



Scottish Information
Commissioner

**Decision 169/2007 Ms Josephine Doorley and Queen Margaret
University**

Qualifications of second marker

**Applicant: Ms Josephine Doorley
Authority: Queen Margaret University
Case No: 200700894
Decision Date: 19 September 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 169/2007 Ms Josephine Doorley and Queen Margaret University

Request for qualifications of second marker – information not held

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 15 (Duty to provide advice and assistance); 17 (Notice that information not held).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Ms Doorley asked Queen Margaret University (the University) for information regarding the qualifications of the second marker of her portfolio. The University declined to provide this information, with reference to the Data Protection Act 1998. Following a review, Ms Doorley remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the University did not hold the requested information. The Commissioner concluded that the University did not meet its obligation under section 17 of FOISA to issue a notice that the information was not held. In this regard, the University failed to deal with Ms Doorley's request in accordance with Part 1 of FOISA. However, because the requested information was not held by the University, he did not require any action to be taken.

Background

1. In 2005, Ms Doorley was enrolled in the Acute Illness Short Programme, run under a collaborative arrangement between the University and NHS Lothian. It appears that Ms Doorley was dissatisfied with certain aspects of the assessment procedures for that programme.



2. In this context, Ms Doorley emailed the programme leader (an employee of NHS Lothian) on 24 June 2005, noting a rumour that other Emergency Nurse Practitioners were reading / marking student portfolios, and seeking confirmation whether or not this was the case.
3. The programme leader replied on 27 June 2005. Ms Doorley was not satisfied by that reply, and on the same day she responded asking “what academic training / accreditation have [Nurse Practitioners] in order to read academic work”.
4. On 28 June 2005, the programme leader declined to answer Ms Doorley’s question. Ms Doorley responded on the same day stating “I think it is reasonable that I know the qualifications of **whoever** is marking my portfolio”. The programme leader replied that “it is up to [Queen Margaret University] to judge this, not the students”.
5. On 29 June 2005, Ms Doorley forwarded her correspondence with the programme leader to the Senior Lecturer in Nursing at the University. Ms Doorley expressed disappointment with the programme leader’s responses, and stated: “I still maintain that it is reasonable that I know the qualifications of **whoever** is marking my portfolio”.
6. On 29 June 2005, the Senior Lecturer responded to Ms Doorley. She acknowledged her request for information about the person who had marked her portfolio. She explained that she had discussed the matter with the Head of Nursing at the University, who would follow it up once the programme leader returned from leave. She advised that until the programme leader returned from leave, the University would be unable to provide information regarding individual markers. She indicated that either she, or the Head of Nursing, would get back to Ms Doorley as soon as possible.
7. On 2 November 2005, Ms Doorley emailed the Senior Lecturer again, noting she had received no response from the Senior Lecturer or the Head of Nursing. The Senior Lecturer replied to Ms Doorley saying she would discuss the matter with the Head of Nursing and ask her to respond.
8. On 6 December 2005, Ms Doorley wrote to the Academic Registrar at the University. In addition to a complaint about the assessment procedures for the short programme, Ms Doorley complained about the Senior Lecturer’s failure to answer her question regarding the “qualifications / accreditations of the second readers of my portfolio”.



9. The Associate Dean / Head of School of Health Sciences responded to Ms Doorley on 30 January 2006. With regard to her complaint about the Senior Lecturer's failure to answer her question, the Associate Dean referred to a meeting between Ms Doorley and the Head of Nursing, at which the Head of Nursing "highlighted ...that [the University's] Quality Assurance procedures ensured the appropriateness of all markers", and explained "that in addition to both of the internal markers on the programme the external examiner also examined the portfolios". The Associate Dean concluded that the Head of Nursing was under the impression that Ms Doorley was satisfied with this response.
10. Following this exchange there was (it would appear) a gap in the correspondence between Ms Doorley and the University. Ms Doorley emailed the University on 10 August 2006 expressing her dissatisfaction with the Associate Dean's response. She stated "all my questions remain unanswered", and said she would like an answer. Ms Doorley provided clarification of her complaint on 13 October 2006, by email to the Academic Registrar, to whom her concerns had been referred. In that email, Ms Doorley stated "I want answers to **all** the questions that I raised in the formal complaint".
11. The Academic Registrar responded to Ms Doorley on 30 October 2006 addressing Ms Doorley's general concerns about the assessment procedures for the programme, and also her request for information regarding the qualifications of the second marker. In relation to that request, she stated:

"In terms of your original question regarding the qualification of the second marker ... [the Head of Nursing] was under the impression that you were satisfied with her original response, recorded as having been given at a meeting on 18th July 2005. Again, it is difficult to corroborate the facts at this distance. It is certainly the case that, in entering into partnership with external collaborators in the delivery of a programme, QMUC does require to satisfy itself that the staff delivering and assessing the programme are competent to do so. Staff CVs would form part of that judgement. It is important to note however that personal information about an individual, which would include academic qualifications, is subject to the provisions of the Data Protection Act, and cannot be released by a data holder to a third party. I believe it would have been helpful to you had the reason for the non-release of this information been explained to you at the time of your original complaint".



12. On 6 December 2006, Ms Doorley emailed the Academic Registrar requesting a review of the University's decision. She referred to the Registrar's letter of 30 October 2006, and the decision not to supply the second marker's qualifications in reliance on the Data Protection Act 1998. She stated "it is my view that not providing me with this information is in breach of the freedom of information act".
13. Ms Doorley received no response to her request for review, and on 10 April 2007, she wrote to my Office seeking a decision in connection with the University's apparent failure to respond to that request within the 20 working days allowed by section 21(1) of FOISA.
14. After investigating Ms Doorley's application I found that, on the balance of the available evidence, the University did not receive her request for review, and therefore, it did not fail to respond to that request within the timescales set by section 21(1) of FOISA (decision notice 100/2007 refers). In any event, the University agreed to conduct a review and inform Ms Doorley of the outcome.
15. On 13 June 2007, the University advised Ms Doorley of the outcome of its review:

"As [the Academic Registrar] indicated in her letter of 30 October 2006, the CV's of staff as well as external collaborators contain personal information including academic qualifications. Under the terms of the Freedom of Information (Scotland) Act 2002, this information is exempt under Section 38(1)(b) of the Act (Personal Information), when read with 38(2)(b), as release of the information would not be 'fair and lawful' for the purposes of the Data Protection Act 1998. ...

[The Academic Registrar] also indicated that subject to the provisions of the Data Protection Act, information cannot be released by a data holder to a third party. In fact, Queen Margaret is not the data holder of this information as the second marker was not an employee of Queen Margaret. Therefore I am satisfied that the information requested regarding qualification of markers should be withheld, under both freedom of information and data protection legislation".
16. On 19 June 2007, Ms Doorley wrote to my Office, stating that she was dissatisfied with the outcome of the University's review and applying to me for a decision in terms of section 47(1) of FOISA. The application was validated by establishing that Ms Doorley had made a request for information to a Scottish public authority and had applied to me for a decision only after the authority had reviewed its response to that request.



17. On 22 June 2007, the University was notified in writing that an application had been received from Ms Doorley. The University was asked to provide my Office with a copy of the withheld information.
18. The University responded on 26 June 2007, clarifying that it does not in fact hold the information requested by Ms Doorley. It quoted from the review notice as follows: "Queen Margaret is not the data holder of this information as the second marker was not an employee of Queen Margaret". It conceded that the review notice could have been clearer in this regard.
19. At this stage, the case was allocated to an investigating officer.
20. On 6 July 2007, the investigating officer wrote to Ms Doorley to clarify that the University's position was that it did not hold the requested information. The investigating officer explained that the focus of my investigation would be on ascertaining whether or not the information was held. The investigating officer also advised that, in the event that I was satisfied that the information was not held, I could not order its disclosure. Ms Doorley was invited to clarify whether she wished to pursue her current application, or alternatively to submit a fresh request for the information to NHS Lothian. In response, she asked me to proceed with my investigation.

The Investigation

21. On 20 July 2007, the investigating officer wrote to the University inviting comments in relation to Ms Doorley's application, in terms of section 49(3)(a) of FOISA. The investigating officer asked the University to address the following specific matters:
 - a) When the University established that it did not hold the qualifications of the second marker;
 - b) What steps were taken to establish that the University did not hold the qualifications of the second marker;
 - c) The nature of the arrangement between the University and NHS Lothian; and
 - d) Why, pursuant to that arrangement, the University would not be expected to hold the qualifications of the second marker.
22. The University's response was received on 14 August 2007. Further clarification was requested and received in the course of the investigation.



The Commissioner's Analysis and Findings

23. It does not seem that Ms Doorley's request was conceived of, or processed as, a request made pursuant to FOISA, until she complained to this Office about the University's apparent failure to review its decision of 30 October 2006. Prior to that, it would appear that Ms Doorley's request to know the qualifications of the second marker was subsumed within her general complaint about the assessment procedures for the Acute Illness Short Programme. After Ms Doorley complained to this Office, the University agreed to review its decision, and advised Ms Doorley that the information sought would not be provided. Reference was made to section 38(1)(b) of FOISA and the data protection principles set out in the Data Protection Act 1998, followed by advice to the effect that the University is "not the data holder of this information".
24. Though not referred to specifically in any of the University's correspondence with Ms Doorley, the relevant provision of FOISA is section 17. That section provides that where a Scottish public authority receives a valid request for information under FOISA, and the authority does not hold that information, it must promptly, and within the 20 working days allowed by section 10(1) of FOISA, give the applicant notice in writing that it does not hold it. In considering the application of section 17, I must be satisfied that the University does not (and did not at the time it dealt with Ms Doorley's request) hold information regarding the second marker's qualifications.

Does the University hold the second marker's qualifications?

25. In its submissions, the University clarified that the point at which it became aware it did not hold the second marker's qualifications was when undertaking the review of the Academic Registrar's refusal to disclose that information. This was established following:
- discussions between the Business and Research Support Adviser (who has responsibility for Freedom of Information matters), the Director of Registry and Secretariat, the Head of Nursing and the Registry Officer (Quality Enhancement);
 - a check of the documentation in connection with the Acute Illness Short Programme, including: the Memorandum of Co-operation between the University and NHS Lothian in relation to that programme; the minute of the Faculty Taught Programmes Committee recording the Committee's approval of that programme; the "Acute Illness Course Module Descriptor"; the more general validation agreement between the University and NHS Lothian; and the "Programme Development, Monitoring and Review" and "Academic Collaborations" sections of the Quality Assurance Handbook.



26. The University explained why it would not expect to hold details of the second marker's qualifications.
27. The University is involved in the accreditation of programmes run by NHS Lothian, leading to the award of academic credit by the University. Pursuant to the Memorandum of Understanding between the University and NHS Lothian in relation to the Acute Illness Short Programme:
- the management of the Short Programme is the responsibility of NHS Lothian;
 - NHS Lothian will provide all resources, physical and human, necessary to support the Short Programme;
 - each party shall be responsible for the provision of appropriate staffing to meet its agreed input to the Short Programme development, delivery and monitoring;
 - the responsibility for all matters of discipline, health and safety and general welfare of staff of NHS Lothian rests with NHS Lothian;
 - NHS Lothian must take responsibility for the appointment and conduct of the teaching staff for the Short Programme.
28. The University confirmed that the second marker was employed by NHS Lothian not the University. The University did not hold any personnel records in relation to that individual. Nor was NHS Lothian required to supply information regarding the second marker's qualifications to the University.
29. The extent of documentation required for accreditation or approval of programmes may vary depending on the nature and length of a programme. Longer programmes will require "validation events". The required documentation for a validation event includes the curriculum vitae of all teaching staff intended for the new programme (see paragraph 3.8 of the University's Programme Development, Monitoring and Review Guidelines, available at www.qmu.ac.uk).
30. However, validation events are not required for Short Programmes. Instead, "the Faculty Academic Board will consider the Programme Specification at the same time as the Statement of Intent and make a recommendation to Academic Council" (see paragraph 13.4 of the University's Academic Collaborations Manual, also available at www.qmu.ac.uk).
31. Accordingly, if the Acute Illness module had been validated, the University would have expected to hold the curricula vitae of the teaching staff. As that module was a Short Programme, such documentation was not required. Appropriate staffing was the responsibility of NHS Lothian, pursuant to the Memorandum of Co-operation.



32. In addition to the steps identified above, the University recalled from archives validation documentation in connection with the Minor Injuries Programme. This was done because staffing for the Minor Injuries Programme was substantially the same as the staffing for the Acute Illness Short Programme. However, the validation documentation did not contain information in relation to the second marker.
33. In light of the above, I am satisfied that the University does not (and did not at the time it deal with Ms Doorley's request) hold information regarding the second marker's qualifications. If that information is held by any public authority, it would seem likely to be held by NHS Lothian, as the employer of the second marker.

The processing of Ms Doorley's request

34. Having established that the information at issue is not held by Queen Margaret University, I cannot order its disclosure. Nevertheless, I do propose to comment on various aspects of the University's processing of Ms Doorley's request.
35. I consider it very unfortunate that over two years have passed since Ms Doorley first requested information regarding the second marker's qualifications, and only now has she received confirmation that the University does not hold such information.
36. I note that Ms Doorley's request was initially directed to the programme leader, who was an employee of NHS Lothian. At the time, FOISA had not long been in force, and Ms Doorley's request was not stated to be made pursuant the legislation. As noted above, it appears that Ms Doorley's request was subsumed within her general complaint about the assessment procedures for the Acute Illness Short Programme. However, it is the case that any request for information held by a Scottish public authority must be processed in accordance with Part 1 of FOISA; there is no requirement for an applicant to specify that a request is made pursuant to the legislation.
37. Accordingly, on receipt of Ms Doorley's request, the programme leader should have considered whether the requested information was held (by NHS Lothian), and if so whether any of the exemptions in FOISA properly applied. Instead, Ms Doorley was redirected to Queen Margaret University ("it is up to [the University] to judge [the qualifications of markers], not the students"). Although this redirection may have been well-intentioned, it could also be argued that the collaborative nature of the arrangement between the University and NHS Lothian may have blurred the lines of responsibility for handling freedom of information matters in this case. It would be worth bearing this risk in mind where future requests for information concerning the University's collaborative arrangements with NHS Lothian (or other Scottish public authorities) are received.



38. Once Ms Doorley redirected her request to Queen Margaret University (29 June 2005), it was again not treated as a request pursuant to FOISA. I understand that Ms Doorley's request was subsumed within the general complaints process. However, as noted above, any request for information held by a Scottish public authority must be processed in accordance with FOISA. On receipt of that request, the University should – within the 20 working days allowed by section 10(1) of FOISA – have issued a notice pursuant to section 17 that the requested information was not held. Subsequent opportunities to rectify this omission were also missed when Ms Doorley:
- reiterated her request (2 November 2005);
 - formally complained about the University's refusal to answer that request (6 December 2005); and
 - wrote to express her dissatisfaction with the University's response to her formal complaint (August and October 2006).
39. The University's first reference to the fact that the information was not held came with the review of decision dated 13 June 2007. While the review of decision stated that "Queen Margaret is not the data holder of this information", it also referred to section 38(1)(b) of FOISA and the Data Protection Act, and concluded that "the information requested should be withheld, under both freedom of information and data protection legislation". In my view, this was ambiguous.
40. Section 17 of FOISA creates an obligation to issue a written notice to that effect where the requested information is not held. The University did not issue such a notice, at least not in clear and unambiguous form, and in this regard I find that it failed to deal with Ms Doorley's request for information in accordance with Part 1 of FOISA. It seems to me it may be worth reiterating to staff involved in the student complaints process that requests for information held by the University must be handled in accordance with Part 1 of FOISA.
41. I would also remind authorities that they have a duty to provide advice and assistance to applicants (section 15 FOISA refers). At the least, this should have included advising Ms Doorley to request the information from NHS Lothian, as the perceived holder of the information, and providing relevant contact details. I have provided Ms Doorley with the necessary contact details for NHS Lothian and understand that she is in a position to pursue such a request.



Decision

I find that Queen Margaret University (the University) does not (and did not at the time it dealt with Ms Doorley's request) hold the information requested by Ms Doorley. I also find that the University did not meet its obligation under section 17 of the Freedom of Information (Scotland) Act 2002 (FOISA) to issue a notice that the requested information was not held. In this regard, the University failed to comply with Part 1 of FOISA. However, because the requested information is not held by the University, I do not require any action to be taken.

I also find that the University did not fulfil its duty to advise and assist Ms Doorley in terms of section 15 of FOISA, in that it did not advise her clearly (with contact details) as to where it understood the information requested to be held. I understand, however, that Ms Doorley now has the information she requires to pursue a further request with that other authority, and therefore I do not require any action to be taken in this connection.

Appeal

Should either Ms Doorley or Queen Margaret University wish to appeal against this decision, there is an 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 notice.

Kevin Dunion
Scottish Information Commissioner
19 September 2007



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

15. Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

...

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.

...