

# Decision Notice

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## **Decision 136/2017: Hannah Kirkpatrick and the Scottish Further and Higher Education Funding Council**

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### **Early retirement packages**

Reference No: 201700810

Decision Date: 29 August 2017



Scottish Information  
Commissioner

## Summary

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The SFC was asked for information about early retirement packages. Following an investigation, the Commissioner found that the SFC had failed to disclose all of the information it held which did not fall under an exemption. The information was disclosed during the investigation.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement)

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

## Background

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1. On 28 February 2017, Ms Kirkpatrick made a request for information to the Scottish Further and Higher Education Funding Council (the SFC). The terms of her request related to the response she had received to an earlier request for information about severance payments. Her request was worded as follows:
  - (i) Disclosure of the 2016-17, were [sic] you have one, "non-compulsory exit".
  - (ii) Full payouts and detail on all early retirement within the SFC and any other institutions that the Accountable Officer is responsible for signing off.
2. The SFC sought clarification of this request on 28 February 2017, and asked Ms Kirkpatrick to specify a timescale for part (ii) of her request and to provide details of the requested disclosure in part (i) of her request.
3. On 28 February 2017, Ms Kirkpatrick provided clarification of both parts of her request. In relation to part (ii) of her request she noted that she was seeking information from 1 April 2014 to 28 February 2017.
4. The SFC failed to respond to her request for information.
5. On 1 April 2017, Ms Kirkpatrick wrote to the SFC requesting a review of its decision on the basis that a response to her request was now overdue.
6. The SFC notified Ms Kirkpatrick of the outcome of its review on 3 April 2017. The SFC noted that it had already answered part (i) of her request in the response it had given to another request she had made, and repeated that response. With regard to part (ii) of her request for information, the SFC notified Ms Kirkpatrick that it was withholding the information under section 38(1)(b) of FOISA (Personal information), as it comprised the personal data of third parties.
7. On 4 May 2017, Ms Kirkpatrick applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms Kirkpatrick stated she was dissatisfied with the outcome of the

SFC's review (in relation to part (ii) of her request). She said she was not seeking personal data and she considered that the SFC could disclose the information she wanted but with the personal data redacted.

## **Investigation**

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8. The application was accepted as valid. The Commissioner confirmed that Ms Kirkpatrick made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
9. On 19 May 2017, the SFC was notified in writing that Ms Kirkpatrick had made a valid application. The SFC was asked to send the Commissioner the information withheld from Ms Kirkpatrick. The SFC provided the information and the case was allocated to an investigating officer.
10. The SFC indicated that it was willing to provide anonymised information to Ms Kirkpatrick and the investigating officer asked it to disclose this information to her.
11. The information was disclosed to Ms Kirkpatrick and she confirmed that she was satisfied with the information she had received, but was not satisfied that it had taken so long for her to obtain the data. Ms Kirkpatrick wanted the Commissioner to issue a decision.
12. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SFC was invited to comment on this application and answer specific questions regarding its failure to provide Ms Kirkpatrick with the anonymised data at an earlier juncture.
13. The SFC provided submissions and responded to the questions raised by the investigating officer.

## **Commissioner's analysis and findings**

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14. 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 her by both Ms Kirkpatrick and the SFC. She is satisfied that no matter of relevance has been overlooked.

### **Information held by the SFC**

15. 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 relevant in this case.
16. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
17. The Commissioner has considered the information disclosed during this investigation in the light of the submissions received by Ms Kirkpatrick and the SFC.
18. In its submissions to the Commissioner, the SFC explained that its understanding of Ms Kirkpatrick's request, which sought "full payouts and detail" of early retirement agreements, was that she was seeking copies of the full proposed settlement agreements (including the full detail) agreed by the SFC between 1 April 2014 and 28 February 2017.

19. The SFC submitted that providing copies of the full agreements would have required the disclosure of personal data and would have breached the Data Protection Act 1998 (the DPA). The SFC explained that, at the time of the information request, it had considered whether it could redact personal information from the proposed packages but had concluded that there was still a risk that individual members of staff might be identified from the remaining information, particularly for smaller colleges.
20. In light of this, the SFC had responded to Ms Kirkpatrick's request by notifying her that it considered the information she had requested to be exempt from disclosure under section 38(1)(b) of FOISA.
21. The SFC submitted that it was only after Ms Kirkpatrick applied to the Commissioner, that it became apparent that she was content to receive summary information about settlement agreements in an anonymised form. Once this was made clear, the SFC provided Ms Kirkpatrick with the anonymised information.
22. The Commissioner will not consider whether the SFC has correctly applied section 38(1)(b) to the information it is continuing to withhold from Ms Kirkpatrick, as she has made it clear that she is not seeking any personal data.
23. The Commissioner is satisfied that the SFC has now provided Ms Kirkpatrick with an anonymised version of the information falling within the scope of her request but she notes that this did not occur until after she had received Ms Kirkpatrick's application for a decision.
24. The Commissioner accepts that Ms Kirkpatrick did not make it clear in her request for information (or subsequent request for review) that she was content for personal data to be redacted or anonymised. If she had done so, the Commissioner considers that it is possible that the SFC may have disclosed the information to her sooner.
25. However, even though Ms Kirkpatrick did not specify that she was content for personal data to be withheld, the Commissioner takes the view that the SFC should have taken steps to identify what information it could disclose to her, without breaching the DPA. Despite the initial concerns noted by the SFC that the redaction of personal data may still have led to individuals being identified, the SFC later found that it was able to disclose anonymised data in a form which would prevent this from happening.
26. The Commissioner considers that if the SFC had disclosed the anonymised data to Ms Kirkpatrick in its response to her request for information, it would have obviated the need for Ms Kirkpatrick to make an application to her.
27. Taking account of all of the circumstances, the Commissioner concludes that the SFC failed to comply fully with section 1(1) of FOISA, by failing (in dealing with Ms Kirkpatrick's request and requirement for review) to identify and provide all of the information it held, which did not fall under a specific exemption, and which fell within the scope of Ms Kirkpatrick's request.

## 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 Ms Kirkpatrick. In failing to provide Ms Kirkpatrick with information it held and which was not exempt from disclosure, the SFC failed to comply with section 1(1) of FOISA.

Given that the information has since been provided to Ms Kirkpatrick, the Commissioner does not require the SFC to take any action in response to this failure.

## Appeal

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Should either Ms Kirkpatrick 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.

**Margaret Keyse**  
**Acting Scottish Information Commissioner**

**29 August 2017**

### 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.

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- (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.

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