

Decision Notice

Decision 109/2017: Ms Moira Niven and Scottish Further and Higher Education Funding Council

Edinburgh College Business Transformation Plan: Failure to respond within statutory timescales

Reference No: 201700986

Decision Date: 11 July 2017



Scottish Information
Commissioner

Summary

On 28 February 2017, the Scottish Further and Higher Education Funding Council (the SFC) was asked for information about Edinburgh College's Business Transformation Plan. In particular, whether there were any additional planned reviews for the Academic Year 2016/17.

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

Background

Date	Action
28 February 2017	Ms Niven made an information request to the SFC.
	The SFC did not respond to the information request.
16 April 2017	Ms Niven wrote to the SFC, requiring a review in respect of its failure to respond.
19 April 2017	The SFC acknowledged the requirement for review, but Ms Niven did not receive a response to it.
30 April 2017	Ms Niven sent a further requirement for review as she had still not received a response to her request.
24 May 2017	Ms Niven received an update explaining the reason for the delay, but she still did not receive a response to her request.
31 May 2017	Ms Niven 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.
15 June 2017	The SFC was notified in writing that an application had been received from Ms Niven and was invited to comment on the application.
28 June 2017	The Commissioner received submissions from the SFC. These submissions are considered below.

Commissioner's analysis and findings

1. When contacted by the Commissioner, the SFC confirmed that it had failed to comply with Ms Niven's request and requirement for review. It explained that it had received an unprecedented increase in information requests since January 2017, many of which were complex involving multiple questions.
2. It explained that this has had a significant impact on staff resources resulting in the SFC's ability to comply with all requests within the statutory timescales. It also explained that this had also coincided with finalising funding allocations to Colleges and Universities and was the SFC's busiest time of year.

3. The SFC also notified the Commissioner that a review outcome was issued to Ms Niven on 28 June 2017. A copy was provided to the Commissioner. It provided additional comments on the review process, which will be considered below.
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 Niven'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 Niven'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 Commissioner recommends that the SFC considers whether it would be appropriate to apologise to Ms Niven for its failure to comply. Having considered the terms of the SFC's response to Ms Niven and the related submissions, she would also offer the following comments:
 - (i) Where the public authority has failed to respond to the original information request within the required 20 working days and is then asked for a review, its only option is to give the applicant a response to their request (section 21(4)(c) of FOISA).
 - (ii) That response must be given to the applicant within 20 working days (section 21(1) and (5) of FOISA).
 - (iii) The requirements of section 21 having been fulfilled, the public authority does not have a further opportunity to carry out a review. The applicant's next step, if dissatisfied with the response, 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 Niven. In particular, the SFC failed to respond to Ms Niven's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.

The Commissioner does not require the SFC to take any action in respect of these failures, in response to Ms Niven's application, given that a response has now been issued.

Appeal

Should either Ms Niven or Scottish Further and Higher Education Funding Council (the SFC) 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.

Euan McCulloch
Deputy Head of Enforcement

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