



Scottish Information
Commissioner

**Decision 010/2007 Mr Brent Hodgson and the
Scottish Agricultural College**

*Request for information regarding complaints procedure and
careers advice*

**Applicant: Mr Brent Hodgson
Authority: Scottish Agricultural College
Case No: 200601455
Decision Date: 19 January 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 010/2007 Mr Brent Hodgson and the Scottish Agricultural College

Request for information regarding the Scottish Agricultural College's complaints procedure and careers advice – information provided – authority's response generally upheld

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 sections 10(1) (Time for compliance), 14 (Vexatious or repeated requests), 17 (Notice that information is not held), 21(1) (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

Mr Brent Hodgson wrote to the Scottish Agricultural College (SAC) requesting information regarding the SAC's complaints procedure and careers advice.

The SAC wrote to Mr Hodgson advising him that it had responded in the past to his requests for information and it would not respond on this occasion. Mr Hodgson was not satisfied with the SAC's response and asked it to review its decision.

Upon review, the SAC provided Mr Hodgson with a copy of the SAC's complaints procedure, guidance on careers advice and a list of correspondence from the SAC to Mr Hodgson.

Mr Hodgson was dissatisfied with the response he received from the SAC and submitted an application for a decision to the Scottish Information Commissioner in order to obtain clarification as to whether the SAC had provided him with all the information relevant to his enquiry and dealt with his request in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA).

Following an investigation, the Commissioner found that the SAC had dealt with the majority of Mr Hodgson's request for information in line with Part 1 of FOISA.



Background

1. On 27 March 2006 Mr Hodgson wrote to the SAC requesting the following information:
 1. Written proof that the SAC had in place an independent student complaints procedure;
 2. Whether there had been an independent student complaints procedure in operation at the SAC at any time;
 3. Written proof that the SAC made career advice available to its enrolled students;
 4. Confirmation that careers advice was made available to him when he was an enrolled student at the SAC.
2. On 30 March 2006 the SAC wrote to Mr Hodgson, advising him that it did not intend to respond to his request for information as it had corresponded with him in the past on such matters.
3. On 11 April 2006 Mr Hodgson wrote to the SAC to ask it to review its response to his request for information and provide answers to his questions.
4. On 6 July 2006, following the intervention of my Office in relation to its apparent failure to respond to his request for a review, the SAC wrote to Mr Hodgson, providing him a copy of the SAC's complaints procedure, guidance on careers advice that could be obtained from the SAC and a list of correspondence from the SAC to Mr Hodgson regarding his dissatisfaction with careers advice provided to him.
5. On 24 September 2006 Mr Hodgson wrote to my Office, stating that he was dissatisfied with the outcome of the SAC's review and applied to me for a decision in relation to the SAC's failure to provide him with all of the information he had requested.
6. On 9 October 2006, my Validation Officer wrote to the SAC, giving notice that an appeal had been received and that an investigation into the matter had begun, and invited comments from the SAC as required under section 49(3)(a) of FOISA. The SAC was asked to supply my Office with, amongst other items, copies of any information withheld from Mr Hodgson.



7. On 26 October 2006, the SAC wrote to the Validation Officer, providing a response to the letter of 9 October 2006 and detailing the correspondence between itself and Mr Hodgson. It stated that it had not withheld any information from Mr Hodgson.
8. On 2 November 2006, the SAC wrote to the Validation Officer stating that it had received further requests for information from Mr Hodgson, which it asked to be considered as evidence that his requests for information were vexatious and repeated.
9. The case was allocated to an investigating officer and the application validated by establishing that Mr Hodgson had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to his request.

The Investigation

10. On 20 and 22 November 2006, the investigating officer emailed the SAC, asking certain questions to confirm that it had responded to points 2 and 4 in Mr Hodgson's letter of 27 March 2006.
11. On 27 November 2006, the investigating officer telephoned the SAC and spoke to Professor George Marshall (Assistant Principal) regarding the SAC's careers advice and complaints procedure. Professor Marshall commented that the SAC did not hold any information about the careers advice that had been made available to Mr Hodgson whilst he was a student at the college. However, the SAC had provided careers advice to Mr Hodgson between 1986 and 1991. Professor Marshall also commented that a formal written complaints procedure did not exist at the time when Mr Hodgson attended the West of Scotland Agricultural College (1983 – 1986). However, the process for making a complaint at that time was the same as the current formal written procedure; in that after exhausting the local resolution process, a student could make a complaint to the Principal and it would be investigated. A formal complaints procedure was documented in 1990 when three colleges (including the West of Scotland College) merged into one to form the SAC.

Background

12. Mr Hodgson attended the SAC between 1983 and 1986, and over the last twenty years he has corresponded regularly with the SAC on a variety of topics including careers advice.



The Commissioner's Analysis and Findings

13. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Hodgson and the SAC and I am satisfied that no matter of relevance has been overlooked.

Scope of Mr Hodgson's request

14. Mr Hodgson's request for review dated 11 April 2006 included additional questions. Under section 20(1) of FOISA, an applicant has the right to request that a Public Authority review its response to the original request.
15. In my opinion, the SAC was correct to exclude these additional questions from its review response.

Information Requested By Mr Hodgson

16. On 27 March 2006 Mr Hodgson wrote to the SAC requesting the four items of information detailed in paragraph 1. I have considered each of these points in turn and whether the SAC has responded adequately to each of them.

Point 1: Written proof that the SAC had in place an independent student complaints procedure.

17. In its letter of 6 July 2006 to Mr Hodgson, the SAC provided a printed copy of its current complaints procedure, a copy of which can be found on the following website:
http://www1.sac.ac.uk/foisa/files/Student%20Admin%20and%20Support/L6_complaints.doc.
18. Mr Hodgson qualified his request for evidence that a complaints procedure existed with the word 'independent'. I cannot comment whether the complaints procedure is 'independent' or not. However, I do note that formal complaints received by the SAC which have not been resolved by the individuals concerned are allocated to 'disinterested' staff and ultimately if the individual making the complaint is not satisfied with the outcome, they can ask the Scottish Public Services Ombudsman (SPSO) to investigate the matter.
19. I consider that the SAC has responded adequately to Mr Hodgson's first question in that it provided him with a copy of the SAC's complaints procedure.



Point 2: Whether there had been an independent student complaints procedure in operation at the SAC at any time.

20. As stated in paragraph 17, the SAC provided Mr Hodgson with a copy of its current complaints procedure. This procedure is dated September 2004, version 5.1.
21. Mr Hodgson's question had included the words "at any time". Therefore I considered it was pertinent to clarify the date when the complaints procedure was first created by the SAC.
22. As stated in paragraph 11, the SAC confirmed that an informal complaints procedure had existed in 1983 when Mr Hodgson attended the college. This procedure had subsequently been formalised in 1990 and now existed as a written procedure.
23. Therefore I consider that the SAC responded adequately to Mr Hodgson's second question by providing him with a copy of the SAC's current complaints procedure. The complaints procedure included an issue date and version number, which answered Mr Hodgson's request for confirmation that such a procedure had existed at any time. However, the SAC did not explicitly state in its response to Mr Hodgson when the complaints procedure had been created, which may have been helpful. I do not require the SAC to take any further action on this point.

Point 3: Written proof that the SAC made career advice available to its enrolled students.

24. In its letter of 6 July 2006 to Mr Hodgson, the SAC provided a printed copy of information about its careers advice service, which is also available on the following website:
<http://www.sac.ac.uk/learning/aboutcollege/student-services/careersadvice>.
25. Careers advice is provided initially by academic staff and further advice can be obtained from the careers services of the universities with which the SAC is associated. From reading Mr Hodgson's correspondence it seems he had expected to receive more formal careers advice from the SAC. However, it is for the SAC to decide on the arrangements it adopts for making careers advice available to students and I cannot comment further on this in my decision.
26. Therefore I consider that the SAC has responded adequately to Mr Hodgson's third question, as it has provided him with a printed copy of the careers advice information made available to SAC students.



Point 4: Confirmation that careers advice was made available to him when he was an enrolled student at the SAC.

27. In his original request of 27 March 2006 Mr Hodgson had requested that the SAC provide him with proof that careers advice was made available to him when he was enrolled as a student at the West of Scotland Agricultural College. The key point here is whether the advice was available to Mr Hodgson at the time when he was a student in 1983.
28. In its review response to Mr Hodgson on 6 July 2006 the SAC did not refer to this question and consequently failed to answer Mr Hodgson's question.
29. As stated in paragraph 11, the SAC stated that it did not hold any records of careers advice that had been made available to Mr Hodgson when he was a student at the West of Scotland College in 1983. However, it confirmed that it had provided him with careers advice subsequent to the completion of his course in 1986. From my investigation, I am satisfied that the SAC does not hold the information in question.
30. Therefore I consider that the SAC did not respond to Mr Hodgson's fourth question and it should have issued him with a notice under section 17 of FOISA in that it did not hold any information regarding the careers advice that was available to him when he was a student at the college. I do not require the SAC to take any action on this point.

Response Timescales

31. In his letter to my Office on 24 September 2006, Mr Hodgson expressed dissatisfaction with the time taken by the SAC to respond to his requests for information.
32. The SAC responded to Mr Hodgson's initial request for information on 30 March 2006, 3 days after the date of Mr Hodgson's letter (27 March 2006). Therefore, I find that the SAC responded to Mr Hodgson's initial request within the time-period laid down in section 10(1) of FOISA.
33. Mr Hodgson asked the SAC to review its response to his initial request on 11 April 2006. The SAC responded to Mr Hodgson, following intervention from my Office, on 6 July 2006. Therefore, I find that the SAC failed respond to Mr Hodgson's request for review within the period of 20 working days laid down in section 21(1) of FOISA. I do not require the SAC to take any action regarding this failure.



Vexatious & Repeated Request

34. In its letter to my Office of 2 November 2006, the SAC had asked that Mr Hodgson's request for information should also be considered to be vexatious and repeated. Section 14 of FOISA applies to vexatious and repeated requests and is set out at length in the Appendix to this decision.
35. In the first instance I will consider whether Mr Hodgson's four points, as stated in paragraph 1, are repeated. As stated in paragraph 12, Mr Hodgson has regularly corresponded with the SAC on a variety of topics over the last 20 years. However, considering the four items requested by Mr Hodgson in detail, I can find no evidence in the information submitted by the SAC to my Office that these four items have been requested by Mr Hodgson before.
36. The SAC considers Mr Hodgson's requests for information are vexatious. The Scottish Ministers Code of Practice on the Discharge of Functions by Public Authorities under FOISA (the Section 60 Code) states that the factors that might be taken into consideration in determining whether a request is vexatious include:
- Whether the request has already been rejected on appeal to the Commissioner and the applicant knows this;
 - Whether there has been unreasonable refusal or failure to identify sufficiently clearly the information required;
 - Whether there has been unreasonable refusal or failure to accept documented evidence that the information is not held;
 - Whether the request can be shown to be clearly intended to disrupt the authority's work rather than for the purpose of obtaining information.
37. In considering what is manifestly unreasonable or manifestly disproportionate (which may be relevant considerations in determining whether a request is vexatious), it will sometimes be necessary to consider the effect of dealing with the request on a public authority. I have always made it clear that public authorities wishing to rely on the provision contained in section 14(1) must be able to show that the request – and not the person making the request – is vexatious. Even if an applicant does not intend a request to be vexatious, however, it is possible that dealing with that request will impose a burden on a public authority that by any objective standard would be considered manifestly unreasonable or manifestly disproportionate. The nature and effect of the request, rather than the intentions of the applicant, must therefore be taken into account in appropriate cases.



38. Mr Hodgson's request for information appears to be straightforward and appears to have been straightforward to answer. Mr Hodgson has been corresponding with the SAC over the last 20 years and it has dealt with Mr Hodgson's requests accordingly. I do not consider Mr Hodgson to be purposely disruptive in making his request of 27 March 2006 and I cannot in any sense regard it as manifestly unreasonable or manifestly disproportionate. Consequently I cannot uphold the SAC's application of section 14 of FOISA to Mr Hodgson's request for information.

Decision

I find that the Scottish Agricultural College (SAC) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hodgson.

I find that by providing 3 of the 4 items requested by Mr Hodgson, the SAC largely complied with Part 1 of FOISA. However, in failing to provide a response to one part of the request (in relation to information it did not hold) or a timely response to Mr Hodgson's request for review, the SAC failed to comply with sections 17(1) and 21(1) of FOISA.

Since the SAC has confirmed to me that in relation to point 4 it did not hold any information on careers advice made available to Mr Hodgson when he was a SAC student (and I am satisfied that this is in fact the case), I do not require the SAC to take any further action.

Appeal

Should either Mr Hodgson or the SAC 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.

Kevin Dunion
Scottish Information Commissioner
19 February 2007



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.
- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information,it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.



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.