

Decision Notice

Decision 173/2017: Mr Ashton King and Edinburgh College

Date of a meeting

Reference No: 201701489

Decision Date: 17 October 2017



Scottish Information
Commissioner

Summary

The College was asked for the date of a specific meeting between its Principal and Vice Principal. The College indicated that the date was mid-September 2015, but stated that it held no recorded information showing the actual date.

The Commissioner investigated and was satisfied that the College held no recorded information that showed the date of the meeting.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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. Previously, Mr King had made requests to Edinburgh College (the College) for information about the Principal of the College instructing a review of the college curriculum frameworks. He received information from the College which stated that, in the autumn of 2015, during a regular one to one meeting between the Principal and Vice Principal (VP), the Principal asked the VP to carry out a review of curriculum frameworks.
2. On 28 January 2017, Mr King made a request¹ for information to the College in which he asked for “the date of the regular One to One Meeting and Vice Principal.” Mr King asked for other information from the College within the same request, but that information is not the subject of this decision.
3. The College responded on 1 February 2017 and stated:
“Regular meetings took place between the Principal and Vice Principal. The specific meeting took place in mid-September and initial work commenced thereafter.”
4. On 4 February 2017, Mr King wrote to the College requesting a review of its decision on the basis that he wished the College be more specific about the date.
5. The College notified Mr King of the outcome of its review on 23 February 2017. The College stated that there was no written record of the meeting and it therefore did not hold information about the date on which it took place. The College explained that meetings between the Principal and members of her senior team were regular and part of the course of normal business.
6. On 21 August 2017, Mr King applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the College’s review because he had not been given the specific date of the meeting, as he had requested.

¹ https://www.whatdotheyknow.com/request/review_of_the_college_curriculum#outgoing-666226

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr King made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The College was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
9. During the Commissioner's investigation, the College confirmed that it did not hold information about the actual date of the meeting, but offered to provide some information to Mr King which would narrow the time frame in which it took place. The College wrote to Mr King on 26 September 2017 and, to assist him, confirmed that the review of curriculum frameworks commenced shortly after a meeting held on 8 September 2015 with curriculum staff.
10. On 27 September 2017, Mr King told the Commissioner that he was still dissatisfied that the College could now apparently disclose a date, but could not provide written evidence of this. He still challenged the fact that there would not have been recorded information relating to this meeting, if it did actually take place. Mr King was concerned at the lack of recorded information.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to him by both Mr King and the College. He is satisfied that no matter of relevance has been overlooked.

Section 17 - Notice that information is not held

12. 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. This is subject to qualifications, but these are not applicable in this case. If no such information is held by the authority, section 17(1) of FOISA requires the public authority to give the applicant notice in writing to that effect.
13. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information (or, in this case, more information) is not held.
14. The College was asked to explain how it had established that it did not hold recorded information covered by Mr King's request.
15. The College responded that it was able to confirm that the meeting took place in mid-September 2015 as this information was confirmed verbally by the Principal herself. There was no formal recorded evidence to show when the Principal requested the Vice-Principal to carry out a review of the curriculum frameworks; however, a meeting note circulated to curriculum staff dated 8 September 2015 confirmed that the curriculum audit work would be commencing.

16. The College supplied an extract of the notes of the 8 September 2015 meeting to the Commissioner, and confirmed that curriculum audit work started shortly after this meeting. (For clarity, it should be noted that the meeting of 8 September 2015 was not the meeting to which Mr King referred in his information request: it was not a meeting between the Vice Principal and the Principal. As noted, the Principal has confirmed her recollection that the meeting with the Vice Principal took place in mid-September.)
17. In relation to the meeting between the Vice Principal and the Principal, the College searched for the requested information in the following places:
 - The Principal's calendar
 - The Principal's email (e.g. emails requesting the meeting sent either to her PA or to the Vice Principal). The College also checked the Principal's emails to see if there had been any reference to the meeting in her correspondence with other members of staff.
 - The email account of the Principal's PA was checked for any correspondence to the Vice Principal requesting this meeting. The College also checked this email account to see if there was any correspondence with other members of staff that referenced this specific meeting.
 - The Principalship calendar (which is used specifically for sending out Executive meeting requests).
 - The Executive area on a specified secure computer area.
18. The College confirmed that it had used the following search terms: one to one; meeting; vice principal; review; curriculum frameworks.
19. The College explained the Principal has many meetings with her Executive Team that are not formally recorded either in a calendar or in notes/minutes. The College has an open door culture and the Executive Team, working in proximity, have many meetings and discussions take place throughout each day. This is in addition to formal meetings.
20. Having considered all the relevant submissions, the Commissioner accepts that the College has taken adequate and proportionate steps to establish whether it held any information that fell within Mr King's request. In reaching this conclusion, the Commissioner has taken into account that the College's searches seem reasonable, proportionate and likely to identify relevant information. The searches covered locations where such information would likely have been held, for example in calendars and the emails of those who would have been involved in setting up or attending the meeting. Appropriate search terms were used. The College has also given a reasonable explanation of why the meeting date may not have been recorded.
21. The Commissioner is therefore satisfied that the College was correct to give Mr King notice, in terms of section 17(1) of FOISA, that it did not hold any information falling within the scope of his request.

Decision

The Commissioner finds that Edinburgh College complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr King.

Appeal

Should either Mr King or the College 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
17 October 2017

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.

...

(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.

...

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.

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