacking in precise information. She noted that the income assessment model flowchart provided to her did not show how a claim is to be assessed once the required information had been gathered. She felt that it was obvious that this was what she was seeking, and requested SUFI to review its actions in its handling of her request.
4. On 30 March 2006, SUFI replied that it had, in its view, provided all the information requested and that the appeals process had been exhausted. It did not provide information about Mrs X's right of appeal to the Scottish Information Commissioner in regard to its handling of her request or her subsequent right of appeal to the Court of Session on a point of law.
5. Mrs X then wrote to my Office on 4 April 2006 appealing to me for a decision on SUFI's handling of her request. She stated that she remained unconvinced that the guidance she received was the sum total of the revised income assessment model, and that she was of the opinion that there was also guidance used by officers in making a decision on a Nil income case.
6. The case was then allocated to an investigating officer.



7. It was first established that SUFI has private limited company status, but that SUFI is wholly owned by the Scottish Ministers, which means that, in terms of FOISA, it is a Scottish public authority in its own right by virtue of section 6(1)(a). Therefore, Mrs X's appeal was validated by establishing that her request was made to a Scottish public authority, and that she had only appealed to me after requesting SUFI to review its response to her request.

Investigation

8. In the process of validating Mrs X's appeal, SUFI was approached by the investigating officer for initial comments on her application. It responded repeating its view that Mrs X had been provided with all of the information she had requested on 22 March 2006.
9. It also provided me with a letter sent to Mrs X by its sponsoring division within the Scottish Executive (the Executive), confirming the changes made from the old income assessment model to the revised version and stating that there are no other documents or guidance notes relating to Mrs X's request.
10. It was noted that this letter appeared to suggest the assessment process required to make the decision on a Nil income application was the receipt of requested documentation as proof of an applicant being a non-earner. This point was put to Mrs X, and she was asked if she wished to go ahead with her application to the Commissioner, having now received this information.
11. Mrs X confirmed that the information had now been made available to her, but stated that she wished to go ahead with the appeal since she felt this should have been made available by SUFI, not by the Executive, in response to the separate request she made to it.
12. SUFI were then formally contacted by the investigating officer in terms of section 49(3)(a) of FOISA, asking it to comment on its handling of the request and on the matters raised by Mrs X in relation to it. It was also asked to supply a copy of the internal guidance used by it in processing applications for Individual Learning Accounts, the guidance it used in handling requests made under FOISA, and any documentation relating to Mrs X's request and request for review.



13. In response, SUFI provided the guidance and documentation and repeated its belief that Mrs X had been provided with all of the information she requested. It did not accept that she was only able to obtain the information she requested as a result of a separate information request to the Executive and was of the view that everything contained in its letter to Mrs X had been provided by SUFI previously. Furthermore, it stated that it had suggested in a letter to Mrs X, dated 27 January 2006, that she should contact the Executive if she remained dissatisfied.
14. In explanation of its handling of Mrs X's request, SUFI submitted that it had made several requests to my Office for clarification as to whether and when SUFI would have to comply with FOISA, and had been told on each occasion that there was no need to do so at that stage. It was not until the investigating officer contacted SUFI that it became aware of a need for compliance.
15. It stated, that whilst Mrs X's request had not been processed in accordance with FOISA, it had acted in good faith and provided all the information available that it believed would address Mrs X's request.

Commissioner's Analysis and Findings

16. This decision shall first address the issue regarding SUFI's status under FOISA. It should first be noted that this Office has no connection to SUFI and that it is owned by Scottish Ministers. Furthermore, its sponsoring body is a branch of the Executive. As a sponsor of SUFI, the Executive is best placed to have knowledge of the ownership of such a body and the implications this has for it in relation to FOISA. Whilst the Commissioner accepts that SUFI was initially advised incorrectly by his Office about its obligations under FOISA, the Executive, as sponsors, should have made the ownership position clear to SUFI from the outset, and advised it clearly on its obligations when FOISA came into force in 2005.
17. Nevertheless, the Commissioner accepts SUFI's argument that the advice from his Office affected the manner in which SUFI handled certain aspects of Mrs X's request and has taken this into account in considering this case.

Did SUFI provide the applicant with all of the information she requested?

18. Turning to the information provided in response to Mrs X's request, the Commissioner noted that her initial request asked for the revised income assessment model, and any further guidance used by SUFI's officers relating to cases of non-earners. He also noted that copies of official guidance relating to the handling of Nil income applications was provided to her.



19. It is in an applicant's interest to describe the information requested in as much detail as possible to assist the authority to be able to identify and locate it.
20. Since there was no explicit request by Mrs X at this point for information on how claims should be assessed once various pieces of required information had been gathered, the Commissioner found that this part of her initial request was interpreted in an acceptable manner by SUFI, and that its provision of its internal guidance on assessing Non income applications satisfied this part of the request.

Content of certain notices

21. Under section 19 of FOISA, a public authority must state an applicant's right to request a review of its decision when a request for information is refused, along with the applicant's right to appeal to the Commissioner if he or she remains dissatisfied following the review. Section 21(10) of FOISA also states that any letter detailing an authority's decision in response to a review undertaken by it must contain details about the applicants rights to make an appeal to me regarding the authority's handling of the request and thereafter to appeal to the Court of Session on a point of law.
22. In failing to provide Mrs X with a copy of the revised income assessment model she requested, SUFI was obliged to provide the information specified in section 19 of FOISA within its response to her initial request. Similarly, it was obliged to provide the information specified in section 21(10) of FOISA in its response to her request for review.
23. The Commissioner accepts that the advice provided by his Office affected SUFI's handling of Mrs X's request and request for review in this regard. However, as has been stated, SUFI was a Scottish public authority at the time of the request, and therefore, the Commissioner must still find that it breached section 19 and section 21(10) of FOISA in failing to provide the advice detailed in these sections.

Decision

The Commissioner finds that the Scottish University for Industry (SUFI) failed to deal with Mrs X's request for information in accordance with Part 1 of FOISA in that it failed to comply with sections 19 and 21(10) of FOISA as detailed above.

In the circumstances, I do not require SUFI to take any further action in connection with this Decision Notice.



Appeal

Should either party wish to appeal 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.

Margaret Keyse
Head of Investigations
19 October 2006



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.

6 Publicly-owned companies

- (1) A company is a “publicly-owned company” for the purposes of section 3(1)(b) if it is wholly owned –
- (a) by the Scottish Ministers

19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars -

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

21 Review by Scottish public authority

- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.