



Decision Notice 205/2024

Postponement of validation of named programme

Authority: University of the West of Scotland
Case Ref: 202400635

Summary

The Applicant made a multi-part request to the Authority for information relating to the postponement of the validation of a named programme of study. The Authority disclosed some information to the Applicant in response to part of their request and informed them that it held no further information, and it stated that it held no information for the remainder of their request. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position. He required the Authority to carry out fresh searches for the information requested and to provide the Applicant with a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (4) (General entitlement); 10(1) (Time for Compliance); 17(1) (Notice that information is not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 20 March 2024, the Applicant made a five-part request for information to the Authority. The Applicant asked for documents, communications, meeting minutes or any other relevant records that shed light on:
 - 1) the specific reasons and criteria considered by the Dean and other involved parties in deciding to postpone the validation of the "MSc Digital Business Transformation with Metaverse" course
 - 2) detailed minutes of meetings or internal communications regarding this decision

- 3) any assessments, reports, or reviews of the course that contributed to this decision, including feedback or evaluations from staff, students, or external consultants, if applicable
 - 4) any financial, academic, strategic, or policy factors that played a role in this decision
 - 5) correspondence or records of discussions with external entities or individuals that may have influenced this decision.
2. The Authority responded on 19 April 2024 with a notice, under section 17(1) of FOISA, that it did not hold the information requested. The Authority explained that the course in question had been “paused” due to it being reviewed and no date for an approval event had been set.
 3. On 21 April 2024, the Applicant wrote to the Authority, requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because:
 - the Authority had failed to interpret their request correctly by drawing a distinction between “paused” and “postponed”
 - the Authority’s response to part 1 of their request was incorrect as a validation event date had been set
 - the Authority’s response to their request was late.
 4. The Authority notified the Applicant of the outcome of its review on 25 April 2024. The Authority upheld the application of section 17(1) of FOISA in relation to parts 3-5 of the Applicant’s request, but disclosed the following information in relation to parts 1 and 2:
 - a copy of an internal email to staff (dated 29 February 2024) communicating that the course in question would not be offered for a September 2024 start, and the reasons for this
 - confirmation that this decision had been taken in February 2024
 - an extract of an earlier March 2023 Programme Advisory Group (PAG) meeting at which a proposed September 2023 start date for the programme had been rejected.
 5. On 3 May 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority’s review because they considered that the Authority held more information than it had provided and because the Authority’s initial response to their request was late.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 17 May 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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. The Authority was invited to comment on this application and to answer specific questions. These primarily related to how the Authority established what information it held falling within the scope of the Applicant’s request, including specific details on the searches undertaken.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 1(1) – General entitlement

10. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications in section 1(6) are not applicable in this case.
11. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4).

The Applicant's submissions

12. The Applicant considered that the Authority held further information within the scope of their request than that which was disclosed to them, including (but not limited to) emails and notes taken by relevant parties.
13. The Applicant submitted that these relevant parties included the Dean of School and the Associate Dean for Teaching and Learning.

The Authority's submissions

14. The Authority explained that the programme proposal had been developed by academic staff for delivery by its School of Business and Creative Industries.
15. The Authority submitted that the programme was at an early stage in the approval process, that no date had been set for an approval event (and no formal committee minutes were held) and, on this basis, information would be held by the School of Business and Creative Industries solely.
16. The Authority explained that the programme had been presented in early 2024 as an initial proposal to the Dean of the School of Business and Creative Industries, who had indicated that further information was needed before the proposal could be formalised and progressed.
17. The Authority stated that initial searches had been undertaken by its Quality Enhancement Team and Deputy Principal, as well as the Dean of the School of Business and Creative Industries and three senior staff in that school. The Authority submitted that these were the only individuals involved in the approval (and postponement) of the programme at that time.
18. Following the Applicant's requirement for review, the Authority stated that it had sought and received confirmation from the Dean and Associate Dean of the relevant school that no further information was held.

The Commissioner's view

19. The Authority claims that it does hold any further information within the scope of the Applicant's request in addition to that already disclosed to them in respect of parts 1 and 2 of their request.

20. In considering whether a Scottish public authority holds the requested information in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.
21. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.
22. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).
23. In this case, notwithstanding the opportunity given to provide comments, the Commissioner is not satisfied that the Authority has achieved this. Specifically, the Commissioner finds that the Authority's submissions on searches fall short in the following key respects:
 - it identified four individuals it considered would hold all information within the scope of the request. The Commissioner considers it entirely reasonable that those individuals would hold all relevant information, but the Authority has not provided him with adequate evidence of the searches carried out by three of those individuals
 - while it has provided evidence of assurances received at review stage from key officers that no further information was held, it has not substantiated this position in its submissions to the Commissioner (e.g. by providing screenshots or evidence of digital searches undertaken by those officers).
24. In its submissions, the Authority stated that it considered information that did not relate to the to "reasons, criteria etc" for the postponement of the course in question fell outwith the scope of the Applicant's request.
25. The Commissioner has closely considered the terms of the Applicant's request, specifically part 2 which sought "internal communications regarding this decision". There is no qualification within part 2 of the Applicant's request requiring that the information relate to "reasons" or "criteria".
26. As such, the Commissioner considers that the Authority's interpretation of part 2 of the Applicant's request was too narrow. He cannot therefore be satisfied that it has identified and disclosed all relevant information to the Applicant.
27. In all the circumstances, therefore, the Commissioner cannot, based on the submissions he has received, uphold the Authority's claim that it does not hold any further information than that disclosed to the Applicant in response to parts 1 and 2 of their request.
28. The Commissioner therefore requires the Authority to carry out fresh searches for information relevant to parts 1 and 2 of the Applicant's request, giving particular attention to:
 - requiring all relevant individuals to undertake adequate and proportionate searches of all mediums and locations where relevant recorded information (in any form) may be held
 - the specific wording of part 2 of the Applicant's request, which is not limited to information relating to "reasons" or "criteria" for the postponement of the course in question

- ensuring evidence of the searches undertaken is retained in the event of a further appeal to the Commissioner.

Section 17(1) – Notice that information is not held

29. For the same reasons as set out above, the Commissioner also cannot, based on the submissions he has received, uphold the Authority's claim that it holds no information relevant to parts 3-5 of the Applicant's request.
30. The Commissioner therefore requires the Authority to also carry out fresh searches for information relevant to parts 3-5 of the Applicant's request, again giving particular attention to the first and third bullet points of paragraph 28.

Handling of the request

31. The Applicant was dissatisfied with the time taken by the Authority to respond to their initial request.
32. In the covering email to its response to the Applicant's request, the Authority apologised that the response was a day late.
33. 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.
34. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.

Decision

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

Specifically, the Authority has failed to satisfy the Commissioner that it does not hold any further information in addition to that disclosed already for parts 1 and 2 of the Applicant's request and that it does not hold any information relevant to parts 3-5 of the request. As a result, the Commissioner finds that the Authority failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA), by **31 October 2024**.

The Commissioner also finds that the Authority failed to respond to the Applicant's request for information within the timescales laid down by section 10(1) of FOISA. He does not require the Authority to take any action in response to the failure to respond within timescales.

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.

Euan McCulloch
Head of Enforcement

16 September 2024