

# Decision Notice

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## **Decision 118/2017: Ms Jennifer Foy and the Scottish Further and Higher Education Funding Council**

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### **Edinburgh College financial difficulties: failure to respond within statutory timescales**

Reference No: 201701082

Decision Date: 31 July 2017



Scottish Information  
Commissioner

## Summary

On 1 March 2017, Ms Foy asked the Scottish Further and Higher Education Council (SFHEFC) for information about Edinburgh College's financial difficulties. This decision finds that SFHEFC failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that SFHEFC failed to comply with Ms Foy's requirement for review within the timescale set down by FOISA.

## Background

| Date          | Action  |
|---------------|---|
| 1 March 2017  | Ms Foy made an information request to SFHEFC.   |
| 14 March 2017 | SFHEFC acknowledged the information request, but did not respond.   |
| 4 May 2017    | Ms Foy wrote to SFHEFC, requiring a review in respect of its failure to respond.  |
|               | Ms Foy did not receive a response to her requirement for review.  |
| 18 June 2017  | Ms Foy wrote to the Commissioner's Office, stating that she was dissatisfied with SFHEFC's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. |
| 4 July 2017   | SFHEFC was notified in writing that an application had been received from Ms Foy and was invited to comment on the application.   |
| 18 July 2017  | The Commissioner received submissions from SFHEFC. These submissions are considered below.  |

## Commissioner's analysis and findings

1. When contacted by the Commissioner, SFHEFC acknowledged that it had failed to provide responses to Ms Foy's information request and requirement for review. It explained that significant delays in responding to the request and requirement for review were attributable to an unprecedented increase in requests received since the beginning of the year.
2. SFHEFC notified the Commissioner that a response to the request for information was issued to Ms Foy on 26 June 2017. A copy was provided to the Commissioner.
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 SFHEFC did not provide a response to Ms Foy'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 SFHEFC did not provide a response to Ms Foy's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. SFHEFC responded to Ms Foy's request for information on 26 June 2017, so the Commissioner does not require it to take any further action in relation to Ms Foy's application. In terms of section 21(4)(c) of FOISA, that response constitutes a review outcome and Ms Foy is not required to seek a further review if she is dissatisfied with the decision.
8. The Commissioner recommends that SFHEFC considers whether it would be appropriate to apologise to Ms Foy for its failure to comply.

## Decision

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

The Commissioner does not require SFHEFC to take any action in respect of these failures, in response to Ms Foy's application, given that it has now issued a response.

## Appeal

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Should either Ms Foy or the Scottish Further and Higher Education Funding Council 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.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**31 July 2017**

**Scottish Information Commissioner**

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