

Decision Notice 173/2019

SQA Procedures

Applicant: The Applicant

Public authority: General Teaching Council for Scotland

Case Ref: 201900951



Scottish Information
Commissioner

Summary

The GTCS was asked about a matter the Applicant had raised about the assessment and quality assurance procedures at the SQA.

The GTCS failed to treat this as a request for information subject to FOISA, but it did disclose information it held to the Applicant, with some redaction. The information was disclosed in full during the investigation.

The Commissioner investigated and found that the GTCS had failed to comply with a number of requirements of FOISA in handling the request. The GTCS identified the information falling within the request, but was wrong to withhold some information and failed to inform the Applicant of his rights. Given that the Applicant received the information requested during the investigation, the Commissioner does not require the GTCS to take any action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 16(1) and (6) (Refusal of request); 19 (Content of certain notices); 21 (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 13 April 2019, the Applicant made a request for information to the General Teaching Council for Scotland (the GTCS). The Applicant requested all notes, emails and correspondence held by the GTCS in relation to a matter he had raised about assessment and quality assurance procedures at the Scottish Qualifications Authority (the SQA).
2. The GTCS responded on 30 April 2019, outlining its role and providing the Applicant with its correspondence with the SQA relating to the matter the Applicant had raised. The GTCS redacted some information, but did not explain why. No reference was made to FOISA in the GTCS's response.
3. On 3 May 2019, the Applicant wrote to the GTCS, requesting a review of its decision as he disagreed with the redactions made by the GTCS. The Applicant also referred to the information provided and asked to be provided with any notes of a discussion and anything else that had been withheld by the GTCS.
4. The GTCS responded to the Applicant on 15 May 2019. The GTCS stated that it was unclear as to which FOI request the Applicant was referring to, and informed the Applicant that his letter of 3 May 2019 was a repeated request in terms of section 14(2) of FOISA. The GTCS explained that personal data had been redacted from the information disclosed to the Applicant, to avoid breaching Data Protection legislation; no exemption from FOISA was referred to. It also stated that it had provided the Applicant with all the relevant information it held.
5. On 10 June 2019, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he

was dissatisfied with the outcome of the GTCS's review because he did not think the information should have been redacted and believed there should have been more information available.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 1 August 2019, the GTCS was notified in writing that the Applicant had made a valid application. The GTCS was asked to send the Commissioner the information withheld from the Applicant. The GTCS provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The GTCS was invited to comment on this application and to answer specific questions. These related to:
 - whether the Applicant's request for information had been treated as such, subject to the requirements of Part 1 of FOISA
 - why the Applicant's request for review was determined to be a repeated request and therefore subject to section 14(2) of FOISA
 - why, in terms of FOISA, the information had been redacted from what was disclosed, and
 - the searches carried out by the GTCS to determine what information was held that fell within the scope of the request.
9. The GTCS explained that it had redacted information it considered to be the personal data of a third party. The GTCS acknowledged that an explanation of the redactions should have been given to the Applicant and confirmed that it would endeavour to ensure this happened in future correspondence. The GTCS also acknowledged that much of the redacted information could be discerned from information in the public domain and, on 8 October 2019, disclosed the redacted information to the Applicant. The Applicant was therefore provided with all of the information the GTCS believed it held that fell within the scope of his request.

Commissioner's analysis and findings

10. 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 him by both the Applicant and the GTCS. He is satisfied that no matter of relevance has been overlooked.

Information held

11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in section 1(6) are not applicable in this case.

12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with information an applicant believes the authority should hold, although an applicant's reasons may be relevant to the investigation of what is actually held.
13. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
14. In his application to the Commissioner, the Applicant stated that he believed more information was held by the GTCS that fell within the terms of his request. He explained, with reference to the information he had received from the GTCS, why he believed more information was held. The investigating officer asked the GTCS to explain the searches it had carried out to determine what information fell within the scope of the Applicant's request.
15. The GTCS described the searches and enquiries it undertook to ascertain if it held any information that fell within the Applicant's request. It provided the Commissioner with an explanation of how correspondence to and from its Chief Executive was dealt with and how its Records Management Policy worked. The GTCS supplied the Commissioner with a copy of its Records Management Policy. The GTCS confirmed that any telephone notes would have been captured by a search, as any telephone note would be recorded and saved alongside the relevant correspondence. The GTCS concluded that, other than the information provided to the Applicant in responding to his request and during the Commissioner's investigation, it held no further information.
16. Having considered all the relevant submissions, the Commissioner accepts that the GTCS has taken adequate and proportionate steps to establish the information it held which fell within the scope of the Applicant's request. The searches carried out appear reasonable in the circumstances and would appear to cover the scope of the request adequately. The Commissioner finds that the GTCS complied with Part 1 of FOISA in identifying and locating the information falling within the request.

Information withheld

17. As stated above, during the investigation, the GTCS acknowledged that much of the redacted information could be found in the public domain and disclosed the redacted information to the Applicant.
18. In the absence of any justification for withholding this information (which may be personal data as the GTCS stated), and given that the GTCS acknowledged it was information that could be discerned from information in the public domain, the Commissioner must conclude that the GTCS failed to comply with section 1(1) of FOISA by withholding the information. Given that the Applicant has received this information – and that the GTCS has indicated it would ensure that where information is redacted in future, reasons will be given in terms of FOISA to the Applicant – the Commissioner does not require the GTCS to take any action in response to these failures.

Technical breaches of FOISA - sections 16, 19, and 21

19. The Commissioner notes that in responding to the Applicant's request and requirement for review, the GTCS made no reference to any provision in FOISA, except to section 14(2). The GTCS did not inform the Applicant of his right to request a review, or of his right to apply to the Commissioner for a decision.
20. The GTCS explained that the Applicant had been corresponding with its Chief Executive and his correspondence was dealt with as a continuation of that correspondence. The GTCS acknowledged that it should have recognised the request for information in the Applicant's letter of 13 April 2019 and responded to it under FOISA. The GTCS agreed that the request for review was not a repeated request and therefore that section 14(2) was wrongly applied.
21. Section 16(1) of FOISA requires that where an authority holds information which is subject to a request under section 1(1) of FOISA, and which it intends to withhold under any exemption, the authority must give the applicant notice in writing to the effect that the information is held, and specify which exemption it considers applies to the information (with reasons).
22. Section 16(6) of FOISA also makes it clear that a notice in terms of section 16(1) is subject to section 19 of FOISA, which requires the authority to include details of their right to seek a review and to apply to the Commissioner.
23. Section 21(10) of FOISA states that a Scottish public authority's response to the applicant (under section 21(5)) following a review carried out under section 21 must contain particulars about the rights of application to the Commissioner and of appeal to the Court of Session conferred by sections 47(1) and 56 respectively.
24. The GTCS's response to the Applicant's requirement for review did not contain particulars about his rights of application to the Commissioner and of appeal to the Court of Session, as required by section 21(10).
25. The Commissioner finds that, by failing to inform the Applicant of his rights, the GTCS failed to comply with Part 1 of FOISA (in particular, sections 16(6), 19 and 21(10)). It also failed to comply with section 16(1) of FOISA, in relation to information withheld from its original response to the request.
26. The Commissioner has issued guidance on the content of notices that is clear on what information they should contain both in the response to a request for information and in response to a request for a review.
27. Given the GTCS's explanations and acknowledgement, the Commissioner does not require the GTCS to take any action in response to these failures, in response to the Applicant's application.

Decision

The Commissioner finds that the General Teaching Council for Scotland (the GTCS) failed to comply fully with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The GTCS complied with Part 1 of FOISA in identifying the information falling within the Applicant's request, but was wrong (in terms of section 1(1) of FOISA) to withhold some information. The GTCS also failed to comply with various requirements of FOISA in relation to giving notice, in particular sections 16(1) and (6), 19 and 21(10).

Given that the Applicant has received the information he requested, the Commissioner does not require the GTCS to take any action in response to the Applicant's application.

Appeal

Should either the Applicant or the GTCS 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.

Margaret Keyse
Head of Enforcement

29 November 2019

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.
- ...
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- ...

16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a "refusal notice") which-
- (a) discloses that it holds the information;
 - (b) states that it so claims;
 - (c) specifies the exemption in question; and
 - (d) states (if not otherwise apparent) why the exemption applies.
- ...
- (6) Subsections (1), (4) and (5) are subject to section 19.

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

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
- (2) If-
 - (a) the authority is the Keeper of the Records of Scotland; and
 - (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on the requirement.
- (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.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.
- (7) Regulations under subsection (6) may-
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
 - (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (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.

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