

Decision Notice

Decision 133/2017: Ms Anna Hamilton and the Scottish Further and Higher Education Funding Council

Glasgow Clyde College Board correspondence: failure to respond within statutory timescales

Reference No: 201701121

Decision Date: 9 August 2017



Scottish Information
Commissioner

Summary

The Scottish Further and Higher Education Funding Council (the SFC) was asked for information about the Glasgow Clyde College Board, in particular information relating to the Principal of the then Glasgow Clyde College, and information concerning an extraordinary meeting of the Glasgow Clyde College Board.

This decision finds that the SFC failed to respond to the request and the requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner has ordered the SFC to comply with the requirement for review.

Background

All references to "the Commissioner" in this decision are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Date	Action
8 March 2017	Ms Hamilton made an information request to the SFC.
8 March 2017	The SFC acknowledged receipt of the request, but did not provide a response to it.
4 May 2017	Ms Hamilton wrote to the SFC requiring a review of its failure to respond.
23 May 2017	The SFC acknowledged the requirement for review, but Ms Hamilton did not receive a response to it.
21 June 2017	Ms Hamilton wrote to the SFC asking it to provide the information requested before it exceeded the statutory timescale allowed for responding to her request for review.
27 June 2017	The SFC wrote to Ms Hamilton explaining the reason for the delay, but did not provide a response to her requirement for review.
27 June 2017	Ms Hamilton wrote to the Commissioner's Office, stating that she was dissatisfied with the SFC's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
24 July 2017	The SFC was notified in writing that an application had been received from Ms Hamilton and was invited to comment on the application.
7 August 2017	The Commissioner received submissions from the SFC. These submissions are considered below.

Commissioner's analysis and findings

1. In response to the request for submissions, the SFC confirmed that it had failed to comply with Ms Hamilton's request and requirement for review. It explained that, in recent months, it

had received an unprecedented volume of information requests, many of which were particularly complex.

2. The SFC explained that this increase in volume had also coincided with its busiest period of the year, when it was finalising funding allocations to colleges and universities. It explained that this increase in requests had significantly impacted on staff resources, resulting in it being unable to comply with statutory timescales when responding to requests.
3. The SFC accepted that, while it had written to Ms Hamilton on 27 June 2017 explaining the reasons for the delay in responding, that communication could not be regarded as a review outcome. It stated it was working urgently to provide an outcome to Ms Hamilton.
4. 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. This is subject to qualifications which are not relevant in this case.
5. It is a matter of fact that the SFC did not provide a response to Ms Hamilton's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
6. 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. Again, this is subject to qualifications which are not relevant in this case.
7. It is a matter of fact that the SFC did not provide a response to Ms Hamilton's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
8. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the SFC failed to discharge these requirements: she now requires a review to be carried out in accordance with section 21.
9. Noting that the SFC explained to Ms Hamilton the reasons for the delay in responding, the Commissioner recommends that it considers whether it would be appropriate to apologise to Ms Hamilton for its failure to comply.
10. Having considered the terms of SFC's response to Ms Hamilton of 27 June 2017, she would also offer the following comments:
 - (i) Where a public authority has failed to respond to the original information request within the statutory 20 working days and is then asked to carry out a review, its only option is to provide a response to the request (section 21(4)(c) of FOISA).
 - (ii) That response must be given to the applicant within 20 working days following receipt of the requirement for review (section 21(1) and (5) of FOISA).
 - (iii) Having fulfilled the requirements of section 21(1), the public authority does not have a further opportunity to carry out a review. The applicant's next step, if dissatisfied with the response (or where the public authority has failed to provide a review outcome within the statutory 20 working days), is to make an application to the Commissioner under section 47 of FOISA.

Decision

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 Hamilton. In particular, the SFC failed to respond to Ms Hamilton's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner requires the SFC to provide a response to Ms Hamilton's requirement for review, by **25 September 2017**.

Appeal

Should either Ms Hamilton 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.

Enforcement

If the Scottish Further and Higher Education Funding Council (the SFC) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SFC has failed to comply. The Court has the right to inquire into the matter and may deal with the SFC as if it had committed a contempt of court.

Margaret Keyse
Acting Scottish Information Commissioner

9 August 2017

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