

Decision Notice

Decision 134/2015: Mr Andrew Hamilton and the University of Edinburgh

Attendance at courses

Reference No: 201501039

Decision Date: 19 August 2015



Scottish Information
Commissioner

Summary

On 11 March 2015, Mr Hamilton asked the University of Edinburgh (the University) for information which would show whether two named individuals had attended certain courses.

The University stated that it did not hold any information about one of the individuals. In relation to the other individual, it stated that it required further information from Mr Hamilton to allow it to identify the information, and that the cost of providing information would be excessive.

Following an investigation, the Commissioner did not accept that the University required further information from Mr Hamilton in order to comply with his request. However, she accepted that the University did not hold information about one individual and that, given the broad terms of Mr Hamilton's request, it would cost more than £600 to provide information about the other individual.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 17(1) (Notice that information is not held)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount)

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 11 March 2015, Mr Hamilton made a request for information to the University. Mr Hamilton requested information about two named individuals (named in this decision as Person A and Person B). In relation to these individuals, he asked:
 1. Have the above mentioned ever registered with your practice teaching course?
 2. Have the above mentioned ever attended your practice teaching course?
 3. If so, when did they complete the practice teaching course?
 4. If so, when did they receive the certificate for the practice teaching course?
 5. Have they done any other practice teaching training with your organisation, if so when and what?
 6. Have the above mentioned ever attended the mental health award course within your organisation?
 7. If so, when did they complete the mental health award course?
 8. If so, when did they receive the certificate for the mental health award course?
 9. Have they done any mental health training with your organisation and if so what and when?

2. The University responded on 29 April 2015. It stated that if it held information about the named individuals, disclosing this information without their consent would breach the data principles in the DPA and, therefore, it was exempt under section 38(1)(b) of FOISA.
3. On 29 April 2015, Mr Hamilton emailed the University requesting a review of its decision on the basis that he was not certain that the individuals were fully qualified and they had made statements about him.
4. On 15 May 2015, the University contacted Mr Hamilton to obtain further information from him to help it identify the two individuals. Mr Hamilton replied on 16 May 2015, saying that he was unable to provide any further information to assist the University.
5. The University notified Mr Hamilton of the outcome of its review on 28 May 2015. It referred to section 1(3) of FOISA, noting that if it needed further information to identify and locate the information covered by Mr Hamilton's request, it was not required to process his request until it had received that information from him. The University went on to inform Mr Hamilton that, in relation to Person A, it would cost in excess of £600 to provide a response and, in terms of section 12(1) of FOISA, the University was not required to comply with his request. In relation to Person B, the University explained that it had made contact with this person who confirmed that they had never attended the University.
6. On 3 June 2015, Mr Hamilton emailed the Commissioner. Mr Hamilton applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Hamilton stated he was dissatisfied with the outcome of the University's review because he did not accept that the University would have to carry out the extensive searches it had indicated in order to locate the information covered by his request. He argued that the University had the name of the courses and would be fully aware that the courses are to do with social work training. He noted that he had provided the Social Work registration numbers of both individuals, and that the University had been able to contact one individual on the basis of the information he had provided. He considered he had provided the University with sufficient information to identify both individuals.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Hamilton 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. The case was then 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. On 30 June 2015, the investigating officer notified the University in writing that Mr Hamilton had made a valid application. The University was invited to comment on this application and to answer specific questions. The University responded on 16 July 2015.

Commissioner's analysis and findings

9. 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 Hamilton and the University. She is satisfied that no matter of relevance has been overlooked.

Section 1(3) – Clarification of request

10. In its submissions, the University stated that the primary reason for being unable to comply with Mr Hamilton's request was that it required further information from him in line with section 1(3) of FOISA.
11. Section 1(3) of FOISA provides that a Scottish public authority is not obliged to respond to an information request if it requires further information in order to identify and locate the information an applicant has requested, and has told the applicant so (specifying what further information is needed). However, a public authority is only entitled to seek such information where the requirement for further information is *reasonable*.
12. In this case, the University did not discover that it needed more information from Mr Hamilton until it reviewed its response to his request. At that point, the University asked him which programmes he believed the two individuals had attended, with approximate dates. Mr Hamilton was unable to provide any further information.
13. The University understood that Mr Hamilton was interested in mental health and teaching courses, but stated that he had not specified a date, type of course, level of study, or type of qualification in his request. The University submitted that the additional information that Mr Hamilton provided at review made it believe that he was interested in either education or social work courses (date, type and level unspecified). The University noted that, in his application, Mr Hamilton stated that he had provided specific course information, but in conducting a test search of its course database, the University identified the following numbers of courses which could be covered by the terms of his request:
 - Practice teaching 1,250
 - Social work 544
 - Mental health 104
14. The University stated that it had narrowed the scope of its search to taught courses about social work, teaching or social work teaching in the period 1967 to present, and identified four areas of the University offering potentially relevant courses.
15. The University explained that there is no single central set of records covering course attendance, student matriculation or qualifications attained across all these courses and programmes. The University provided a table showing the locations of the relevant records.
16. The University commented that Mr Hamilton could not confirm that the individuals had used their current names at the time they were studying. It considered that Mr Hamilton had not provided enough information for it to identify the individuals precisely.
17. In considering the terms of Mr Hamilton's request, the Commissioner has reached a different view from the University. She considers that the wording of Mr Hamilton's requests *did* allow the University to identify and search for information covered by his request. Mr Hamilton provided the names of two individuals and a general description of the type of courses they may have attended. The Commissioner takes the view that the University had enough information to establish the scope of the searches it would have to carry out in order to retrieve information about individuals with those names who attended the types of courses listed in Mr Hamilton's request.
18. The University considered it was reasonable to ask for more information because the individuals could not be uniquely identified. The Commissioner notes that the University had

enough information to produce an estimate of the costs it would incur in searching for information about persons bearing the name of Person A, and to establish that it did not hold information in relation to Person B by contacting them. This does not suggest that the University could not identify and search for the information; simply that, in asking for more information, it was trying to narrow down the scope of the request.

19. The Commissioner accepts that if the University had found any information about either of the two named individuals, and had provided it to Mr Hamilton, it might have chosen to warn him that it did not have sufficient details to be completely sure that the information related to the person in whom he was interested, rather than a person with the same name (while observing that Person A's name is not a common one).
20. The Commissioner also accepts that the descriptions Mr Hamilton provided of the courses in which he was interested could apply to a wide range of courses offered at various times by the University. However, she does not accept that it was impossible for the University to identify courses potentially falling within the scope of his request, given its submissions about the costs it would incur in carrying out searches.
21. In all the circumstances of this case, the Commissioner considers that it was not reasonable for the University to conclude that it required further information from Mr Hamilton to establish whether it held information covered by the terms of his request, and that it was wrong to rely upon section 1(3) of FOISA in its response to his request for review.
22. The University stated that the imprecise nature of the information provided by Mr Hamilton was the primary reason why it refused his request, but asked the Commissioner to consider its arguments relating to section 12 of FOISA (excessive costs) if she disagreed. Accordingly, the Commissioner will consider whether the University was justified in refusing to comply with Mr Hamilton's request on the grounds that it would cost more than £600 to do so.

Section 12(1) - Excessive cost of compliance (information relating to Person A)

23. Under section 12 of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently £600 (regulation 5). Consequently, the Commissioner has no power to order a public authority to disclose information should she find that the cost of responding to a request for that information exceeds this sum.
24. The projected costs the public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in:
 - (i) locating
 - (ii) retrieving, and
 - (iii) providingthe information requested in accordance with Part 1 of FOISA. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
25. The University explained that there is no central database which covers attendance at all the courses that Mr Hamilton has referred to in his correspondence. The University noted that the location and coverage of the information varies depending on the year, subject matter,

level of study and type of qualification (if any). The University noted that, in his application to the Commissioner, Mr Hamilton had suggested that he was interested in social work qualifications from the period before they became degree qualifications, but he had not specifically said this or provided confirmation whether he was interested in social work, social work teaching or general teaching skills.

26. The University explained that, together with its predecessor institutions, it had offered social work education since 1918 and teaching education since 1848. Based on the information offered by Mr Hamilton, it considered that he was interested in taught courses about either social work, teaching or social work teaching in the period 1967 to the present. The University submitted that, in this 48 year period, at least four areas of the University offered potentially relevant courses or programmes: the Institute for Academic Development offered higher education teaching qualifications; the Office for Lifelong Learning offered CPD courses; the School of Social and Political Science (SSPS) offered social work qualifications at a range of levels; and Moray House (which merged with the University in 1998) offered social work, teaching and social work teaching qualifications at a range of levels.
27. The University confirmed that it has a central database, but that qualifications other than undergraduate degrees were not recorded in the central database until 2005. It also confirmed that the SSPS holds a card index with information about social work professionals who qualified before the professional social work qualification became a degree subject in the 1990s. However, up until 1998, social work and social work education were also taught by Moray House, and records of students from this period remain at Moray House.
28. The University provided a calculation of the cost of providing the information covered by Mr Hamilton's request, which amounted to £655.43. This was the estimated cost of searching the areas of the University which were considered most likely to hold information covered by Mr Hamilton's request, but the University stated that the search could be wider and provided a list of all potential locations for relevant records.
29. The University provided a breakdown of the above figure into separate tasks, which included the time taken to identify the information requested and for a search to be conducted. The University also provided details of the hourly charge for each task, which was £15.00 per hour or less.
30. Taking account of all the circumstances, the Commissioner is satisfied that the University has provided a reasonable estimate of the cost of complying with that request, based on searches in the four areas most likely to hold relevant information. The Commissioner accepts that additional costs would be incurred in searching for information about other courses potentially covered by the terms of Mr Hamilton's request. As the estimated cost for retrieving the information for the four main areas is over £600, the Commissioner considers it is not necessary to consider what the estimated costs would be if the search was extended to courses run by the University as a whole. Given the nature of the work required, the Commissioner accepts that complying with the request would cost well over the £600 limit.
31. Consequently, the Commissioner is satisfied that the University was entitled to rely on section 12(1) of FOISA in relation to the information sought by Mr Hamilton about Person A, and therefore was under no obligation to comply with the request.
32. The Commissioner will make no finding in this decision on whether any information covered by Mr Hamilton's request would be exempt from disclosure under section 38(1)(b) of FOISA.

Section 17 - Notice that information is not held (information relating to Person B)

33. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received, subject to qualifications which are not applicable in this case. Under section 17(1) of FOISA, where an authority receives a request for information it does not hold, it must give an applicant notice in writing to that effect.
34. In its submissions the University confirmed that it was satisfied that Person B had been correctly identified. The University confirmed that Person B's name does not appear in its central student database and that Person B's name is not recorded in the card indexes.
35. Having considered the University's submissions and the confirmation provided by Person B that they did not attend the University, the Commissioner is satisfied that the University does not hold information relating to this person and covered by Mr Hamilton's request.
36. In light of the above, the Commissioner finds that the University was correct to give Mr Hamilton notice, in terms of section 17(1) of FOISA, that it does not hold the information sought by Mr Hamilton about Person B.

Decision

The Commissioner finds that, in respect of the matters specified in the application, the University of Edinburgh (the University) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Hamilton.

The Commissioner found that it was unreasonable for the University to require further information from Mr Hamilton in order to identify and locate information covered by his request, under section 1(3) of FOISA.

The Commissioner found that the University was entitled to rely on section 12(1) of FOISA in relation to information relating to Person A. She finds that the University correctly gave notice, in terms of section 17(1) of FOISA, that it did not hold information relating to Person B.

Appeal

Should either Mr Hamilton or the University 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

19 August 2015

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.

...

- (3) If the authority -

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

- (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.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

17 Notice that information is not held

- (1) Where-
- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
- (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

(b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info