

# Decision Notice

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## **Decision 148/2017: Ms X and the Scottish Further and Higher Education Funding Council**

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### **Accommodation lease: failure to respond within statutory timescale**

Reference No: 201701170

Decision Date: 12 September 2017



Scottish Information  
Commissioner

## Summary

On 22 and 23 February 2017, confirmed on 25 February 2017, Ms X asked the Scottish Further and Higher Education Funding Council (the SFC) for information about an accommodation lease and associated works to the property. This decision finds that the SFC failed to comply with Ms X's requirement for review within the timescale set down by the Freedom of Information (Scotland) Act 2002 (FOISA).

As a review response has now been issued, the Commissioner has not ordered the SFC to take any action in response to this breach.

## Background

Date	Action
22 and 23 February 2017	Ms X made information requests to the SFC.
25 February 2017	Ms X made a consolidated information request, incorporating the requests made on the above dates.
21 March 2017	The SFC responded to Ms X's request and disclosed some of the information asked for, withholding the remainder under section 33(1)(b) of FOISA.
25 March 2017	Ms X wrote to the SFC, requiring a review of its response.
11 April 2017	Ms X and the SFC agreed clarification of the scope of the requirement for review.
3 July 2017	Ms X wrote to the Commissioner's Office, stating that she was dissatisfied with SFC's failure to respond to her requirement for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
10 July 2017	SFC provided a response to Ms X's requirement for review.
1 August 2017	The SFC was notified in writing that an application had been received from Ms X and was invited to comment on the application.
15 August 2017	The Commissioner received submissions from SFC. These submissions are considered below.

## Commissioner's analysis and findings

1. 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. This is subject to qualifications which are not relevant in this case.
2. It is a matter of fact that the SFC did not provide a response to Ms X's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

3. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. The SFC responded to Ms X's requirement for review on 10 July 2017, so the Commissioner does not require it to take any further action in relation to Ms X's application.
4. The Commissioner notes that the SFC stated it would apologise to Ms X for its failure to comply, and welcomes this. She also notes that the SFC submitted that its non-compliance was due to volume of work.

## **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 X. In particular, the SFC failed to respond to Ms X's requirement for review within the timescale laid down by section 21(1) of FOISA.

The Commissioner does not require the SFC to take any action in respect of this failure, in response to Ms X's application, given that a review response has now been provided.

## **Appeal**

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Should either Ms X 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**

**12 September 2017**

**Scottish Information Commissioner**

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