

# Decision Notice

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## **Decision 135/2017: Ms Y and the Scottish Further and Higher Education Funding Council**

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### **Cost of temporary staffing requirement: failure to respond within statutory timescales**

Reference No: 201701169

Decision Date: 10 August 2017



Scottish Information  
Commissioner

## Summary

On 11 March 2017, Ms Y asked the Scottish Further and Higher Education Funding Council (the SFC) for information about the cost for a specific temporary staffing requirement with a breakdown by year and month. This decision finds that the SFC failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA). The decision also finds that the SFC failed to comply with Ms Y's requirement for review within the timescale set down by FOISA.

## Background

Date	Action
11 March 2017	Ms Y made an information request to the SFC.
	The SFC did not respond to the information request.
4 May 2017	Ms Y wrote to the SFC requiring a review of its decision in respect of its failure to respond.
8 May 2017	The SFC wrote to Ms Y acknowledging, and apologising for, its delay in responding.
20 June 2017	Ms Y wrote again to the SFC, requiring a review of its decision in respect of its failure to respond.
27 June 2017	The SFC wrote to Ms Y explaining the delay in responding.
2 July 2017	Ms Y 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.
25 July 2017	The SFC was notified in writing that an application had been received from Ms Y and was invited to comment on the application.
8 August 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 acknowledged that it had failed to provide responses to Ms Y's information request and requirement for review. It explained that the delays in responding to the request and requirement for review were attributable to an unprecedented increase in requests received since the beginning of the year.
2. The SFC notified the Commissioner that it had issued a response to Ms Y's request for information on 26 July 2017. A copy was provided to the Commissioner.

3. 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.
4. It is a matter of fact that the SFC did not provide a response to Ms Y's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
5. 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.
6. It is a matter of fact that the SFC did not provide a response to Ms Y's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
7. The SFC responded to Ms Y's requirement for review on 26 July 2017, and the Commissioner does not require it to take any further action in relation to Ms Y's application.
8. The Commissioner notes that the SFC has apologised to Ms Y for its delay in responding.

## Decision

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The Commissioner finds that 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 Y. In particular, the SFC failed to respond to Ms Y'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 Y's application, given that it has now issued a response.

## Appeal

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Should either Ms Y or 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.

**Alison Davies**  
**Deputy Head of Enforcement**

**10 August 2017**

**Scottish Information Commissioner**

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