

Decision Notice 146/2021

Annual monitoring forms for COSCA

Applicant: The Applicant

Public authority: Perth College

Case Ref: 202100518



Scottish Information
Commissioner

Summary

The College was asked for the latest annual monitoring forms for COSCA for two specified courses.

The College failed to respond to the initial information request and requirement for review, but it eventually provided the Applicant with copies of two documents.

The Commissioner investigated and found that the College failed to inform the Applicant that it did not hold any information falling within the scope of her request when the request was received and that it also failed to respond to the Applicant's request and requirement for review within the statutory timescales.

Relevant statutory provisions

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

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 29 January 2021, the Applicant made the following request for information to Perth College (the College):
Please could you provide me with the latest annual monitoring forms for COSCA (Counselling and Psychotherapy in Scotland) for the DipHE/Diploma in Person-Centred Counselling and Psychotherapy and the Certificate in Counselling Skills. This should be the one due for return by 31 October 2020.
2. The College failed to respond to this request for information.
3. On 7 March 2021, the Applicant wrote to the College requesting a review on the basis that it had failed to respond to her request for information.
4. The College failed to respond to the Applicant's requirement for review and the Applicant wrote to the Commissioner and asked him to investigate the College's handling of her request.
5. The Commissioner contacted the College. It apologised for the failure to respond to the Applicant's request and requirement for review. It explained that it did not hold the information at the time of the request, and it agreed to provide the Applicant with a review outcome.
6. The College subsequently notified the Applicant of the outcome of its review on 19 April 2021.
7. On 22 April 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 College's review as she did not accept that the information it provided to her was held at the time of her request for information: she suspected the information was created after she had

requested it. The Applicant was also dissatisfied with the College's failure to respond to her request and request for review timeously.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
9. On 23 April 2021, the College was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The College was invited to comment on this application and to answer specific questions. These related to its reasons for failing to respond to the Applicant's request and requirement for review. The Commissioner also queried whether it held the information it disclosed to the Applicant at the time it received her information request.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the College. He is satisfied that no matter of relevance has been overlooked.

Failure to comply with timescales

12. 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.
13. 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.
14. In its submissions to the Commissioner, the College accepted that it had not responded to the Applicant's request of 29 January 2021, or to her requirement for review of 7 March 2021. It explained that this was because the information she had requested had not been completed and submitted to COSCA at the time of the request. Additionally, on receiving what was assumed to be the completed form, it noted that there were some anomalies with the form that required internal consultation with staff. The College apologised for failing to communicate this delay to the Applicant. The College also acknowledged that it should have given the Applicant notice, in terms of section 17(1) of FOISA, that the information was not held. This is discussed in more detail further on in this decision.
15. It is a matter of fact that the College failed to respond to the Applicant's request for information of 29 January 2021 and her requirement for review of 7 March 2021, in the time allowed. The Commissioner therefore finds that the College failed to comply with section 10(1) and 21(1) of FOISA.
16. While the Commissioner has identified these failures, given that the main thrust of the Applicant's application was to ascertain whether the College held information falling within

the scope of her request, at the time it received her request, the Commissioner does not require the College to take any further action in relation to these failures.

Information held by the College

17. As mentioned above, the Commissioner's investigation is primarily to ascertain whether the College held information falling within the scope of the Applicant's request, at the time it was received.
18. 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.
19. 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 notice in writing to that effect.
20. In its submissions to the Commissioner, the College identified that the information requested by the Applicant related to a statutory submission which had not been completed or submitted due to significant staff turnover within the academic department.
21. Discussions within the College indicated that, while the requested data was not at that stage held by the College, it would be possible to complete the required submission to COSCA and supply the information to the Applicant within the legal timeframe.
22. However, the Council acknowledged that this position proved not to be the case and the completion of the statutory submission was not processed until March 2021. The College accepted that a response indicating that the data was not held at that time the request was received should have been provided to the Applicant, and it apologised for any confusion caused by this omission.
23. The College acknowledged that it should have communicated its reasons for the delay in responding to the Applicant, and it referred to its formal response letter of 19 April 2021 which did apologise for this shortfall.
24. The College confirmed that it provided the Applicant with two documents in its review outcome of 19 April 2021, and that both of these documents were first created in its submission to COSCA on 16 March 2021, after the date the information request was received.
25. Having considered the submissions made by the College, it is clear that the information requested by the Applicant was not held when she made her request for information, nor when she submitted her requirement for review. In both instances, the College had 20 working days to notify the Applicant that the information was not held, but it failed to do so.
26. The Commissioner understands that the College wanted to provide the Applicant with the information she had requested, but if that information was not held at the time it received her information request, the correct course of action was to give the Applicant notice, under section 17(1) of FOISA, that the information was not held.
27. The Commissioner notes that the College told him, in an email of 14 April 2021, that it did not hold information at the time it received the Applicant's request. On 19 April 2021, the College

issued the Applicant with a review outcome. This review outcome provided the Applicant with two COSCA monitoring forms, but it still failed to notify the Applicant that this information was not held at the time of her request. This led the Applicant to believe that the College was suggesting that it did hold the two COSCA forms at the time she had made her information request, but this was not the case. It is the Commissioner's view that the review outcome of 19 April 2021 should have given the Applicant notice, under section 17(1) of FOISA, that the two COSCA forms were not held at the time it received her request for information.

28. As noted above, section 1(4) of FOISA makes it clear that the information to be given is that held by the authority at the time a request is received. Authorities cannot delay a response to an information request in order to give them time to create the information that was requested. If the information is not held, the Applicant must be notified of this fact. Whether a public authority should hold information which it does not hold, is not a matter for the Commissioner to decide.
29. In conclusion, the Commissioner is satisfied that the College did not hold (at the time it received the request) recorded information which would fulfil the Applicant's request. Consequently, he finds that the College breached section 17(1) of FOISA by failing to notify her that it did not hold the information.
30. As this decision notice provides the Applicant with confirmation that the information was not held at the time of the request, the Commissioner does not require the College to take any action in relation to this failing.

Decision

The Commissioner finds that Perth College (the College) failed to comply with Part 1 (and in particular, section 1(4)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. The Commissioner finds that the College failed 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 College breached section 10(1) and 21(1) of FOISA by failing to respond to the Applicant's information request and requirement for review within 20 working days.

The Commissioner does not require the College to take any action in response to these failures in response to the Applicant's application.

Appeal

Should either the Applicant or Perth College 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

29 September 2021

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
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

...

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.

...

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