

# Decision Notice

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**Decision 172/2016: Ms X and the Scottish Qualifications Authority**

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## **Examination Statistics**

Reference No: 201600285

Decision Date: 5 August 2016



Scottish Information  
Commissioner

## Summary

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On 18 September 2015, Ms X asked the Scottish Qualifications Authority (the SQA) for the old higher exam 2015 and the new higher exam 2015 statistics for several subjects.

The SQA responded and provided Ms X with a link to its website, where it stated it had published some of the information she was looking for. The SQA claimed that it did not hold the remainder in the format requested and therefore was not obliged to provide it.

Ms X could not access all of the information she was looking for on the website so applied to the SQA for a review. Following the review, the SQA upheld its initial position. Ms X remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and concluded that the SQA held the remainder of the information Ms X was looking for. As the SQA had not cited any exemptions to withhold it, the Commissioner required the SQA to disclose this information to Ms X, anonymising any personal data.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) General entitlement); 11(1) and (2) (Means of providing information)

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

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1. On 18 September 2015, Ms X made a request for information to the SQA. The information requested was:

*For both the old higher exams 2015 and the new higher exams 2015, for each of the following subjects: English, History, Geography, Biology, Art-*

- (a) *number of candidates from independent schools*
  - (b) *number of candidates from state schools*
  - (c) *number of other candidates*
  - (d) *total number of candidates*
  - (e) *number of independent school candidates who achieved A pass*
  - (f) *number of state school candidates who achieved A pass*
  - (g) *number of other candidates who achieved A pass*
  - (h) *total number of A passes.*
2. The SQA responded on 9 October 2015; it provided Ms X with a link to published national attainment statistics on its website, where it stated she could find the total number of candidates and the total number of A passes. The SQA stated that it did not hold the

remainder of the information in the format requested by Ms X. Therefore, in terms of section 11 of FOISA, it did not consider it was obliged to provide any further information.

3. On 27 January 2016, Ms X wrote to the SQA requiring a review of its decision, on the basis that the SQA had not provided answers to points (a), (b), (e) and (f) of her request.
4. The SQA notified Ms X of the outcome of its review on 2 February 2016, stating that it upheld its position as communicated to her on 9 October 2015. The SQA also provided Ms X with further links to its own and other websites, where, it stated, she might find relevant information.
5. On 5 February 2015, Ms X wrote to the Commissioner. She applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms X stated she was dissatisfied with the outcome of the SQA's review because she could not obtain the information broken down as she had requested it.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Ms X made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 7 March 2016, the SQA was notified in writing that Ms X had made a valid application and the case was 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. The SQA was asked to explain its reasoning for not providing Ms X with the information she was seeking.
9. The SQA asked the Commissioner to take account of its submissions in respect of a previous application made to the Commissioner by Ms X, because its justification was the same for both of the requests.
10. The previous application referred to by the SQA resulted in *Decision 168/2016 Ms X and the Scottish Qualifications Authority*.<sup>1</sup> The SQA's submissions are summarised there.
11. Ms X was also asked if she had any additional comments to make. She did not have anything to add to the comments made in her application and in relation to the case which led to *Decision 168/2016*.

## Commissioner's analysis and findings

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12. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Ms X and the SQA. She is satisfied that no matter of relevance has been overlooked.
13. The Commissioner has considered all of the relevant submissions carefully in this case, along with the terms of the information request (insofar as covered by Ms X's application), and has concluded that the issues she is required to consider here are issues she has considered already in *Decision 168/2016*:

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<sup>1</sup> <http://www.itspubliknowledge.info/uploadedFiles/Decision168-2016.pdf>

- (i) the relevance of section 11 of FOISA in the circumstances (on the basis that the SQA considered Ms X to be seeking a digest), and
  - (ii) whether responding to the remaining points in Ms X's request (i.e. points (a), (b), (e) and (f), as identified in her requirement for review) would require the creation of new information.
14. For the reasons stated in *Decision 168/2016*, the Commissioner cannot accept that section 11 of FOISA has any application here. As in that earlier case, there is no reason for concluding that Ms X asked for a digest. She simply asked for information, which she believed the SQA should hold in recorded form (as defined in section 73 of FOISA) and which she described intelligibly (as required by section 8(1)(c) of FOISA). The question, therefore, was simply whether the SQA held that information and so was required to comply with the request in terms of section 1(1) of FOISA.
  15. The Commissioner has gone on to consider whether the SQA held the remaining information sought by Ms X, or whether it would have needed to create new information to respond to her request. She has considered whether there is any reason for reaching a different conclusion on this point from that reached in *Decision 168/2016*. In the present circumstances, on the basis of all the relevant submissions she has received, she does not believe the case has been made by the SQA to enable her to reach a different conclusion.
  16. As in *Decision 168/2016*, the Commissioner must note that the SQA's position on what it holds is not entirely clear, in terms of Part 1 of FOISA. Clearly, it holds the raw data required to answer the request, even if work is required to extract and interrogate those data to allow a response. As in that earlier case, there appears to be nothing to suggest that this work could be said to involve a significant exercise of skill and judgement of the kind the Commissioner would expect before she could accept that the creation of new information was involved.
  17. As the Commissioner noted previously, the SQA's arguments appear to relate to the reasonableness of being required to produce bespoke datasets of the kind requested from the raw data it holds, and in particular whether such work could be described as proportionate and a reasonable use of its resources. The Commissioner would reiterate that she fails to see the relevance of these considerations to the question of whether the SQA held the information requested by Ms X, whatever relevance they may have for a Scottish public authority in more general terms. On the basis of the submissions provided, she must find that the SQA did (and does) hold the information which is the subject of Ms X's application.
  18. As the SQA has not cited any exemptions or other provisions of FOISA which would allow it to refuse to disclose the information it holds, the Commissioner finds that the information (insofar as falling within the scope of Ms X's application, i.e. that covered by points (a), (b), (e) and (f)) should be disclosed to Ms X. If this would otherwise involve the disclosure of personal data, the SQA should anonymise the information fully before disclosing it.
  19. The Commissioner would reiterate her advice to the SQA, as imparted in *Decision 168/2016*. In future cases, the SQA should think carefully about its position in relation to any information it is asked for, ensuring that it identifies the provisions of FOISA which are truly relevant to that position, for reasons which are truly relevant to the application of those provisions.

## Decision

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The Commissioner finds that the Scottish Qualifications Agency (the SQA) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms X.

The Commissioner finds that the SQA:

- (i) Held the information requested by Ms X and falling within the scope of her application.
- (ii) Failed to apply any exemption or other relevant provision of FOISA to the information held. Therefore, it should have disclosed the information to Ms X and, in failing to do so, breached section 1(1) of FOISA.

The Commissioner therefore requires the SQA to disclose the information to Ms X, after rendering any personal data anonymous, by 19 September 2016.

## Appeal

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Should either Ms X or the Scottish Qualifications Authority 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.

## Enforcement

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If the Scottish Qualifications Authority (the SQA) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SQA has failed to comply. The Court has the right to inquire into the matter and may deal with the SQA as if it had committed a contempt of court.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**5 August 2016**

### 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.

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- (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.

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#### 11 Means of providing information

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.

- (2) The means are-

- (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
- (b) such provision to the applicant of a digest or summary of the information; and
- (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.

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