



Decision Notice 116/2024

Memorandum of Agreement with Heriot-Watt University – failure to respond

Applicant: The Applicant

Authority: University of Edinburgh

Case Ref: 202400155

Summary

The Applicant asked the Authority for information about a Memorandum of Agreement with Heriot-Watt University relating to the MAC-MIGS PhD programme. This decision finds that the Authority failed to respond fully to the Applicant's requirement for review in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA).

Background

1. The Applicant made an information request to the Authority on 3 May 2023.
2. The Authority responded to the information request on 30 May 2023.
3. On 31 May 2023, the Applicant wrote to the Authority requiring a review of its decision.
4. The Authority reviewed its original response and communicated its review to the Applicant on 28 June 2023. The Authority concluded that it had misinterpreted the Applicant's request. It apologised and stated that it would provide the Applicant with information "subject to any relevant exemptions in FOISA". The Authority did not do this in its review communication, but said that it would provide the Applicant with this information "within a month and by Friday 28 July 2023 at the latest".
5. The Authority contacted the Applicant again on 2 October 2023 to apologise for the delay in providing the information.
6. On 3 February 2024, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation. The Commissioner decided, in terms of section 47(5) of FOISA, that that he would consider this application under section 47(1) of FOISA even though it was made after the expiry of the time allowed by section 47(4) for the making of an application to him as it was - in the Commissioner's opinion - appropriate to do so in the circumstances. This was communicated to both the Authority and the Applicant.

Investigation

8. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 20 February 2024.
9. The Commissioner received submissions from the Authority. These submissions are considered below.
10. The Authority confirmed that it acknowledged the Applicant's requirement for review and conducted a review, but was unable to provide the information contained in the Memorandum of Agreement within the statutory timescale.
11. The Authority explained that the delay in providing the information was attributable to the following factors: staff resource issues; an increase in the volume of information requests and the complexity and amount of work involved in responding to the Applicant's request. The Authority stated that it would "anticipate being able to provide this information by the end of March 2024".
12. 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. This is subject to qualifications which are not relevant in this case.
13. In this instance, the Authority communicated its review to the Applicant. It apologised that it had misinterpreted the Applicant's request: the Applicant's requirement for review had expressed dissatisfaction that the full information requested had not been provided, and he specified the additional information that he expected to be held by the Authority and to have fallen within the terms of his request.
14. The Authority acknowledged that there had been a procedural breach of FOISA in this case.
15. The Authority has not – as far as the Commissioner is aware – supplied the information identified by its review to the Applicant, or communicated to the Applicant any reason (in terms of a relevant provision of FOISA) for withholding that information in whole or in part. As such, the Commissioner finds that the Authority failed to comply with section 21 of FOISA.
16. The Commissioner requires the Authority to give effect to its review decision of 28 June 2023 and communicate that review to the Applicant.
17. The Commissioner recommends that the Authority considers whether it would be appropriate to apologise to the Applicant for its failure to comply fully with section 21.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the

Applicant. In particular, the Authority failed to respond fully to the Applicant's requirement for review. The Commissioner requires the Authority to provide a complete response to the Applicant's requirement for review, by 19 July 2024.

Appeal

Should either the Applicant or the Authority 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 Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Colin MacFadyen

Freedom of Information Officer

4 June 2024