

Decision Notice



Decision 086/2012 Motherwell, Cumbernauld and South Lanarkshire Colleges
and Coatbridge College

Whether a review response was issued

Reference No: 201200527
Decision Date: 14 May 2012

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Rosemary Agnew
Scottish Information Commissioner

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Summary

This decision considers whether Coatbridge College (Coatbridge) complied with the technical requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to information request made by Motherwell, Cumbernauld and South Lanarkshire Colleges (the Colleges).

Background

1. On 6 February 2012, Mr Hugh Logan, Principal of Motherwell College, wrote on behalf of the Colleges to Coatbridge requesting certain specified information.
2. Coatbridge responded on 10 February 2012.
3. On 13 February 2012, the Colleges wrote to Coatbridge requesting a review of its decision.
4. The Colleges did not receive a response to their requirement for review and on 16 March 2012, wrote to the Commissioner, stating that they were dissatisfied with that failure and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
5. The application was validated by establishing that the Colleges had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

6. On 11 April 2012, Coatbridge was notified in writing that an application had been received from the Colleges and was invited to comment on the application.
7. Coatbridge responded on 13 April 2012. It stated that it had in fact provided a response to the Colleges' requirement for review on 15 February 2012 and provided the investigating officer with a copy of a letter to the Colleges, dated 15 February 2012, notifying them of the outcome of its review.



8. The investigating officer subsequently forwarded a copy of Coatbridge's letter of 15 February to the Colleges. The investigating officer suggested to the Colleges that, as they had now received a copy of Coatbridge's response to their request for review, which appeared to have been issued on 15 February, they may wish to withdraw their application without the need for a decision from the Commissioner.
9. In response, the Colleges indicated that they did not believe that Coatbridge had ever sent the letter dated 15 February. Furthermore, they believed that the letter dated 15 February had actually been created by Coatbridge in response to the investigating officer's letter i.e. after receiving the investigating officer's letter of 11 April 2012. The Colleges asked the investigating officer to obtain a copy of the original electronic document from Coatbridge in order to ascertain the creation date of the electronic version.
10. The investigating officer subsequently asked Coatbridge to provide him with the electronic version of the letter of 15 February. Additionally, the investigating officer asked Coatbridge to clarify whether it had a log of outgoing mail which would evidence that it had a record of the letter to the Colleges of 15 February having been posted.
11. Coatbridge responded on 25 April 2012, explaining that it did not keep a log of outgoing mail, but maintained copies of correspondence that is received within and sent from the Principal's Office with a supporting filing system that is maintained by the Principle's P.A. At the same time, Coatbridge also forwarded a copy of the electronic version of the letter of 15 February to the investigating officer.
12. The investigating officer subsequently discussed the matter with the Colleges and noted that the creation date of the electronic document was 15 February which suggested that the letter dated 15 February had indeed been created on that date. The investigating officer subsequently (at their request) forwarded the electronic version of the letter of 15 February to the Colleges.
13. In subsequent discussions and correspondence the Colleges highlighted several concerns about the electronic document and asked the investigating officer to conduct further enquiries. These concerns are discussed in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

14. 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, subject to certain exceptions which are not relevant in this case.

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15. In this case, the Colleges have argued that Coatbridge failed to respond to their requirement for review of 13 February 2012. The Colleges have argued that the letter of 15 February 2012 that was provided to the investigating officer (and subsequently forwarded to the Colleges) was actually created after Coatbridge had been advised that an investigation had been commenced by the Commissioner.
16. The Colleges have raised several concerns about the electronic document which the Commissioner will address in turn:
 - a) The electronic document's creation date and time (15 February at 09:24)
 - b) The author of the electronic document
 - c) The "last modified" date and time (25 April at 15:35)
17. In relation to point a), the Colleges expressed surprise that Coatbridge would have been able to draft a response to their requirement for review so quickly given that the earliest it would have been received by Coatbridge would have been 14 February.
18. The Commissioner notes that, whilst this would have been an expeditious response, all previous correspondence between Coatbridge and the Colleges and between Coatbridge and the Commissioner suggests that it is the practice of Coatbridge to provide very prompt responses to incoming correspondence. This suggests to the Commissioner that a prompt response by Coatbridge to the Colleges' requirement for review would not be out of character for this authority.
19. In relation to point b), the Colleges pointed out that the document author on the electronic document was not the same individual who had signed the paper copy of the letter of 15 February. The Colleges expressed surprise at this.
20. In the Commissioner's view, the fact that the electronic document indicates as its author a different person to the person who signed the paper copy is again, not a matter that she considers untoward. It is not unusual, for example, for electronic document templates created by one person in an organisation to be used by other individuals within the organisation. In such cases, the electronic version of a document will often show a different author from the person who opens and creates a new document. The Commissioner recognises that it would also not be unusual for one member of staff to prepare correspondence on behalf of a colleague.
21. In the circumstances of this case, the Commissioner does not consider the mismatch between the names of the creator and signatory of the letter to suggest that the letter was not created at the point claimed by Coatbridge. The Commissioner does not consider that further investigation of this point would contribute to the evidence available regarding the date of sending of the letter.



22. In relation to point c), the Colleges pointed out that, whilst the electronic document had been created on 15 February at 09:24, it had last been modified on 25 April at 15:35. This was shortly before Coatbridge had emailed the electronic document to the investigating officer. In the Colleges' view, this suggested that Coatbridge had overwritten the exact contents of the letter dated 15 February (which had been provided to the investigating officer on 13 April) onto a completely different document which had actually been created on 15 February. The Colleges contended that this had been done in order to give the impression that the letter dated 15 February had actually been created on that date when, in the Colleges' opinion, it had actually been created after Coatbridge had received the investigating officer's letter of 11 April.
23. The Commissioner does not wish to speculate on why the electronic version of the document shows a modification date of 25 April. The Commissioner notes however that the electronic document is exactly the same as the paper copy that was sent by Coatbridge to the investigating officer on 13 April. If the Colleges' assertion is correct, Coatbridge would have had to create a document on or around 13 April to send to the investigating officer. When asked for an electronic version by the investigation officer, Coatbridge would then have had to find a document that was created on 15 February, delete its contents and then overwrite it with the exact contents of the letter dated 15 February that was previously sent in paper copy form to the investigating officer. In the Commissioner's view, this is an unlikely sequence of events.
24. The Commissioner has considered the representations made by the Colleges and by Coatbridge. In the absence of conclusive evidence that the letter of 15 February was (or was not) sent, she has concluded, on the balance of probabilities that it was sent by Coatbridge on 15 February 2012. In reaching this conclusion, the Commissioner is especially persuaded by the fact that Coatbridge has demonstrated a pattern of providing very prompt responses to any correspondence received by it in relation to this matter. The Commissioner is not persuaded by the Colleges' submissions that a sequence of events along the lines in paragraph 23 has taken place. She does not consider that further investigation of these matters would provide any further certainty as to whether Coatbridge responded to the Colleges' request for review on the date it suggests.
25. The Commissioner is therefore satisfied on balance of probabilities that Coatbridge responded to the Colleges' requirement for review within the 20 working days allowed by section 21(1) of FOISA.

DECISION

The Commissioner finds that Coatbridge College acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the information request made by Motherwell, Cumbernauld and South Lanarkshire Colleges.

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Appeal

Should either Motherwell, Cumbernauld and South Lanarkshire Colleges or Coatbridge College wish to appeal against this decision, there is an 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 notice.

Claire Sigsworth
Deputy Head of Enforcement
14 May 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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