

Decision Notice



Decision 203/2013 Mr F and University of Dundee

Handling of request

Reference No: 201301940

Decision Date: 13 September 2013

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

On 4 July 2013, Mr F asked the University of Dundee (the University) for information relating to the University's policy on the provision of external consultancy services by its academic staff. The University responded following a requirement for review. Mr F applied to the Commissioner for a decision, expressing dissatisfaction with aspects of the University's handling of the request and requirement for review.

Following an investigation, the Commissioner found that the University partially failed to deal with Mr F's request for information in accordance with Part 1 of FOISA, by failing to respond to the request until a review was sought and by failing to provide all of the information required in its notice of the outcome of the review. In the circumstances, she did not require the University to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 10(1) (Time for compliance); 21(4), (5) and (10) (Review by Scottish public authority)

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 4 July 2013, Mr F wrote to the University requesting information relating to the University's policy on the provision of external consultancy services by its academic staff.
2. The University failed to respond to this request within 20 working days and, on 7 August 2013, Mr F wrote to the University again, requesting a review in respect of its failure to respond.
3. The University responded to Mr F on 15 August 2013. It provided information in response to his request and informed him that he should apply to the Commissioner if he was unhappy with this response.
4. On 19 August, Mr F wrote to the Commissioner, stating that he was not satisfied that the University had carried out a proper review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



5. The application was validated by establishing that Mr F made a request for information to a Scottish public authority and 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

6. On 22 August 2013, the University was notified in writing that an application had been received from Mr F, as required by section 49(3)(a) of FOISA.
7. The following day, also in accordance with section 49(3)(a), the investigating officer contacted the University, giving it an opportunity to provide comments on the application, with particular reference to the areas of dissatisfaction identified by Mr F in his application (see below). The University provided its comments on 30 August 2013.

Commissioner's analysis and findings

8. 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 her by both Mr F and the University. She is satisfied that no matter of relevance has been overlooked.
9. The first point on which Mr F seeks a decision is the University's failure to respond to his request until prompted to do so by his requirement for review. Clearly, the University did not respond until after it received the requirement for review (i.e. after the expiry of the time allowed for responding by section 10(1) of FOISA). The University has acknowledged this failure to respond to the request in accordance with section 10(1). Given that Mr F made his requirement for review promptly, and was clearly aware of his right to do so in the absence of a response to the original request, the Commissioner will not require the University to take any action in response to this failure.
10. Mr F also contends that the University's response of 15 August 2013 did not follow a formal review and failed to acknowledge that the original request should have elicited a response under FOISA.
11. In this case, the University believes its error was clearly a failure to respond to the request. It was, it submits, self-evident that a mistake had been made and that a request for information had been overlooked. On this basis, it considered the most effective response was to recognise the error and take corrective action by sending Mr F the information he had requested. The University has also drawn the Commissioner's attention to an acknowledgement, in its letter to Mr F of 15 August 2013, that his original request for information was overlooked.



12. The Commissioner would refer to section 21(4)(c) of FOISA. This requires a Scottish public authority, where it receives a requirement for review and the applicant's complaint is that no decision has been reached on the relevant request for information, to reach such a decision. In terms of section 21(5), it is then required to give the applicant notice in writing of what it has done under section 21(4), with a statement of its reasons for so doing. In this case, the University acknowledged that it had overlooked the original request and provided a response to Mr F. That was all it was required to do by way of reaching a decision and giving notice of that decision and the underlying reasons.
13. Finally, Mr F states that, in responding to his requirement for review, the University failed to provide information "about subsequent avenues of appeal via the Commissioner, etc." The University has pointed out that its letter of 15 August 2013 did contain information on Mr F's right to apply to the Commissioner under section 47(1) of FOISA. To that extent it did comply with section 21(10) of FOISA). The Commissioner recognises this.
14. The University also acknowledges that its letter of 15 August did not refer to Mr F's right of appeal to the Court of Session against any subsequent decision of the Commissioner, on a point of law only, under section 56 of FOISA. The Commissioner must find that this oversight was a failure to comply fully with section 21(10) of FOISA. She will not require the University to take any action in response to this failure: she is satisfied that Mr F was aware of his rights under section 56 in any event and was not disadvantaged in his exercise of them by the failure.



DECISION

The Commissioner finds that the University of Dundee (the University) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr F.

The Commissioner finds that the University's response to Mr F's requirement for review generally complied with Part 1.

However, the University failed to comply with section 10(1) of FOISA by failing to respond timeously to Mr F's request for information, and failed to comply fully with section 21(10) of FOISA by failing to provide Mr F with complete information on his rights of appeal.

Given that Mr F has not been disadvantaged in the exercise of his rights by these failures, the Commissioner does not require the University to take any action in respect of the failures in response to Mr F's application.

Appeal

Should either Mr F or the University of Dundee 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.

Rosemary Agnew
Scottish Information Commissioner
13 September 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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

21 Review by Scottish public authority

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

- (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.