



Decision Notice 183/2024

Information relating to the handling of a previous information request

Authority: Edinburgh Napier University
Case Ref: 202400028

Summary

The Applicant asked the Authority for copies of any documents held in relation to a previous information request he had made. The Authority withheld the information on the grounds that disclosure would, or would be likely to, prejudice the effective conduct of public affairs. The Commissioner investigated and during his investigation the Authority applied a number of new exemptions. The Commissioner required the Authority to issue the Applicant with a new review outcome in which it notified him of all the exemptions it was now relying on.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 16 (Refusal of request); 21(4)(b) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 18 September 2023, the Applicant made a request for information to the Authority. He asked for copies of all internal and external correspondence, primary and ancillary documents, memorandums, reports, etc. which the Authority held in relation to a previous information request he had made. He stated that this type of information request is known as a “meta request”. The Applicant’s previous request was for two documents produced by the Universities and Colleges Employers Association (UCEA) and is the subject of a separate decision.

2. The Authority responded on 16 October 2023. It commented that the Applicant had requested documents rather than information, and therefore it was unable to assist him. It went on to explain that, as it considered disclosure of some of the information contained in the correspondence would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation, it was withholding the information under section 30(b)(ii) of FOISA.
3. On 21 October 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because, in his view, the Authority had issued a blanket refusal of his request. The Applicant stated that, in his view, a “meta request” was an enshrined right to scrutinise decisions taken regarding information requests. He commented that exemptions relating to the effective conduct of public affairs were undermined if arguments were not linked to disclosure of the information requested, as opposed to the discussions around whether or not to release that information.
4. The Authority notified the Applicant of the outcome of its review on 16 November 2023, fully upholding its original decision.
5. On 4 January 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority’s review because it did not address any of the points he raised in his requirement for review. He argued that blocking a meta request under section 30 constituted a perversion of FOISA, and he reiterated the points he had made to the Authority in his review request.

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 29 February 2024, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
8. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was subsequently allocated to an investigating officer.

Commissioner’s analysis and findings

9. During the investigation, in its submissions to the Commissioner the Authority stated that, as well as withholding the information under 30(b)(ii) of FOISA, it was also relying on the exemptions contained in sections 30(b)(i), 30(c), 33(1)(b), 36(1), 36(2)(b) and 38(1)(b) of FOISA to withhold the information.
10. The grounds of dissatisfaction set out in the Applicant’s application is restricted to his disagreement with the Authority’s reliance on section 30(b)(ii) of FOISA. The Applicant did not know, at the time of making his application to the Commissioner, that additional exemptions were being relied on, and therefore he did not have the opportunity to consider these exemptions and challenge them in his application.

11. Given this, the Commissioner requires the Authority to provide the Applicant with a revised review outcome, which lists all of the exemptions that the Authority is now seeking to apply, and which explains, in detail, why the Authority considers these exemptions to be relevant. This will enable the Applicant to make a new application in which he can fully challenge the Authority's reasons for withholding information from him.

Decision

The Commissioner finds that the Authority failed to comply fully with Part 1 (and in particular section 16) of FOISA, in failing to provide the Applicant with adequate justification for its refusal to disclose the requested information. He requires the Authority to provide a new response to the Applicant's requirement for review, in terms of section 21(4)(b) of FOISA by **17 October 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.

Euan McCulloch
Head of Enforcement

2 September 2024