

Decision Notice 074/2022

Credit rating of COSCA courses

Applicant: The Applicant

Public authority: Edinburgh Napier University

Case Ref: 202101077



Scottish Information
Commissioner

Summary

The University was asked for information about the credit rating of COSCA courses. The University advised the Applicant that the information sought could be obtained from its website, and applied section 25(1) of FOISA. During the investigation, the University supplied further information to the Applicant that was not available on its website. The Commissioner investigated and found that the information disclosed during the investigation should have been disclosed in response to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(a) and (2)(a) (Effect of exemptions); 25(1) (Information otherwise accessible); 47(1) and (2) (Application for decision by Commissioner)

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

1. On 25 May 2021, the Applicant made a request for information to Edinburgh Napier University (the University). The information requested was:
... all the information you hold regarding the credit rating of COSCA courses by Edinburgh Napier University. Please could this include the reasons behind the recent decision to cease credit rating COSCA courses.
2. The University responded on 22 June 2021 and applied the exemption in section 25(1) of FOISA. The University stated that the information sought was available via a link to a website and it provided this link to the Applicant. The University also provided the Applicant with its reasoning for deciding to cease credit rating COSCA courses.
3. On 25 June 2021, the Applicant wrote to the University requesting a review of its decision. The Applicant stated:
You directed me to the SCQF database which only tells me that Edinburgh Napier credit rates the COSCA course, which I knew already.
I would expect Edinburgh Napier to have some formal records of this credit rating process. When it was approved, who approved it, minutes of meetings, email correspondence between Napier and COSCA perhaps, ongoing approval processes.
You referred to agreements reaching their endpoint so I would expect there to be some documentation indicating this.
I would also expect there to have been some formal documentation regarding deciding to stop credit rating COSCA courses and your communication with COSCA regarding this.
Please could you revise your response and provide me with the more detailed information I have requested?
4. The University notified the Applicant of the outcome of its review on 2 July 2021. The University upheld its application of section 25(1) of FOISA.

5. On 30 August 2021, 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 had not been provided with any minutes, correspondence or formal records, and that it was "obvious" that she was requesting the information contained within any such records.

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 15 September 2021, the University was notified in writing that the Applicant 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. On 21 March 2022, the University was invited to comment on this application and was asked by the investigating officer to provide a copy of internal and external discussions, meeting minutes and emails on the credit rating approval process and on the decision to stop credit rating COSCA courses. The University was also asked to confirm where on its website this information could be located.
9. On 4 April 2022, the University contacted the investigating officer and advised that it held further information falling within the scope of the Applicant's request. The further information was disclosed to the Applicant by the University on 12 April 2022.
10. The Applicant contacted the investigating officer on 17 April 2022 to say that she was now content that she had been provided with the information that she was seeking, but that she would still like the Commissioner to issue a decision in respect of her application.

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.

Section 25 - Information otherwise accessible

12. Information which an applicant can reasonably obtain other than by requesting it under section 1(1) of FOISA is exempt from disclosure. This exemption is not subject to the public interest test in section 2(1)(b) of FOISA. Section 25(1) is not intended to prevent or inhibit access to information, but to relieve public authorities of the burden of providing information that an applicant can access readily without asking for it.
13. The University relied on section 25(1) in responding to the Applicant's request. However, the Applicant was of the view that the University should hold further information in addition to that which she could obtain from the website.
14. During the course of the Commissioner's investigation, the University located further information that fell within the Applicant's request, and provided it in full to the Applicant.
15. The Commissioner therefore finds that the University was not entitled to rely on the exemption in section 25(1) of FOISA when it responded to the Applicant's request and review requirement.

Decision

The Commissioner finds that Edinburgh Napier University (the University) failed to comply fully with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA)) in responding to the information request made by the Applicant.

As some information falling within the scope of the Applicant's request was not otherwise accessible to her on the University's website, he found that the University was not entitled to rely on section 25(1) of FOISA in responding to the request.

As all of the information falling within the scope of the request was provided to the Applicant during the course of the investigation, the Commissioner does not require the University to take any further action in response to this decision.

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

18 July 2022

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - ...
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
 - ...

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and

(c) specify –

(i) the request for information to which the requirement for review relates;

(ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and

(iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...

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