

Decision Notice



Decision 043/2014 Mr K and West College Scotland

Complaint procedures and admission processes

Reference No: 201302490

Decision Date: 26 February 2014

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

On 11 August 2013, Mr K asked West College Scotland (the College) for information regarding its handling of complaints and its student admission processes. The College responded by referring Mr K to information available on its website.

Following an investigation, the Commissioner was satisfied that the information was otherwise accessible to Mr K and therefore the College was entitled to rely on section 25 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(a) and (2)(a)(Effect of exemptions); 25(1) (Information otherwise accessible)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 1 August 2013, Clydebank College, James Watt College (Inverclyde) and Reid Kerr College all merged to form West College Scotland (the College).
2. In July 2013, prior to the Colleges' merger, Mr K submitted a complaint to the then Clydebank College.
3. On 11 August 2013, 10 days following the merger, Mr K wrote to the College requesting information relating to the handling of complaints and the College's student admission processes.
4. On 15 August 2013, following the conclusion of unrelated correspondence between the Council and Mr K, the College wrote to Mr K and asked him to confirm if he still wished to proceed with his request for information. Mr K did not respond to this.
5. On 28 September 2013, Mr K wrote to the College, requesting a review in respect of its failure to respond to his request.



6. The College notified Mr K of the outcome of its review on 23 October 2013. It apologised for the delay in responding. The College understood that he had already been provided with a copy of the College's complaints policy, guidance on how to make a complaint and the complaint form. In any event, it stated that this information (and the information he sought on student admission processes) was already in the public domain, on the College's website. Therefore, the College submitted, the information could reasonably be obtained by him and was exempt under section 25 of FOISA (erroneously cited in the College's correspondence as section 26). The College provided Mr K with links to where the information could be accessed.
7. On 26 October 2013, Mr K wrote to the Commissioner, stating that he was dissatisfied with the outcome of the College's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr K made a request for information to a Scottish public authority and 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

9. On 11 November 2013, the College was notified in writing that an application had been received from Mr K, was provided with an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and was asked to respond to specific questions. In particular, the College was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
10. Mr K was not satisfied with the manner in which his request was handled and queried whether he had been provided with the correct information.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr K and the College. She is satisfied that no matter of relevance has been overlooked.
12. It is important to note that Mr K made his request for information on 11 August 2013, after the merger of the three colleges to form West College Scotland.



Section 25(1)

13. Under section 25(1) of FOISA, information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt information. The exemption in section 25 is absolute, in that it is not subject to the public interest test set out in section 2(1)(b) of FOISA. The College confirmed that it was applying section 25(1) to the information requested by Mr K.
14. The College explained that Mr K made a formal complaint in July 2013, which was handled under the Clydebank College complaints procedure as it existed at the time. The College stated that Mr K had access to the complaints procedure via Clydebank College's website, and that he was also provided with an electronic copy at the time of his complaint.
15. The College stated that following the merger, each college retained its own campus version of their existing complaints handling procedures. On 31 August 2013, the College adopted the Scottish Public Services Ombudsman model complaints handling procedure for the further education sector. The previous Clydebank College complaints procedure ceased to exist at that point.
16. The College confirmed that Mr K's complaint was dealt with under the Clydebank College procedure. In any event, the information caught by Mr K's request would be that current when his request was received (the request was by email dated 11 August 2013, so it would be presumed to have been received on that date).
17. With regard to the student admission processes, the College provided Mr K with links to where this information could be viewed on its website. The College also confirmed that the former Clydebank College procedures still applied when Mr K's request was received.
18. The Commissioner has considered the request made by Mr K and the context within which it was made. She is satisfied, given the explanations provided by the College, that the former Clydebank College procedures and processes were the relevant ones at the time the College received Mr K's request. It is clear from Mr K's application that he had no difficulty accessing the information for which he was provided with links: the issue, for him, was whether the former Clydebank College information was the relevant information.
19. In all the circumstances, therefore, the Commissioner is satisfied that the information requested by Mr K could be reasonably be obtained by him other than by requesting it under section 1(1) of FOISA. Therefore, she accepts that the College was entitled to withhold it under section 25(1) of FOISA.

Timescales and handling of request

20. Mr K was not satisfied with the manner in which his request was handled by the College, in that:
 - his request and requirement for review were not acknowledged



- he was asked for confirmation that he wished to proceed with his request, which he considered inappropriate in the circumstances
 - the College did not respond to the request within the required timescale.
21. There is no requirement in FOISA that a request or requirement for review be acknowledged, although the Commissioner would consider this good practice unless the request or requirement is to be responded to immediately.
22. Similarly, there is no particular requirement in Part 1 of FOISA applicable to the College's request that Mr K confirm he wished to proceed with his request. However, in keeping with the spirit of the legislation and in line with good practice, authorities should not place unnecessary impediments in the way of those seeking information under FOISA. Mr K may have concluded other business with the College, but it does not appear to the Commissioner to follow that he would no longer be interested in his information request. In the circumstances, the Commissioner would suggest that this should not have been assumed: in other words, there would appear to have been no good reason for the Council seeking confirmation rather than simply proceeding to deal with the request.
23. On the other hand, the Council clearly did fail to respond to Mr K's request within the required timescale. 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, subject to qualifications which are not applicable in this case. The College acknowledged that it had failed to meet this requirement (and apologised for this) when it responded to Mr K's requirement for review. The matter having been dealt with fully on review, this is not a matter on which the Commissioner is required to make a formal finding in this decision, although all of the points noted here in relation to the handling of the request will be taken into account in considering whether further engagement is required with the College in relation to its practice under FOISA.

DECISION

The Commissioner finds that West College (the College) Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr K.

Appeal

Should either Mr K or West College Scotland 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.

Decision 043/2014
Mr K
and West College Scotland



Margaret Keyse
Head of Enforcement
26 February 2014



Appendix

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.
- ...
- (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.
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
- (a) the provision does not confer absolute exemption; and
- ...
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
- (a) section 25;
- ...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.
- ...