

# Decision Notice 008/2020

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## Examination fairness

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**Applicant: The Applicant**

**Public authority: The University of Glasgow**

**Case Ref: 201901146 and 201901693**



Scottish Information  
Commissioner



## Summary

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The University was asked for information concerning OSCE (Objective Structured Clinical Examination) collusion and fairness. The University withheld the information requested.

Following an investigation, the Commissioner found that the University had failed to identify and disclose all of the information it held. Given that all of the information was disclosed during the investigation, the Commissioner did not require the University to take any action.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1) and (4) (General entitlement)

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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### Request 1

1. On 21 March 2019, the Applicant made a request for information to the University of Glasgow (the University). The information requested was:

*“... all information available from all emails and correspondence, meetings and internet forums that involves student and staff concerns regarding the OSCE examination fairness.”*

The Applicant stated that he believed multiple complaints had been made to the medical school regarding OSCE fairness “prior to the restructure”.

2. The University responded on 24 April 2019. It informed the Applicant that it had considered his request to be for information about complaint cases as defined in the University’s complaints procedures and provided a web-link to its complaints policy. The University stated there had been three complaints regarding the fairness of OSCE exams since 2014/2015. It advised that details of these were exempt from disclosure under section 38(1)(b) of FOISA, as it considered them to be personal data.
3. On 26 April 2019, the Applicant wrote to the University, requesting a review of its decision on the basis that he had an interest in knowing whether the complaints related to other students being advantaged by collusion surrounding the OSCE examination process.

### Request 2

4. On 1 May 2019, the Applicant wrote to the University and requested:
  - a) *All reports / meeting minutes regarding OSCE data interpretation.*
  - b) *All evidence / correspondence / meetings that have evaluated the OSCE data and show that students first sitting the OSCE stations do not perform as well as later sessions.*
  - c) *Information that the medical school knew there was collusion prior to 2017 OSCE. As I had clearly highlighted this in 2008 and I am aware of other students formally and informally stating their concern regarding the fairness of the exam in subsequent years.*

5. The University responded on 30 May 2019. In relation to parts a) and b) of the request, the University advised that it was withholding information as exempt under section 33(1)(b) of FOISA (Commercial interests and the economy). In relation to part c) of his request the University referred him to its response to another information request.
6. On 11 June 2019, the Applicant wrote to the University requesting a review of its decision and provided personal reasons why he believed the information should be disclosed.
7. The University notified the Applicant of the outcome of its review on 25 June 2019. It upheld its application of section 33(1)(b) of FOISA, noting that the information related to ongoing research.
8. On 3 July 2019, the Applicant wrote to the Commissioner's office. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the University's responses, providing reasons why he disagreed with the withholding of the information requested.
9. It became apparent that the Applicant had not received a response to his requirement for review of 26 April 2019. The University notified the Applicant of its review outcome on 4 September 2019. It provided a copy of a response that had been prepared on 23 May 2019 and apologised that it had not been issued to the Applicant at that time. The University explained that one of the complaints identified was the Applicant's own complaint, and that the other two did not relate to other students being advantaged by collusion.
10. On 6 September 2019, following the review outcome in respect of request 1, the Applicant wrote to the Commissioner's office. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the University's review, providing reasons why he disagreed with the withholding of the information.

## Investigation

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11. The applications were accepted as valid. The Commissioner confirmed that the Applicant had made requests for information to a Scottish public authority and asked the authority to review its responses to those requests before applying to him for a decision.
12. On 5 September 2019, the University was notified in writing that the Applicant had made a valid application in relation to Request 2 above. The University was asked to send the Commissioner the information withheld from the Applicant. The University responded, advising that it no longer wished to rely upon section 33(1)(b) of FOISA to withhold the information, with explanation that the information did not constitute evidence as requested by the Applicant. The University further advised that the evidence sought by the Applicant had already been provided to the Applicant and was available online.
13. The University also advised the Commissioner that it had conducted further investigation and located relevant minutes from the MBChB Board of Examiners. It confirmed that it was prepared to provide relevant extracts to the Applicant.
14. On 19 September 2019, the University was notified in writing that the Applicant had made a valid application in relation to Request 1 above. The cases were conjoined and allocated to an investigating officer.
15. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 7 October 2019, the University was

invited to comment on both of the applications and to answer specific questions, in particular to explain the steps it had taken to identify and locate the information requested.

16. The University responded and advised that it had conducted further searches, in which the scope of the requests were broadened to include information evidencing the robustness and rigour of the OSCE Examination and associated processes. It submitted that the Applicant's requests overlapped each other and that, following the further searches, additional information, in the form of Minutes of Exam Board Meetings (2013-2019) and accompanying OSCE results presentations, had been identified.
17. The University also explained that the two letters referred to in its review of 4 September 2019 did not fall within the scope of Request 1, as above. The Commissioner accepts this position.
18. The University provided the information located during the investigation to the Applicant, with an apology that the information had not been provided previously.
19. The Applicant confirmed receipt of the information disclosed, but questioned whether further information was held. He explained why he believed that the University should hold further information.

## **Commissioner's analysis and findings**

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20. 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 University. He is satisfied that no matter of relevance has been overlooked.

### **Information held by the University**

21. 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 relevant in this case.
22. 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 does or should hold.
23. The Commissioner has considered the information disclosed during the investigation, in the light of the submissions received from both the Applicant and the University.
24. In its submissions to the Commissioner, the University explained the searches and enquiries it undertook during the investigation, detailing the resources searched and departments and individuals consulted, providing evidence of the outcomes of these searches. The University stated that there was a significant crossover between Requests 1 and 2, and confirmed that during the investigation it had located further information which fell within the scope of the Applicant's requests. The University confirmed that it did not hold any further information, explaining that it only retained Examination Board Minutes for a period of seven years and student information for a period of six years following graduation.
25. As mentioned above, the information located during the investigation was provided to the Applicant.

26. The Commissioner has also given consideration to the Applicant's submissions as to why he believes that the University should hold further information falling within the scope of his requests.
27. The standard proof to determine whether a Scottish public authority holds information, or whether it has identified all of the information that it does hold, is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information or has identified all of the information held. While it may be relevant as part of this exercise to explore expectations as to what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
28. As stated in many previous decisions, the Commissioner's remit extends only to consideration of whether a Scottish public authority actually holds the requested information and whether it has complied with Part 1 of FOISA (or where relevant with the Environmental Information (Scotland) Regulations 2004) in responding to a request. The Commissioner cannot comment on what records it should maintain.
29. Having considered all relevant submissions and the terms of the Applicant's requests, the Commissioner accepts that (by the close of the investigation) the University had carried out adequate, proportionate searches to establish whether it held any further information falling within the scope of the Applicant's requests. He is satisfied that the additional information located has now been provided to the Applicant.
30. However, it is evident that adequate searches were not carried out in dealing with the Applicant's information requests and requirements for review. If they had been, the Commissioner believes the relevant information would have been located and provided to the Applicant at that time. This might have obviated the need for the Applicant to make his applications to the Commissioner.
31. Taking account of all of the circumstances, the Commissioner concludes that the University failed to comply fully with section 1(1) of FOISA, by failing (in dealing with the Applicant's requests and requirement for review) to identify, locate and provide all of the information it held and which fell within the scope of the Applicant's requests.

## Decision

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The Commissioner finds that the University of Glasgow (the University) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by the Applicant.

In failing to provide the Applicant with all the information it held and which fell within the scope of his requests, the University failed to comply with section 1(1) of FOISA.

Given that all of the information has now been provided to the Applicant, insofar as falling within the scope of his applications, the Commissioner does not require the University to take any action regarding this failure, in response to the Applicant's applications.

## **Appeal**

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Should either the Applicant or the University 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**

**23 January 2020**

### 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.

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