



# Decision Notice 071/2023

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## Lessons learned – failure to respond

**Applicant: The Applicant**

**Authority: General Teaching Council for Scotland**

**Case Ref: 202300728**

### Summary

The Applicant asked the Authority for details about opportunities for learning. He wanted to know what the specific events were that related to these “lessons learned”, along with any action taken relating to the complaints process. This decision finds that the Authority failed to respond to the information request and requirement for review within the timescales allowed by the Freedom of Information (Scotland) Act 2002 (FOISA).

### Background

1. The Applicant made an information request to the Authority on 5 March 2023.
2. The Authority did not respond to the information request, but acknowledged it on 17 March 2023.
3. On 7 May 2023, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. The Applicant did not receive a response to his requirement for review.
5. The Applicant wrote to the Commissioner on 9 June 2023, stating that he was dissatisfied with the Authority’s failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

## Investigation

7. Section 49(3)(a) of FOISA requires the Commissioner to notify public authorities of an application and to give them an opportunity to comment. The Commissioner did this on 21 June 2023.
8. The Commissioner received submissions from the Authority on 4 July 2023. These submissions are considered below.
9. The Authority accepted that it had failed to respond to the request and requirement for review within the timescales set down by FOISA.
10. It explained that its initial interpretation of the request was that it was one seeking an explanation, view or opinion, rather than asking for recorded information. It accepted that this was incorrect and said that it had now initiated a review of the request. It confirmed that a response would be issued to the Applicant as soon as possible.
11. 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.
12. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA.
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. It is a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.
15. The remainder of section 21 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21.
16. The Commissioner recommends that the Authority consider whether it would be appropriate to apologise to the Applicant for its failure to comply.

## Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by the Applicant. In particular, the Authority failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA. The Commissioner requires the Authority to respond to the Applicant's requirement for review, by **1 September 2023**.

## **Appeal**

Should either the Applicant or the 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**

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

**Colin MacFadyen**  
**Acting Deputy Head of Enforcement**

**18 July 2023**