



Scottish Information
Commissioner
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Decision Notice 241/2024

Communications of the Chair of the UCEA

Authority: University of Aberdeen

Case Refs: 202301230 and 202400233

Summary

The Applicant asked the Authority for information relating to certain communications of the Principal and Vice-Chancellor of the Authority. The Authority stated that it did not hold the information requested for the purposes of FOISA. The Commissioner investigated and agreed that the information was not held by the Authority for the purposes of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 3(2)(a)(i) (Scottish public authorities); 17(1) (Information not held); 47(1) and (2) (Application for decision by Commissioner)

Background

1. Professor George Boyne is the Principal and Vice-Chancellor of the Authority. [Professor Boyne is also Chair of the Universities and Colleges Employers Association \(UCEA\)](#)¹, the body that represents the interests and views of UK higher education organisations as employers.
2. On 7 August 2023 and 8 December 2023, the Applicant made requests for information to the Authority. The information requested was as follows:

Request one (on 7 August 2023)

¹ <https://www.ucea.ac.uk/news-releases/12oct22/>

All sent and received communications of Professor George Boyne related, however tangentially, to Queen's University Belfast (QUB) after 1 January 2023

Request two (on 8 December 2023)

With specified conditions, the content of emails sent and received between Professor George Boyne and four named individuals

3. The full wording of both requests is reproduced in Appendix 1.
4. The Authority responded on 4 September 2023 and 11 January 2024. For both requests, the Authority issued the Applicant with a notice, in terms of section 17(1) of FOISA, that it did not hold the information requested. The Authority explained that it did not hold any information for the purposes of FOISA where that information related to Professor Boyne acting solely in his role as the Chair of the UCEA.
5. On 4 September 2023 and 11 January 2024, the Applicant wrote to the Authority, requesting a review of its decisions as he did not agree that it did not hold the information requested for the purposes of FOISA.
6. The Authority notified the Applicant of the outcome of its reviews on 29 September 2023 and 2 February 2024. For both reviews, the Authority fully upheld its original decisions.
7. On 30 September 2023 and 14 February 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA.

Investigation

8. The Commissioner determined that both applications complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 7 November 2023, in line with section 49(3)(a) of FOISA, the Authority was notified in writing that the Applicant had made a valid application relating to request one. The Commissioner invited the Authority's comments, which it provided.
10. On 8 March 2024, the Authority was notified in writing that the Applicant had made a valid application relating to request two. In line with section 49(3)(a), the Authority was invited to comment on this application and to answer specific questions relating to its application of section 17 of FOISA. The Authority provided its comments.
11. Both cases were subsequently allocated to the same investigating officer.

Commissioner's analysis and findings

12. The Commissioner has considered the submissions made by the Applicant and the Authority.

Section 17(1) – Notice that information is not held

13. 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.

14. The information to be given is that held by the authority at the time the request is received, (section 1(4)). Section 3(2) of FOISA defines the circumstances in which information is held by a Scottish public authority. There is no suggestion that section 3(2)(a)(ii) applies so, for the purposes of this decision, information will be held by the Authority if it is held by the Authority otherwise than on behalf of Professor Boyne in his capacity as Chair of the UCEA or on behalf of the UCEA (section 3(2)(a)(i)).
15. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.

The Applicant's submissions – both requests

16. The Applicant provided detailed submissions in support of his position that the Authority held the information requested for the purposes of FOISA. The Commissioner will not reproduce these submissions in full, but he will summarise what he considers to be the key points. The Applicant submitted that:
 - the information requested was held for the purposes of FOISA because, due to the role(s) of Professor Boyne, the information had an appropriate connection to the Authority
 - it was perfectly possible for the Authority to hold the information requested in its own right and on behalf of the UCEA or Professor Boyne – these are not mutually exclusive conditions
 - UCEA is owned, amongst other universities, by the Authority – an ownership relationship that stemmed from the identity of the statutory bodies that make up UCEA. Hence, there is an “undeniable link” between the Authority and the UCEA and the UCEA is therefore not a “completely separate organisation”
 - the Authority could not claim that it lacks interest in the information requested, given the Authority, the UCEA and Professor Boyne are so interconnected – it cannot be claimed that the information would not influence decisions of Professor Boyne as Principal and Vice-Chancellor of the Authority
 - the Authority possessed absolute control over the information requested as it is held on its web servers, and it can delete or amend the information as it sees fit
 - Professor Boyne claimed expenses from the Authority while conducting UCEA-related activities, which established a link between the Authority and Professor Boyne’s role as Chair of the UCEA.
17. The Applicant also expressed concern that the Authority had not provided any evidence that it had carried out searches in response to his requests.

The Authority's submissions – both requests

18. The Authority considered both requests directly analogous as they both asked for copies of communications discussing Queen’s University Belfast and they both related to Professor Boyne’s role as Chair of the UCEA.
19. The Authority explained that Professor Boyne fulfilled two distinct roles relevant to the requests: Chair of the UCEA and Principal and Vice-Chancellor of the Authority.

20. For both requests, the Authority submitted that it did not hold any information for the purposes of FOISA where that information related to Professor Boyne acting solely in his role as the Chair of the UCEA.
21. The Authority explained that it had consulted with UCEA in response to receiving notification from the Commissioner that the Applicant had made a valid application. The Authority explained that the UCEA had confirmed that it considered all communications between Board Members relating to UCEA business to be confidential.
22. The Authority explained that UCEA is an independent company, entirely separate from the Authority, and that it has no controlling interest in the UCEA. The Authority noted that the UCEA issued guidance that information provided to individuals in their capacity as UCEA Board Members is confidential and that any breach of that confidentiality would be an actionable breach of confidence on the part of the Board Member in question.
23. The information requested was present on the Authority's systems because it was held on behalf of Professor Boyne, it was not held by the Authority for its own separate purposes or functions and the Authority played no part in the creation of the information. Specifically, the Authority stated that the position of Queen's University Belfast had no bearing on the Authority or its membership of the UCEA.
24. The Authority noted that the Applicant considered that the interests of Professor Boyne as Principal and Vice-Chancellor of the Authority and Chair of the UCEA overlapped. However, the Authority explained that Professor Boyne had signed a code of conduct for his independent role as Chair of the UCEA which clearly set out the distinct roles and responsibilities he must undertake as Chair. The Authority recognised that all UCEA's Board Members have leading roles within universities but affirmed that their roles as Board Members of the UCEA are distinct.
25. The Authority also noted that the UK Information Commissioner had recently issued [decisions relating to similar requests](#)², where he found that UCEA communications were not held by the universities to whom the requests were made.
26. In terms of the searches it carried out, the Authority confirmed that it had carried out searches in relation to request one, but not for request two. The Authority explained that, given the requests were directly analogous, it did not carry out searches for request two as any searches would only locate information relating to Professor Boyne's role as Chair of the UCEA which was information it would therefore not hold for the purposes of FOISA.

The Commissioner's view

27. In considering whether an authority holds information, the Commissioner will consider a number of factors, including (but not limited to):
 - whether there is an appropriate connection with the authority, meaning that the information is for the purposes of carrying out its functions as a public authority
 - the content of the information
 - the circumstances in which it was created and
 - how it is held.

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4028765/ic-268384-g4m3.pdf>

28. In this case, while he has fully considered the submissions provided by the Applicant, the Commissioner considers the key factor to be whether there is an appropriate connection between the information and the Authority.
29. The Commissioner recognises that there plainly is a connection between the information and the Authority. However, given the terms of the requests and the nature of the information requested, he does not consider that connection to be sufficient to consider the information requested held by the Authority for the purposes of FOISA. This is for the following reasons:
- Professor Boyne fulfils distinct and separate roles as Chair of the UCEA and as Principal and Vice-Chancellor of the Authority
 - the information requested clearly related to Professor Boyne's role as Chair of the UCEA (and primarily to Queen's University Belfast, not the Authority)
 - the Authority asserted that it did not use the information for its own purposes or functions and that it had no interest itself in the information requested (which, in the circumstances, the Commissioner is satisfied is true)
 - the UCEA Board of Directors Code of Conduct requires work on the Board to be independent from institutional interests and that certain information on Board matters be kept confidential and separate from institutions.
30. In all the circumstances and having fully considered the submissions made by the Applicant and the Authority, the Commissioner is satisfied that, were any relevant information held, the Authority would not use that information for its own purposes and that it would be held on behalf of Professor Boyne in his capacity as Chair of the UCEA.
31. The Commissioner is therefore satisfied that the information requested (in both requests) is not held by the Authority for the purposes of FOISA and that it was entitled to give him notice, in terms of section 17(1) of FOISA, that it did not hold the information.
32. The Commissioner also notes that the Applicant queried the searches undertaken by the Authority.
33. In this case, the Commissioner finds that the Authority did not hold the information requested because of the lack of appropriate connection between it and the information – not because it conducted searches which yielded no positive returns.
34. The Commissioner therefore considers that evidence of searches is less important in this case than for most cases where an authority has issued a refusal notice in terms of section 17(1) of FOISA. However, he would remind all public authorities that this is very much the exception, not the norm, and that evidence of searches will usually be a key consideration during his investigations.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

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.

David Hamilton
Scottish Information Commissioner
31 October 2024

Appendix 1: Information requests

Request made on 7 August 2023

"I, the undersigned, hereby issue a request to The University of Aberdeen under the framework of the Freedom of Information (Scotland) Act 2002: All the sent and received communications (whether internal, external, and regardless of the platform) of Professor George Boyne that are related, however tangentially, to Queen's University Belfast. Such search can be limited to exchanges that took place after the 1st of January 2023. The nature of this request includes, but it is not limited to: e-mail, physical correspondence, chat exchanges, messaging exchanges, etc. The relevant documentation can be sent in an electronic format."

Request made on 8 December 2023

"I, the undersigned, wish to request the following information from the University pursuant to the FOISA 2002:

The content of the e-mails sent and received between the following parties:

One.- George Boyne and Roshan Israni,

Two.- George Boyne and Raj Jethwa,

Three.- George Boyne and Graham Baldwin,

Four.- George Boyne and Ian Greer.

For all these requests, please consider the following conditions:

A.- Please limit search to electronic mails, do not search physical documents.

B.- Please search from 01-01-2023 to 15-10-2023.

C.- Please limit the disclosure to the following matters: the UCU MAB and QUB being removed from UCEA. You can use the following search operators: "UCEA", "UCU", "MAB", "Marking and assessment boycott", "QUB", "Belfast", "Queen's University Belfast", "JNCHES", "Pay", "Pay round", "Negotiations", "Jo Grady"

D.- Note that if an e-mail contains a communication between George Boyne and any of the named parties (One-Four) plus additional recipients and/or additional recipients that were cc'd (carbon copied) or blindly cc'd, then this e-mail will also fall within the scope of my request. So an e-mail from/to George Boyne and Raj Jethwa with or without John Doe will qualify.

In nothing but good faith, I observe the University of Aberdeen will be inclined in first instance to re-issue the s17 rejection they already tried on a different (but admittedly related) matter: see FOI 23-263.

I would respectfully ask the University to consider that any and all activities conducted by George Boyne in relation to UCEA can very well be classed as University Business (i.e., George Boyne working on behalf of the University). I base this assertion on the simple fact that Boyne has consistently claimed expenses related to UCEA Board Meetings and Ancillary Activities. Your expenses policy is clear in that only University businesses done on behalf of the University can be expensed. Some examples include: <https://www.abdn.ac.uk/about/documents/Overall-Sen-ManExpenses-Jun23.pdf> , <https://www.abdn.ac.uk/about/documents/Overall-Sen-Man-Expenses-Jul23.pdf> and many many others you might very well aware of.

Boyne has unequivocally and explicitly expensed fees arising from UCEA Board Meetings: <https://www.abdn.ac.uk/about/documents/Overall-Sen-Man-Expenses-Jun2022.pdf> , which I think makes my argument self-evident.”