

Decision Notice

Decision 129/2017: Ms Anna Hamilton and the Scottish Higher Education and Funding Council

Monthly reports on expenditure: failure to respond within statutory timescales

Reference No: 201701122

Decision Date: 10 August 2017



Scottish Information
Commissioner

Summary

On 24 February 2017, the Scottish Higher Education and Funding Council (the SFC) was asked for information relating to its monthly reports on expenditure over £25,000. This decision finds that the SFC failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the SFC failed to comply with Ms Hamilton's requirement for review within the timescale set down by FOISA.

Background

Date	Action
24 February 2017	Ms Hamilton made an information request to the SFC
	The SFC did not respond to the information request.
27 April 2017	Ms Hamilton wrote to the SFC requiring a review in respect of its failure to respond.
	Ms Hamilton did not receive a response to her requirement for review.
27 June 2017	Ms Hamilton wrote to the Commissioner's Office, stating that she 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.
21 July 2017	The SFC was notified in writing that an application had been received from Ms Hamilton 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 Ms Hamilton's requests 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 also 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 Ms Hamilton'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 Ms Hamilton'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 SFC wrote to Ms Hamilton on 26 June 2017 to explain the delay in responding to her request for review. It then became aware that this letter failed to comply with the requirements in section 21 of FOISA (in particular, section 21(4)(c)). In light of this, the SFC provided a substantive review response on 11 July 2017, in which it informed Ms Hamilton of its review decision.
8. Given that the SFC has now provided Ms Hamilton with a response to her request for review, the Commissioner does not require it to take any further action in relation to Ms Hamilton's application.

Decision

The Commissioner finds that the Scottish Higher and Further 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 Ms Hamilton. In particular, the SFC failed to respond to Ms Hamilton's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

As the SFC has now provided Ms Hamilton with a response to her requirement for review, the Commissioner does not require the SFC to take any further action in respect of these failures.

Appeal

Should either Ms Hamilton 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.

Alison Davies
Deputy Head of Enforcement

10 August 2017

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