

Decision Notice 137/2021

Complaint response sources

Applicant: The Applicant

Public authority: University of the Highlands and Islands

Case Ref: 202000964



Scottish Information
Commissioner

Summary

The University was asked for details of the basis of statements made in a response to a complaint. In response, the University provided explanations based on its professional judgement, rather than on the recorded information it held.

During the investigation, the University notified the Applicant that it did not hold some of the information requested.

The Commissioner investigated and found that the University had failed to notify the Applicant where information was not held at the time of handling the request.

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 2 to this decision. Both appendices form part of this decision.

Background

1. On 7 July 2020, the Applicant made a request for information to the University of the Highlands and Islands (the University). The request is set out in full in Appendix 1.
2. The University responded on 16 July 2020. It provided documents and explanations in response to the request.
3. On the same day, the Applicant wrote to the University requesting a review of its decision on the basis that the response was incomplete and failed to provide her with the evidence of statements of facts made.
4. The University notified the Applicant of the outcome of its review on 11 August 2020. The University correlated details of relevant sections, paragraphs and page numbers for documents provided to the 10 specified statements and notified her that some information was not held. The University provided an explanation of the role of the Dean of Research and related activities in determining whether work is formal research.
5. On 23 August 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the University's review because she did not consider that the information provided equated to recorded evidence used for the statements. She considers that the author did not base his statements on recorded information and should admit where information is not held.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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.
7. On 11 September 2020, the University 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. On 7 December 2020, the University was invited to comment on this application and to answer specific questions. These related to whether the statements were based on documentary evidence or professional judgement and experience of the author.
9. Submissions were received from the University on 11 December 2020. On 31 March 2021, following further discussions with the investigating officer, the University notified the Applicant that the 10 responses provided were primarily based on the professional judgment and experience of the Dean of Research, rather than directly lifted from information held by the University. Therefore, the University did not hold the information requested.
10. The Applicant, although now satisfied with the University's updated response, confirmed that she still required a decision to be issued as this clarification should have been provided earlier in the process.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to him by both the Applicant and the University. He is satisfied that no matter of relevance has been overlooked.
12. 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.
13. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). This is not necessarily to be equated with the information an applicant believes an authority should hold. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
14. The University explained that, while no specific documentation had been cited in drafting the response (meaning it did not hold information falling within the scope of the request), the statements provided to the Applicant were based on the professional judgement and experience of the Dean of Research and on the Dean of Research's knowledge of relevant documentation. The University submitted that it had attempted to be helpful by providing information held that would provide support for the statements made.

Commissioner's conclusions

15. The Commissioner concludes that the University failed to notify the Applicant that the information requested was not held, in terms of section 17 of FOISA. However, the Commissioner notes that the explanations provided by the University, which were based on professional judgement and experience rather than specific documentation, was in an attempt to provide advice and assistance to the Applicant.
16. As the Commissioner is satisfied that the further response issued by the University on 31 March 2021 notified the Applicant that the information was not held, he does not require the University to take any further action in respect of the above failure.

Decision

The Commissioner finds that the University of the Highlands and Islands (the University) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to notify the Applicant, in terms of section 17 of FOISA, that it did not hold the information she had requested.

As the University notified the Applicant during the investigation that the information was not held, the Commissioner does not require it to take any action with respect to this failure.

Appeal

Should either the Applicant or the University 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

6 September 2021

Appendix 1: Text of information request

I would be grateful if you would provide me with the information on which you based some of your statements in the formal outcome letter to my complaint. Please provide the formal course/UHI documentation that you saw in order to evidence the following statements. Please highlight the sections/paragraphs the information comes from. If the statements were based on information that I provided to you I would be happy if you referenced them with the specific page numbers/paragraphs.

1. "The assessment is designed to measure and assess the student's competence in therapeutic practice and not the details of the actual therapy received by the participant"
2. "COSCA, which would have known in its decision to approve the [SIC] degree that there is a case study element, and also how this is to be conducted, assessed and quality assured."
3. "It is clear throughout the programme specification and module descriptor documents that ethics and good practice, as well as adherence to the law, are highly stressed at a number of points."
4. "checks-and balances that are in place and appear to be working well" - *Please could you also describe what these are*
5. "there is full appreciation of the types of participants who will be asked to engage with the students in the case study element of the Diploma and the high value and regard that is placed on both legal compliance and ethical considerations."
6. "The participant who volunteers to work with the student in respect of the case-study is therefore known by the student" - *it may be the first time they meet them*
7. "There are various checks and balances in place to ensure that the procedures for the selection of the prospective participant are robust and appropriate" - *please also provide details of these*
8. "Importantly the participant would have been able to build up a trusting relationship with the student" - *participants may be asked to consent at the first meeting*
9. "It is evident from the programme outline that ethics and legal considerations are covered in considerable detail"
10. "the steps that are taken to ensure that students approach the case study process in a responsible and professional way."

I would also like to see the evidence for your statement that that (sic) the case study is missing several key elements that would be necessary in order for it to be regarded as research.

The case study is a qualitative, descriptive study. As such there is no requirement for a specific research question or hypothesis. You have said that the students "are applying researched-based methodologies", yet you then say "there is no specific research-based methodology identified". A case study is a qualitative research methodology. There is nothing to stop students submitting their case studies to a peer-reviewed journal for publication, if of a suitable standard. Case studies are a very important part of the counselling literature. Please provide the source for your definition of research.

If the information that you based these statements on does not come from any formal course documentation, but from verbal correspondence only, please could you confirm this and let me

know who the information was provided by? If the information is based on your own assumptions, please let me know that too."

Appendix 2: Relevant statutory provisions

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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