

# Decision Notice 040/2022

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## Course monitoring forms

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**Applicant: The Applicant**

**Public authority: Inverness College**

**Case Ref: 202100426**



Scottish Information  
Commissioner

## Summary

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The College was asked for the latest COSCA monitoring forms for specified courses, along with the names/roles of senior members of staff responsible for signing off the documents.

The College refused to comply with the request on the basis that it was a repeat of a previous request. The Commissioner did not agree that it was a repeat request for the purposes of section 14(2) of FOISA and ordered the College to issue a new response to the Applicant's request for review.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 14(2) (Vexatious or repeated requests); 21(4)(b) (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

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1. On 13 March 2021, the Applicant made a request for information to Inverness College (the College). The information requested was:  
*... the latest monitoring forms for COSCA for the DipHE/Diploma in Person-Centred Counselling and Psychotherapy and the Certification in Counselling Skills. These should be the ones due for return by 31 October 2020. I believe they were completed on 10/2/21. Please redact individual tutor names if appropriate, but please provide me with the names/roles of the more senior members of staff who would be responsible for signing off these documents in their professional role.*
2. The Applicant confirmed she had already received a redacted version of the information in a follow-up to a previous information request she had made to the College. She wanted to challenge the redactions. However, given that the information had not been held by the College at the time of her earlier request, she did not believe the Commissioner could investigate. She was repeating the request as the College did now hold the information.
3. The Applicant also commented that another University of the Highlands and Islands partner college had provided the same documents without staff names being redacted.
4. The College responded on 17 March 2021. It refused to comply with the request as it was a duplicate of the previous request.
5. On 17 March 2021, the Applicant wrote to the College requesting a review of its decision.
6. The College notified the Applicant of the outcome of its review on 1 April 2021. Again, it refused to comply because it was a duplicate request.
7. On 2 April 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant was dissatisfied that the College had treated her request of 13 March 2021 as a repeat request.

## Investigation

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8. 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.
9. On 14 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.

## Commissioner's analysis and findings

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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.

### Section 14(2) – Repeated request

12. Section 14(2) of FOISA provides that where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar, unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
13. For section 14(2) to apply, therefore, the following need to be considered:
  - (i) whether the Applicant's previous request was identical or substantially similar to the request under consideration here;
  - (ii) whether the Council complied with the previous request and, if so
  - (iii) whether there was a reasonable period of time between the submission of the previous request and the submission of the subsequent request. As the Commissioner's guidance on section 14(2)<sup>1</sup> notes, when considering whether a reasonable period of time has elapsed, it will be useful to consider whether the information has changed and whether the circumstances have changed.
14. The College considered the request of 13 March 2021 to be a duplicate of a request made by the Applicant on 29 January 2021. In its view, given that neither the information nor the circumstances had changed since receipt of the previous request, it was not obliged to comply with the request.
15. The College confirmed that it did not hold the information at the time of the original request. It had not told the Applicant it did not hold the information at that stage as it knew the information would soon be available. Once the report was written and submitted to COSCA on 10 February 2021, it was disclosed to the Applicant with personal data redacted.

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<sup>1</sup> [Vexatious or repeated requests \(itspublicknowledge.info\)](https://www.itspublicknowledge.info)

### *The Commissioner's views*

16. The Commissioner is satisfied that request of 13 March 2021 was expressed largely in the same terms as the request of 29 January 2021. Largely, therefore, it was seeking the same information (although it sought some further information on staff responsible for signing the documents off).
17. However, when the information request was originally made, the College did not hold the information it subsequently disclosed to the Applicant and so the information could not be said to have been provided in response to that request (see section 1(4) of FOISA). Therefore, the Applicant was unable to ask the Commissioner to consider the redactions made by the College at that point.
18. In the circumstances of this case, while the Commissioner accepts that the present request is substantially similar to the previous request made by the Applicant, he is also satisfied that there has been a considerable change in circumstances in that the information is now held – which it was not at the time of the previous request. Given that a reasonable period of time has elapsed between the making of the original request and the subsequent request, section 14(2) is not engaged.
19. The Commissioner requires the College to carry out a further review and, in line with section 21(4)(b) of FOISA, to substitute the decision it made on 1 April 2021 with a different decision.

## **Decision**

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The Commissioner finds that the request made by the Applicant was not a repeated request for the purposes of section 14(2) of the Freedom of Information (Scotland) Act 2002 (FOISA) and that Inverness College (the College) failed to comply with Part 1 of FOISA by treating it as such.

The Commissioner requires the College to provide a revised review response to the Applicant otherwise than under section 14(2), by 26 May 2022.

## **Appeal**

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Should either the Applicant or the 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.

## **Enforcement**

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

**Margaret Keyse**  
**Head of Enforcement**

**11 April 2022**

## Appendix 1: Relevant statutory provisions

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### 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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

#### 14 Vexatious or repeated requests

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

#### 21 Review by Scottish public authority

...

- (4) The authority may, as respects the request for information to which the requirement relates –

...

- (b) substitute for any such decision a different decision; or

...

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