

Decision Notice 059/2022

Course applicants to BA Photography – whether request is repeated

Applicant: The Applicant

Public authority: City of Glasgow College

Case Ref: 202100979



Scottish Information
Commissioner

Summary

The College was asked for a yes or no answer about whether more than one application from a particular group of students, for a particular course, received an unqualified rejection. The College refused to comply with the request on the basis that it was a repeat of a previous request. The Commissioner did not agree that the request was a repeat request for the purposes of section 14(2) of FOISA. However, as the College provided the Applicant with a revised response to his request during the investigation, he did not require the College to take any further action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(2) (Vexatious or repeated requests); 47(1) and (2) (Application for decision by Commissioner)

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.

Background

1. On 14 May 2021, the Applicant made a request for information to City of Glasgow College (the College). The information requested was for a yes or no answer to the following:

Was there more than one applicant, from a former student of Ayrshire College, for the BA course in Photography at City College (beginning 2020) who received an unqualified rejection?

The Applicant clarified that he considered an unqualified rejection to be one rejected by the College without an offer of any kind being made (e.g. a conditional offer or a reserve place).

2. The College responded on 11 June 2021, informing the Applicant that under section 14(2) of FOISA it would not provide a response as it considered the request to be substantially similar to the Applicant's previous request from September 2020 that was subject to an application to the Commissioner and resulted in [Decision 052/2021](#).¹
3. On 17 June 2021, the Applicant wrote to the College requesting a review of its decision on the basis that he considered his request was not substantially similar - but different in important respects - and was similar only insofar as it sought related information. He explained that in this request he had asked about rejected applications (whilst in his first request this was broken down into categories), and he considered his second request described a different population of students to his first.
4. The College notified the Applicant of the outcome of its review on 13 July 2021, upholding its original decision to refuse the request under section 14(2) of FOISA.
5. On 30 July 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of

¹ <https://www.itspublicknowledge.info/decision-0522021>

the College's review because he did not agree that his request was substantially similar to his previous request of September 2020.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 10 August 2021, the College was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The College was invited to comment on this application and to explain why it considered the request was substantially similar to the earlier one of September 2020.
9. In response, the College submitted that, while it considered the requests to be substantially similar, and it remained concerned about disclosing personal data, there were some differences, and that on balance, and in an effort to seek a resolution, it could respond to the Applicant's request and answer his yes/no question. The College did so on 18 February 2022.
10. Having received a revised response, the Applicant was also asked by the investigating officer if he still wanted the Commissioner to issue a decision. The Applicant did not respond to this question.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both the Applicant and the College. He is satisfied that no matter of relevance has been overlooked.

Section 14(2) – Repeated request

12. Under section 14(2) of FOISA, where an authority has complied with an information request, it is not obliged to comply with a subsequent request from the same 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.
13. For section 14(2) to apply, therefore, the following need to be considered:
 - (i) whether the Applicant's previous request was identical or substantially similar to the request under consideration here;
 - (ii) whether the College complied with the previous request and, if so
 - (iii) whether there was a reasonable period of time between the submission of the previous request and the submission of the subsequent request. As the Commissioner's [guidance](#)² on section 14(2) notes, when considering whether a

² <https://www.itspublicknowledge.info/sites/default/files/2022-03/BriefingSection14VexatiousorRepeatedRequests.pdf>

reasonable period of time has elapsed, it will be useful to consider whether the information has changed and whether the circumstances have changed.

14. In responding to the request, the College considered that the request was substantially similar to that made by the Applicant in September 2020.
15. The Applicant disagreed, as he considered the population covered by the request was different, and in his view substantially larger and that the question asked in the present request was less detailed, again in his view lessening the chance of any identification of individuals.

The Applicant's September 2020 request

16. This request asked:
 - how many applications were received for the BA in Photography at the College for the academic year beginning 2020 (part 1)
 - how many applications for the BA in Photography at the College, beginning 2020, were received from students who had completed the HND in Photography at Ayrshire College (part 2)
 - of the applicants from the HND Photography course at Ayrshire College, how many were offered unconditional places, reserve places or neither an unconditional or reserve place (part 3)
17. The College's handling of this request was subject to an application to the Commissioner, resulting in Decision 052/2021 which found that the College was correct to withhold the information on the basis that it was personal data and exempt from disclosure.

The Applicant's May 2021 request

18. As detailed above at paragraph 1, the present request was for a yes or no answer to the following:
 - Was there more than one applicant, from a former student of Ayrshire College, for the BA course in Photography at City College (beginning 2020) who received an unqualified rejection?

Submissions from the Applicant

19. The Applicant's application to the Commissioner highlighted that he had fully accepted the Commissioner's findings in Decision 052/2021 and had made his current request on that basis, taking on board the comments in that Decision. He explained that he had taken care to reduce the scope for the identification of individuals by changing what he had asked for and that his second request described a different (and, in his opinion, potentially much larger, population of students.
20. The Applicant argued that Ayrshire College has the capacity for admission of 14,151 students and has had this capacity for several years, meaning that the number of applicants for the BA in Photography for 2020 is drawn from a potential population of many thousands of former students, not the small population identified in his first request.

21. The Applicant further considered that by asking a question that required a yes or no answer, and not an actual number, this could allay any fears of identifying individuals.
22. In this respect the Applicant submitted that his second request was not identical, or substantially similar to the first request.

Submissions from the College

23. The College considered that the requests were substantially similar, and was concerned that by answering “yes” or “no”, it would provide sufficient information to realistically be used to identify an individual, when considering the information that could be held by an individual, and the small numbers involved.
24. It considered that in terms of content, direction and reference, the request could be seen as a continuation of a line of enquiry.
25. The College, in the course of its considerations during the Commissioner’s investigation, recognised that whether the requests were substantially similar was a matter of judgement, and that, on balance, it had decided to respond to the request, and provide the Applicant with an answer.

The Commissioner’s view

26. The Commissioner notes that the engagement of section 14(2) of FOISA is the only point being considered in this Decision.
27. The request at issue – that of May 2021 - is not identical to the previous request: it is neither identical in wording nor in scope.
28. Whether the request is substantially similar to the previous request is a more difficult question. The present request asked for information about the same course and the same time period of intake. The information held by the College that would be used to answer both requests is the application information for that specific course (BA in Photography at the College) for the specific time - the academic year beginning 2020. Both requests seek information about a subset of applicants for the course i.e. those from Ayrshire College.
29. However, the present request asks for information that could encompass former students of Ayrshire College. The Applicant specifically emphasised this and explained that the information that would fall within this request would differ from his previous request. He asked for information about current and former students of Ayrshire College, and therefore was a larger potential population of applicants. For example, he suggested that a person could have been a former Higher National Photography student from Ayrshire College who had studied in previous years may have taken time out before applying for a BA at the College, or some former Ayrshire College students may have studied related fields such as Art and Design, and later decided to transfer to photography.
30. On balance, Commissioner is satisfied that, although the subject matter of the two requests is the same (i.e. applications to the BA Photography course beginning in 2020), the actual information requested and the population covered by the requests are different (that covered by the second request being potentially larger than the first), meaning that, for the purposes of FOISA, the requests are not identical, nor, in the Commissioner’s view, are they substantially the same.
31. As the Commissioner has not found the requests to be substantially similar, or identical, the Commissioner finds that section 14(2) is not engaged, and the College failed to comply with Part 1 of FOISA in refusing the request on the basis that the request was repeated.

32. Since the College provided the Applicant with a response to his request during the investigation, the Commissioner does not require it to take any action.
33. The College made clear that it was concerned about the disclosure of personal information under FOI in a way that could breach the Data Protection legislation. It did indicate concern that a series of requests under FOISA could, by obtaining information – even yes/no answers – result in the disclosure of information into the public domain that would identify individuals.
34. This point is not at issue here as the Commissioner has considered only section 14(2). However, he does acknowledge that the College - like all public authorities - must take care to abide by its obligations in respect of personal data held by it. In this respect, the Commissioner would highlight that the exemptions in section 38(1)(a) and (b) of FOISA exist for this purpose.

Decision

The Commissioner finds that City of Glasgow College (the College) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant: the request made by the Applicant was not a repeated request for the purposes of section 14(2) and the College was therefore obliged to comply with the request.

Given that the College provided the Applicant with a response to his request during the investigation, the Commissioner does not require the College to take any action in response to this failure in response to the Applicant's application.

Appeal

Should either the Applicant or the College 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
Head of Enforcement

2 June 2022

Appendix 1: Relevant statutory provisions

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.
- ...

14 Vexatious or repeated requests

- ...
- (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.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);and

(iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...

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