



# Decision Notice 101/2024

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## Trigger warnings

**Authority: University of Edinburgh**  
**Case Ref: 202200501**

### Summary

The Applicant asked the Authority for copies of any trigger warnings that were issued to students taking seven named courses. The Authority stated that it was not obliged to comply with the request as the cost of doing so would be more than £600. The Commissioner investigated and found that the Authority was not entitled to refuse to comply with the request on grounds of excessive cost.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (3) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15(1) (Duty to provide advice and assistance); 47(1) and (2) (Application for decision by Commissioner)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost - prescribed amount)

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. In October 2021, the Applicant made a request for any trigger warnings (or notices given to students to prewarn them of course material/topics that may give rise to anxiety or stress) in any course that taught literature and/or drama at the University of Edinburgh. This was refused by the Authority on the grounds of cost, and the Authority suggested that the Applicant narrowed the scope of his request.

2. On 18 January 2022, the Applicant reduced the scope of his request to focus on just two specified courses, with the aim of bringing the cost of compliance under the £600 set out in the Fees Regulations. In this request, the Applicant provided the following description of the information he was looking for;

“Please note that the reference to teaching materials both above and in the questions below should be taken to mean particular novels and or particular plays and or particular poems and or particular pieces of music and or particular musicals and or particular songs and or particular recordings and or particular photographs and or particular paintings and or particular statues and or particular sculptures and or particular busts and or particular drawings and or other kind of artworks and or cartoons and or other animated works. The reference should also include examples of historical writings and historical texts and or any writings from antiquity and or the classic period and or Ancient Greece and or Ancient Rome and or sacred religious works (including but not limited to the Bible) and or religious writings and or philosophical works and or political theories/writings. They should also include historical artefacts and or any pieces of armour or weaponry and or human remains and or an fossils and or any historical finds. They should also include cinema films (live action or animated) and or televisions dramas and or TV documentaries and or TV programmes (live or animated) and or individual academic textbooks.

Please redact the names of any students, teaching staff, faculty employees and researchers from the documents and information provided.

I am interested in all information generated and or held by the faculty/department/school which relates to its own actions and decisions as well as the actions and decisions of its academic staff and or employees and or anyone acting on its behalf. I am also interested in all relevant information held by the faculty/department/school which relates to the actions and decisions of other individuals and or bodies within the University.

- (i) Are any of the above degree courses currently issuing trigger warnings and or content warnings and or content notes which cover entire degree courses and or specific modules and or specific topics and or specific seminars and or specific literary/dramatic/artistic/poetic traditions and or the work of particular authors/novelists/poets/dramatists and or particular artistic schools and traditions and or particular genres of film and or the works of particular filmmakers/artist/photographers AND OR particular issues and subjects and or particular historical time periods and or particular religious work.
- (ii) If the answer to question one is yes can you please provide the following details. In the case of each trigger warning and or content warning and or content note(s) can you provide a copy of the actual warning and or note. In the case of each warning and or note can you identify what it relates to. Please see the definitions above. In the case of each warning and or note can you identify what it relates to. Please see definitions above. In the case of each warning and or note can you identify the degree and the module In the case of each warning and or note can you state when it was introduced and why. In the case of each warning and or note can you state how it is communicated to the student(s). For instance, is it communicated in writing or verbally.
- (iii) Are any of the above degree courses currently issuing trigger warnings and or content warnings and or content note(s) which apply to specific teaching materials. Please see the definition of teaching materials above.

- (iv) If the answer to question three is yes can you provide a copy of the specific trigger warnings and or content warnings and or content note(s). In the case of each warning and or note can you provide the title of the teaching material(s) it relates to. In the case of the teaching materials can you identify the relevant novelist and or playwright and or poet and or thinker and or author and or film maker and or documentary film maker and or artist and or photographer and or musician and or historical figure and or religious figure. In the case of each warning and note can you state when it was introduced and why. In the case of each warning and note can you state which module and degree course it relates to. In the case of each warning and note can you state how is it communicated to students. For instance, is it communicated verbally or in writing.
- (v) Since 1 February 2021 and irrespective of whether the faculty routinely issues trigger warnings and or content warnings and or contents notes has the University and or staff on any of the degree courses felt the need to rest and drop individual teaching materials (see definition above) and or remove material from those teaching materials. If the answer is yes, can you identify the specific teaching materials. In the case each of these teaching materials can you identify the relevant author and or writer and or novelist and or playwright and or poet and or filmmaker and or TV dramatist and or artist and or photographer and or musician and or historical figure and or religious figure. In the case of each of these teaching materials can you state whether it has been dropped from the course altogether or whether it has been rested. If information has been withdrawn, can you identify the information which has been withdrawn. In the case of each work that has been dropped and or rested and or has had material withdrawn can you state when this action was taken and why.”

3. The Authority refused this narrowed request on 4 February 2022, arguing that compliance with this narrowed request would still exceed £600 and that some of the information he had asked for was not held.
4. On 5 February 2022, the Applicant submitted a new, narrowed request for information. He referred to the description contained in his previous email (that of 18 January 2022) and he limited the scope to 25 named modules.
5. On 4 March 2022, the Authority applied section 12(1) to this request, and argued that compliance with this narrowed request would still exceed £600. It also advised him that some of the information he had asked for, was not held.
6. On 7 March 2022, the Applicant made his final, narrowed request for information to the Authority. He stated;

I would like all the questions and definitions in my most recent request [his request of 18 January 2022] to stand but I am now only interested in information which relates to the following modules.

CLLC10007 – The Cinema of Alfred Hitchcock.

CLLC10008 - Boundaries of the Human: Gender, Madness and Werewolves in Medieval Literature.

ELCCC100022 – Comparative Literature in a European and global perspective.

ELCR10002 – The Great Russian Novel.

ELCS10039 – Old Norse Literature and Society.

REST:10049 – Modern Religious and Ethical Debates in Contemporary Literature.

THET10066 – Scottish Literature and the Religious Imagination.

7. The Authority responded on 29 March 2022. It refused the request in terms of section 12(1) of FOISA arguing that the cost of compliance would exceed £600. The Authority also stated that it did not hold some of the information asked for, namely whether or not staff teaching these courses had felt the need to “rest” or “drop” materials or course content, and it apologised for inaccurate calculations it had cited in response to a previous FOI request the Applicant had made.
8. On 29 March 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he considered that his request could be processed within the time and cost restraints set out in FOISA. He also expressed concern that the Authority’s response to a previous FOI request contained information about costs which it now admits were inaccurate.
9. The Authority notified the Applicant of the outcome of its review on 26 April 2022, which upheld its original decision to apply section 12(1) of FOISA. The Authority apologised again for the calculation error in its response to a previous request, but it maintained that it had reviewed the estimated costs in this case and was satisfied they were accurate.
10. On 27 April 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority’s review because he did not accept that processing the request would breach the time and cost limits associated with FOISA.

## **Investigation**

11. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
12. On 8 June 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
13. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer questions about its cost calculations.

## **Commissioner’s analysis and findings**

14. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

### ***Section 12(1) Excessive cost of compliance***

15. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation 5). Consequently, the Commissioner has no power to require the disclosure of information

should he find that the cost of responding to a request for information would exceed that sum.

16. The projected costs the authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA.
17. The authority may not charge for the cost of determining whether it:
  - (i) actually holds the information requested or
  - (ii) should provide the information.
18. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
19. In its response to the Applicant's request of 7 March 2022, the Authority explained that it would cost £562.50 to locate relevant information falling within the scope of one of the five courses in the School of Literatures, Languages and Cultures (SLCC), and it would cost £437.25 to locate relevant information in one of the two courses that are part of the School of Divinity. The Authority also provided the Applicant with a breakdown of its calculations for estimating these costs. It stated that the following steps and associated costs would be required to comply with a request for trigger warnings in one single course in the SLCC:
  - (i) Request added to record management system and assigned to case worker – 1 x grade 5+ member of staff - £15 per hour - 0.25 hour = £3.75
  - (ii) Caseworker meets with relevant senior colleagues in the SLLC to discuss scope of request – 2 x grade 5+ member of staff - £15 per hour – 0.5 hour = £15.00
  - (iii) Senior colleagues in SLLC identify relevant colleagues – 3 x grade 5+ member of staff - £15 per hour – 0.5 hour = £22.50
  - (iv) Members of staff look for and retrieve information
    - *Materials published in advance of course*  
1 x grade 5+ member of staff - £15 per hour – 0.5 hour = 7.50
    - *Course handbook, materials published on Learn site, reading lists.*  
1 x grade 5+ member of staff - £15 per hour – 0.5 hour = 7.50
    - *Weekly materials for 10 weeks of lectures, lecture notes, handouts, transcripts, etc.*  
2 x grade 5+ member of staff - £15 per hour – 10 hours = 300.00
    - *Weekly materials for 10 weeks of lectures, where multiple members of staff teach*  
3 x grade 5+ member of staff - £15 per hour – 3.25 hours = 146.25
    - *Email correspondence with students*  
3 x grade 5+ member of staff - £15 per hour – 1 hour = 45.00
  - (v) Caseworker acts on information received – 1x grade 5+ member of staff - £15 per hour – 1 hour = £15.00
20. The Authority notified the Applicant that the following steps and associated costs would be required to comply with a request for trigger warnings in one single course in the School of Divinity:

- (i) Request added to record management system and assigned to case worker – 1 x grade 5+ member of staff - £15 per hour - 0.25 hour = £3.75
- (ii) Caseworker meets with relevant senior colleagues in the SLLC to discuss scope of request – 2 x grade 5+ member of staff - £15 per hour – 0.5 hour = £15.00
- (iii) Senior colleagues in Divinity identify relevant colleagues – 2 x grade 5+ member of staff - £15 per hour – 0.5 hour = £15:00
- (iv) Members of staff look for and retrieve information
  - *Materials published in advance of course*  
1 x grade 5+ member of staff - £15 per hour – 0.5 hour = 7.50
  - *Course handbook, materials published on Learn site, reading lists.*  
1 x grade 5+ member of staff - £15 per hour – 0.5 hour = 7.50
  - *Weekly materials for 11 weeks of lectures, lecture notes, handouts, transcripts, etc.*  
2 x grade 5+ member of staff - £15 per hour – 11 hours = 330.00
  - *Weekly materials for 11 weeks of lectures, where multiple members of staff teach*  
3 x grade 5+ member of staff - £15 per hour – 0.3 hours = 13:50
  - *Email correspondence with students*  
2 x grade 5+ member of staff - £15 per hour – 1 hour = 30.00
- (v) Caseworker acts on information received – 1x grade 5+ member of staff - £15 per hour – 1 hour = £15.00

21. The Applicant challenged these costs. He commented that he had spent six months trying to obtain information on trigger warnings from the Authority, but each time he narrowed his request, it was refused on cost grounds. He noted that he had reduced the scope of his request from University departments or particular degree courses, to seven named modules, in order to address the Authority's concerns about costs, but the information was still refused.
22. The Applicant submitted that he does not accept that the Authority cannot process his request without breaching the cost limits set out in the legislation. He explained that his concerns about the Authority's reliance on section 12(1) of FOISA have been exacerbated by its admittance that it had previously miscalculated costs in relation to an earlier FOI request he had made.
23. During the investigation, the Authority was asked to carry out a sample search for trigger warnings in one of the seven modules specified by the Applicant, namely *THET10066 – Scottish Literature and the Religious Imagination*, in order for the Commissioner to assess how accurate the costs were.
24. In response, the Authority provided extensive submissions explaining that it had no formal policy with regard to the issuing of "content" or "trigger" warnings to students, and it therefore holds no internal definition of what constitutes a content warning or the manner in which they should be given (e.g. in writing or verbally). The Authority argued that as there is no central resource or policy in relation to these "warnings", any decisions on their use are for individual staff members to take on a case by case basis – and where they do so, it is not clear that such staff members would consider these to be a "trigger" or "content warning" in the manner specified by a particular applicant.

25. The Authority submitted that information which could be identified in course handbooks, lecture or seminar materials, handouts or emails is not categorised in such a way that would easily enable it to be identified as a content or trigger warning as distinct from (for example) other commentary on the content of the relevant texts. It submitted that, in this particular case, and as set out in its cost calculation, all of the documents where such comments may be included would need to be checked against the lengthy definition provided by the Applicant.
26. The Authority argued that while in some instances it may be possible to identify content warnings (for example, if a lecturer had chosen to clearly label their thoughts or opinions on a text as such), in other instances determining whether or not information constitutes a content or trigger warning against any particular definition provided by an applicant would require a subjective judgement to be made on a case-by-case basis. It argued that these subjective judgements would not just be about whether or not the information was a content warning (as opposed to, for example, a description of content, e.g. by stating that a case being looked at by a law class relates to sexual assault, or that a text contains 'violence'), but also about what a content warning is, given the Authority has no working definition.
27. The Authority noted that in response to another request made by the Applicant, it altered its usual approach and instead of searching through all materials for relevant information, it contacted the relevant course organisers directly, providing them with the Applicant's definition, and asked them to identify relevant information. It subsequently withheld the information that was located by the course organisers, arguing that the "trigger warnings" comprised the views, opinions or analysis of the individual staff members, and that it constituted their personal data, which was exempt from disclosure under section 38(1)(b) of FOISA.
28. The Authority explained that it took a similar approach to the sample search required by the Commissioner, and provided the staff involved in delivering course *THET10066 – Scottish Literature and the Religious Imagination* with a copy of the Applicant's definition and questions about trigger warnings (set out in detail in his request dated 18 January 2022) and asked them to identify information falling within the scope of the request, using their knowledge of the course and materials.
29. The Authority submitted that the staff involved in delivering course *THET10066 – Scottish Literature and the Religious Imagination* confirmed that no such guidance under this definition, was given to students.

### **Commissioner's consideration of section 12(1)**

30. In this case, the Authority has confirmed that it does not hold information falling within the Applicant's definition of a "trigger warning" in course *THET10066 – Scottish Literature and the Religious Imagination*, one of the seven modules specified by the Applicant.
31. Paragraph 7 of the [Commissioner's guidance on section 12\(1\) of FOISA](#)<sup>1</sup> states;  
  
"A public authority is entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information. However, an authority is not entitled to charge for any

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<sup>1</sup> <https://www.itspublicknowledge.info/sites/default/files/2022-03/FeesandExcessiveCostofComplianceBriefing.pdf>

costs incurred in determining whether it actually holds the information. This means authorities cannot charge for searching for the information if it turns out they don't hold it."

32. As the Authority has confirmed that it does not hold any relevant information in one of the seven courses specified by the Applicant, the Commissioner cannot uphold the application of section 12(1) to the whole request. The Authority may hold relevant information in each of the other six courses, but it has not demonstrated that this is the case, and the Commissioner cannot uphold section 12(1) when the Authority has not yet determined whether or not it holds relevant information.
33. The Commissioner notes the Authority's concerns about the scope of the request and he has taken account of the Authority's arguments that it holds no internal definition or policies regarding the application of "trigger warnings", and that its response in this case is based purely on the definition and description provided by the Applicant. The Authority has indicated that it has had difficulty assessing whether or not it holds relevant information, due to the Applicant's wording of the request.
34. However, while lengthy, the Commissioner considers the Applicant's definition and associated questions, provided in his request of 18 January 2022, to be comprehensive and relatively easy to understand. He considers the scope of the request to be clear and it is his view that any member of staff involved in teaching a particular course, would have no difficulty in knowing exactly what information the Applicant is seeking from the description provided in his email of 18 January 2022.
35. Furthermore, the Commissioner considers that if the Authority had any doubts or concerns about the scope of the Applicant's request, it should have sought clarification under section 1(3) of FOISA.
36. As the Authority has confirmed that it holds no information in one of the seven courses specified by the Applicant, the Commissioner cannot uphold the application of section 12(1) to the request. He requires the Authority to carry out a further review and to respond to the request other than in line with section 12(1) of FOISA.

### **Section 15 – Duty to advise and assist**

37. Section 15(1) requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. Section 15(2) states that a Scottish public authority which, in relation to the provision of advice and assistance in any case, conforms to the *Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004* ([the Section 60 Code](#)), is taken to comply with the duty to provide reasonable advice and assistance in section 15(1) of FOISA.
38. The Section 60 Code provides guidance to Scottish public authorities on the practice which Scottish Ministers consider desirable for authorities to follow in connection with the discharge of their functions under FOISA. The Section 60 Code, provides (at 9.4.3)<sup>2</sup>:

"When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been

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<sup>2</sup> <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>



exceeded. Any narrowed request would be a separate new request and should be responded to accordingly."

39. The Authority submitted that it complied with its duties under section 15(1) of FOISA, by offering extensive advice and assistance to the Applicant, in helping him narrow the scope of his request to bring it under the £600 cost ceiling.
40. While the Commissioner is satisfied that the Authority has engaged with the Applicant in an effort to help him make a request that it could comply with. As it is now clear that the Authority has not established whether or not it holds information that fulfils the whole request, the Commissioner finds that the Authority could have given the Applicant clearer advice on how best to refine his request (in particular by clearly identifying information it did not hold). The Commissioner therefore finds that the Authority failed to comply with its duty under section 15(1) of FOISA.

## Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. The Commissioner found that the Authority was not entitled to rely on section 12(1) of FOISA in responding to this request. The Commissioner also found that the Authority did not comply with its duty to provide advice and assistance in responding to the request, as required by section 15(1) of FOISA.

The Commissioner requires the Authority to provide the Applicant with a new review response, other than in line with section 12(1) of FOISA.

The Authority must notify the Applicant of the outcome of its review by **8 July 2024**.

## 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.

**David Hamilton**  
**Scottish Information Commissioner**

**23 May 2024**

## **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.”
- (3) If the authority –
  - (a) requires further information in order to identify and locate the requested information; and
  - (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

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

#### **12 Excessive cost of compliance**

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

#### **15 Duty to provide advice and assistance**

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

#### **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).

## **Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004**

### **3 Projected costs**

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
  - (a) no account shall be taken of costs incurred in determining-
    - (i) whether the authority holds the information specified in the request; or
    - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
  - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

### **5 Excessive cost - prescribed amount**

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.