

# Decision Notice

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**Decision 128/2017: Mr Ashton King and the Scottish Further and Higher Education Funding Council**

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**Accumulated surplus: failure to respond within statutory timescales**

Reference No: 201701131

Decision Date: 4 August 2017



Scottish Information  
Commissioner

## Summary

On 28 February 2017, the Scottish Further and Higher Education Funding Council (the SFC) was asked for information about an accumulated surplus of £50 million underspend.

This decision finds that the SFC failed to respond to the request and requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the SFC to comply with the requirement for review.

## Background

Date	Action
28 February 2017	Mr King made an information request to the SFC.
14 March 2017	Although Mr King received an acknowledgement, he did not receive a response to his information request.
18 April 2017	Mr King wrote to the SFC requiring a review in respect of its failure to respond.
19 April 2017	Again, although Mr King received an acknowledgement, he did not receive a response to his requirement for review.
24 May 2017	Mr King received an update from the SFC, explaining the reason for the delay, but he still did not receive a response to his request.
27 June 2017	Mr King wrote to the Commissioner's Office, stating that he was dissatisfied with the SFC's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
19 July 2017	The SFC was notified in writing that an application had been received from Mr King and was invited to comment on the application.
2 August 2017	The Commissioner received submissions from the SFC. These submissions are considered below.

## Commissioner's analysis and findings

1. When contacted by the Commissioner, the SFC confirmed that it had failed to comply with Mr King's request and requirement for review. It explained that it had received an unprecedented increase in information requests between 1 January and 30 June 2017, many of which were complex, involving multiple questions.
2. The SFC explained that this had a significant impact on staff resources, resulting in its inability to comply with all requests within the statutory timescales. It also explained that this had coincided with the SFC's busiest time of year, when it was finalising funding allocations to Colleges and Universities.

3. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
4. It is a matter of fact that the SFC did not provide a response to Mr King's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
5. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
6. It is a matter of fact that the SFC did not provide a response to Mr King's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the SFC failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.
8. The Commissioner recommends that the SFC considers whether it would be appropriate to apologise to Mr King for its failure to comply.

## Decision

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The Commissioner finds that the Scottish Further and Higher Education Funding Council (the SFC) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr King. In particular, the SFC failed to respond to Mr King's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the SFC to provide Mr King with a response to his requirement for review, by 18 September 2017.

## Appeal

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Should either Mr King or the SFC 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.

## **Enforcement**

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If the SFC fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SFC has failed to comply. The Court has the right to inquire into the matter and may deal with the SFC as if it had committed a contempt of court.

**Alison Davies**  
**Deputy Head of Enforcement**

**4 August 2017**

**Scottish Information Commissioner**

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