

Decision Notice 144/2020

Summary of student survey results

Applicant: The Applicant

Public authority: University of Dundee

Case Ref: 202000834



Scottish Information
Commissioner

Summary

The University was asked for any summaries or analysis of student feedback survey results about online teaching provided by the University in its MB ChB medicine course during the Covid-19 pandemic.

The University notified the Applicant, in line with section 17 of FOISA, that it held no recorded information falling within scope of her request.

The Commissioner investigated and found that the University was not entitled to inform the Applicant that it held no information falling within the scope of the request and also failed to respond to the Applicant's request and requirement for review within 20 working days.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance); 17 (Notice that information is not held); 21(1) and (10) (Review by Scottish public authority)

Coronavirus (Scotland) Act 2020, Schedule 6, Part 2, paragraph 6 (Commissioner's ability to take account of the impact of coronavirus)

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 28 May 2020, the Applicant made a request for information to the University of Dundee (the University). In her request, the Applicant asked for any summaries or analysis of student feedback survey results about online teaching provided by the University in its MB ChB medicine course, since the start of the Covid-19 pandemic.
2. An acknowledgement email was sent to the Applicant by the University on 28 May 2020, explaining that a response would be provided within 20 working days.
3. Having received no response to her information request, the Applicant wrote to the University on 26 June 2020, requesting a review of its failure to provide a response and asking that the requested information be sent to her as soon as possible.
4. The University notified the Applicant of the outcome of its review on 5 August 2020. The University explained that it did not have any student feedback relating to the MB ChB course since the start of the Covid-19 pandemic. It commented that the pandemic halted most of its teaching, other than fourth year, but there was no feedback information it could provide to the Applicant on this. The University went on to explain that fifth year students graduated early in April, and so did not experience online learning, and teaching for years one, two and three stopped. The University asked that the Applicant treat its response as a notice, in line with section 17 of FOISA, that the requested information was not held.
5. The University also apologised for the lack of a response to the request within the statutory timescale and indicated that this was caused by complications arising from the impact of COVID-19.

6. On 31 July 2020 (following further correspondence with the University, in which she indicated that she was aware of relevant student feedback surveys and provided the University with a link to one, which closed in May 2020), the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA on the basis that she had not received a response to her request. She wrote to amend this application on 13 August 2020, following receipt of the University's review outcome, stating that she was dissatisfied with the outcome of the University's review because the University did not reply to her request or requirement for review within the statutory time limits. She also remained of the view that the University held information she had requested.

Investigation

7. 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.
8. On 26 August 2020, the University was notified in writing that the Applicant had made a valid application. The case was then allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The University was invited to comment on this application and to answer specific questions. These related to the actions and searches undertaken by the University to determine what recorded information it held falling within scope of the Applicant's request, including whether it was now willing to disclose any information held. The University was also asked to explain the reasons why it was unable to respond to the Applicant's request and requirement for review within the statutory timescales.
10. During the investigation, the University explained that, after the Applicant provided a link to a survey (relating to the Medical School and the relevant timeframe), it had been able to gather the full responses. The University commented that, whilst it did not agree that this fell within scope of the Applicant's request it had, as a gesture of goodwill, provided her with a redacted copy of the results.
11. The Applicant confirmed that she had received this but commented that, while she was happy that the University had provided the information in the end, she was unhappy with how her request was handled.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the withheld information and 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.
13. As mentioned previously, as the Applicant was satisfied that the University disclosed the requested information to her during the course of the investigation but expressed continued dissatisfaction with the way in which her request was handled. The Commissioner's investigation in this case will focus on whether the University was correct to argue that the results from the survey did not fall within scope of the Applicant's request and also whether it breached the statutory timescales in relation to its responses to her request and requirement for review.

14. 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. The qualifications contained in section 1(6) are not applicable in this case.
15. 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 information an applicant believes the authority should hold. If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant a notice in writing to that effect.

The Applicant's submissions

16. The Applicant explained that, after every teaching block, the University seeks feedback from students on the quality of teaching delivered, using online surveys. The Applicant provided a link to one of these surveys, which closed in May 2020.
17. The Applicant also commented that she was aware that, after the University closed because of Covid-19, lectures at the Medical School were given on an online platform.
18. The Applicant considered the request she made to the University for "student feedback survey results for online teaching" was clear, particularly given that the survey she provided the link to was titled "Year 1 – Online Teaching – Student Evaluation 2019/20".

The University's submissions

19. In its submissions to the Commissioner, the University explained that it did not believe it held information falling within scope of the Applicant's request.

Searches

20. The University submitted that it was clear the focus of the Applicant's request was the Undergraduate course in Medicine. As a consequence of this, contact was made with a relevant member of staff in the School of Medicine, who explained (from personal knowledge) that they did not hold any data falling within scope of the Applicant's request.
21. Following on from the Applicant's correspondence where she provided the University with a link to a survey, the University explained that contact was again made with the Medical School, and also with the Survey Team, in an effort to track down the survey and clarify if it fell within scope of the request.
22. The University submitted that it has a decentralised survey approach, where staff can create and launch a survey themselves. The University explained that it decided not to contact the Survey Team in the first instance because it was necessary to know the title of the survey or the person who launched it before the team would be able to carry out a search to determine if the survey was held.
23. The University noted that it was only after it had received the link to the survey from the Applicant that it was able to locate the survey and then gather the full responses.
24. In the University's view, even if its title might suggest otherwise, the survey in question did not evaluate "online teaching provided by the University". The University also noted that, although the survey referred to material being available online, the tutelage was not delivered in the true sense of "online teaching" as any "online" references referred to online study guides. For these reasons, the University upheld its view that the survey results did not fall within the scope of the Applicant's request.

25. However, the University explained that – as a gesture of goodwill – it provided the Applicant with a copy of the full responses to the survey, subject to the redaction of information it considered to be personal data.

The Commissioner's findings

26. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. Ultimately, the Commissioner's role is to determine whether relevant information is actually held by the public authority (or was, at the time it received the request).
27. In reaching a decision in this case, the Commissioner has been mindful of the fact that a requester (the Applicant in this case) cannot be expected to know how and where a public authority (the University in this case) holds, classifies and files its records. What is clear in this case is that, when framing the terms of her request, the Applicant was aware of a particular survey title. The title of this survey included the following: "Year 1 – Online Teaching – Student Evaluation 2019/20". The Commissioner therefore considers it was reasonable for the Applicant to frame her request in the way that she did, with surveys such as this one in mind, by asking for "any summaries or analysis of student feedback survey results about online teaching provided by the University in its MB ChB Medicine course since the start of the COVID pandemic."
28. The Commissioner acknowledges the submission from the University that the purpose of the survey was not to evaluate online teaching in the traditional sense. However, as the University used this language in the title of the survey and some information (study guides and guidance) was made available online as part of the course of study for the topic being evaluated, he accepts that it was reasonable for the Applicant to expect information relating to any results from this survey to be covered by her request. For these reasons, the Commissioner does not agree that the results of the survey highlighted by the Applicant fell outwith the scope of her information request.
29. As the Commissioner is satisfied that the results from the survey highlighted by the Applicant did come within scope of her information request, he will go on to consider whether the University carried out adequate searches to determine if any relevant recorded information was held at the time it received the request.
30. Having considered the submissions from both the Applicant and the University, the Commissioner notes that contact was not made with the Survey Team until after the Applicant highlighted the survey of interest to her. However, he understands from the Applicant's submission that it is normal practice for an online survey to be used to evaluate teaching at the end of each course of study. It is clear from reading the University's submission that such surveys are launched by individual staff. As a consequence, the Commissioner questions why contact was not made with the Survey Team earlier, to ask it to search for survey(s) launched by named staff involved in delivering the undergraduate medical course over the time period covered by the Applicant's request. This would perhaps have enabled the University to locate any surveys which evaluated, or referred to, online teaching.
31. Given that the Commissioner has found that the survey highlighted by the Applicant does fall within scope of her request, and for the reasons detailed above, he finds that the University

did not carry out thorough and adequate searches prior to responding to the Applicant's request. He therefore finds that the University was not entitled to notify the Applicant, in line with section 17 of FOISA, that it did not hold any recorded information falling within scope of her request.

32. As the University provided the Applicant with a redacted copy of the full survey results for the survey in question during the investigation (and the Applicant has not questioned the redaction of personal data), the Commissioner does not require it to take any action.

Timescale for compliance

33. As mentioned above, the Applicant expressed dissatisfaction with the time taken by the University to respond to her request and requirement for review.
34. 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.
35. 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.
36. Because of the current Coronavirus pandemic, the Scottish Ministers passed legislation on 6 April 2020 (the Coronavirus (Scotland) Act 2020), which extended the timescale by which a Scottish public authority could provide a response to a request and requirement for review from 20 to 60 working days. This extension was subsequently removed following the introduction of the Coronavirus (Scotland) No.2 Act 2020 on 26 May 2020. This meant that in practice the University had 60 working days to respond to any information requests received by it between 6 April 2020 and 26 May 2020, although any such request not responded to by 26 May became subject to the reintroduced 20 working day timescale.
37. As noted above, the information request in this case was made by the Applicant on 28 May 2020. This was after the removal of the extension, meaning that the University had 20 working days in which to provide a response. Similarly, as the requirement for review was received on 26 June 2020, the University had 20 working days in which to provide a response.
38. Under Schedule 6 Part 2, paragraph 6 of the Coronavirus (Scotland) Act 2020, the Commissioner can decide that a response to a request or requirement for review is not to be considered late if it satisfies certain criteria. In this case, the Commissioner would have to be satisfied that the failure to comply in time was due to the effect of the Coronavirus on the authority or its ability to carry out its functions, and was reasonable in all the circumstances. In considering what is reasonable, the primary consideration for Commissioner is the public interest in responding promptly.
39. The University submitted that guidance was unclear for some time as to how the change brought in by the Coronavirus (Scotland) No.2 Act 2020 would affect what would be recorded as a "late" request. As a result, the University explained that it switched most of its attention to answering requests which had come in during the period when the 60 working day timescale was in place, in an effort to provide a response within 20 working days. The University commented that this had a negative impact on new requests coming in.
40. The University explained that extending the maximum timescale for answering requests was well received, as it created "breathing space" enabling the person responsible for answering

FOI requests to switch their attention to focussing on addressing complex data protection issues that had arisen due to the Coronavirus. The University advised that the same person is responsible for Data Protection, Records Management and Freedom of Information.

41. The University submitted that it only started processing the Applicant's request after the expiry of the 20 working days and after it had received a requirement for review, because the Applicant's request was "lost" in the other work being undertaken at the time. The complex, time-critical data protection challenges arising at the time required the attention of the member of staff responsible for answering FOI requests, together with others from the relevant service area of the University.
42. The University considered the combination of a department in high demand, experiencing a dramatic rise in data protection requirements and changes in the law, were significant negative contributing factors to the fact that it was unable to respond to the Applicant within the statutory timescale.
43. Having fully considered the submissions from the University, the Commissioner is unable to accept that the terms of Schedule 6 Part 2, paragraph 6 of the Coronavirus (Scotland) Act 2020 would be applicable in this case.
44. The Commissioner cannot accept that the University's lack of knowledge over the change to the legislation as a result of the implementation of the Coronavirus (Scotland) No.2 Act 2020 is a reason for failing to comply with the appropriate timescales, particularly given the action taken by him to upload guidance on this change to his website both before (on 21 May 2020) and after (on 28 May 2020) the passage of the legislation.
45. The Commissioner also took steps to alert relevant staff members within all Scottish public authorities by sending email communications on 25 May 2020 and 28 May 2020. Both of these emails explained that the timescale for responses was reverting to 20 working days and, in the case of the email sent on 28 May 2020, signposted public authorities to updated guidance published on the Commissioner's website which covered all of the changes made.
46. Furthermore, the Commissioner finds it difficult to accept that the Applicant's request was lost amongst all of the other work the University had to complete, given that she received an acknowledgement email on the day she submitted her request informing her that a response would be issued within 20 working days.
47. The Commissioner is also concerned that work to complete matters relating to data protection were given precedence over requests the University received under FOISA, which are also time-sensitive and subject to a statutory regime. The University submits that it has only one member of staff who deals with FOI, Data Protection and Records Management, yet it was able to draw on other resources within the service area concerned to assist with data protection work over the period covered by the Applicant's request and requirement for review. Data protection is clearly important, particularly in a public health emergency, but the Commissioner cannot accept that it, by definition, merits priority of the statutory regime for which he is responsible. At all times, public authorities need to find means of balancing competing statutory requirements.
48. For these reasons, the Commissioner finds that the University failed to comply with section 10(1) and 21(1) of FOISA, by failing to provide a response to the Applicant's request and requirement for review within the required periods of 20 working days.
49. Given that the University responded to the Applicant's requirement for review on 5 August 2020, he does not require the University to take any action in relation to the above failures.

Decision

The Commissioner finds that the University of Dundee (the University) failed to comply 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. The Commissioner finds that the University was not entitled to inform the Applicant, in line with section 17 of FOISA, that no information was held falling within scope of her request.

The Commissioner also finds that the University breached sections 10(1) and 21(1) of FOISA, by failing to respond to the Applicant's request and requirement for review within 20 working days.

Given that a response was provided to the Applicant and the information covered by her request was disclosed to her, the Commissioner does not require the University to take any action in respect of these failures, in response to the Applicant's application.

Appeal

Should either the Applicant or the University of Dundee 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

23 November 2020

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.
- ...
- (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.
- ...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- ...

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.
- ...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.
- ...

Coronavirus (Scotland) Act 2020

Schedule 6 - Functioning of public bodies

Part 2 – Freedom of Information

6 Commissioner's ability to take account of impact of coronavirus

- (1) This paragraph applies in relation to an application made under section 47(1) (which is not excluded by section 48) in respect of which there is a failure of the Scottish public authority to comply with a relevant period.
- (2) Despite section 49(6), the Commissioner may decide that the Scottish public authority has not failed to comply with Part 1 by reason only of its failure to comply with a relevant period if the Commissioner is satisfied that the failure was –
 - (a) due to
 - (i) the effect of coronavirus on the authority generally or its ability to carry out its functions (including any action it had to take to better utilise its resources to deal with the effect of coronavirus), or
 - (ii) the authority operating under requirements of Part 2 of this schedule that were subsequently repealed before the end of the period during which Part 1 of this Act is in force.
 - (b) reasonable in all the circumstances.
- (2A) In considering whether the failure was reasonable in all the circumstances, the Commissioner must regard the public interest in section 1(1) being complied with promptly as the primary consideration.
- (3) For the purposes of this paragraph, “relevant period”, in relation to a request for information (or a subsequent requirement for review) means a period specified in section 10(1) or section 21(1), either as it has effect by virtue of paragraph 3 or otherwise.

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