

# Decision Notice

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**Decision 030/2019: Mr H and the University of Edinburgh**

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**Appeals procedures in flow chart form**

Reference No: 201801610

Decision Date: 5 March 2019



Scottish Information  
Commissioner

## Summary

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The University was asked for flow charts of appeals procedures covering the years from 2012/13 onwards, similar to those published in its Appeals Reports for previous years.

The University's position was that it did not hold flow charts for this period and that, under FOISA, it was not obliged to create new information.

The Commissioner investigated and, while acknowledging the University held information from which the flowcharts could readily be produced, found that the University was not required to provide information in the form of a flowchart.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 11(1), (2), (3) and (4) (Means of providing information)

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 23 July 2018, Mr H made a request for information to the University of Edinburgh (the University). The information requested was flow charts of appeals procedures – similar to those in the 2010/11 and 2011/12 Appeals Reports – for subsequent years.
2. The University responded on 28 August 2018, apologising for the delay. It stated it did not hold similar flow charts for subsequent years and FOISA did not require it to create new information that it did not already hold.
3. On 3 September 2018, Mr H wrote to the University, requesting a review of its decision as he was dissatisfied with the University's refusal. Mr H argued that section 11 of FOISA specifies that individuals are permitted to express a preference as to how information is provided and obliges the public authority to give effect to that preference. Mr H contended that the information already existed and that a flow chart was a way of visually presenting the information about the appeals procedure.
4. The University notified Mr H of the outcome of its review on 19 September 2018. Having considered whether it could provide the data in the required format of a flow chart and whether, in this case, a flow chart would simply be a different way of presenting existing information, the University concluded that this was not the case. The University explained that the process of creating flow charts for this process would require a considerable degree of subjectivity, specialist knowledge and analysis, as these were not binary decisions.
5. On 26 September 2018, Mr H wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr H stated he was dissatisfied with the outcome of the University's review, relying on section 11 of FOISA and contending that:
  - (i) the information already existed, and a flow chart was a reasonable means of visually representing existing procedures and processes;

- (ii) it was reasonably practicable for the University to provide the information in flow chart format, particularly as it had provided no specific details or costs to support its claims about subjectivity, specialist knowledge and analysis;
- (iii) he could prepare a flow chart himself from the information in the appeals reports, but this would lack the official status required;
- (iv) a culture of secrecy existed – while the University had disclosed redacted Appeals Reports under FOISA, these remained “closed” on its systems, preventing students from understanding the appeals system;
- (v) the University’s section 11 refusal was inconsistent with FOISA and its overstatement of complexity reflected a culture resisting transparency – in his view, disclosure would provide transparency on the course of the appeals system over recent years and the University’s claims to adhere to Quality Assurance Agency expectations.

## **Investigation**

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- 6. The application was accepted as valid. The Commissioner confirmed that Mr H 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.
- 7. On 1 November 2018, the University was notified in writing that Mr H had made a valid application and the case was allocated to an investigating officer.
- 8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The University was invited to comment on this application and to answer specific questions, focusing on the information held and the application of section 11 of FOISA.

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

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- 9. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both Mr H and the University. He is satisfied that no matter of relevance has been overlooked.

### **Section 11 of FOISA (Means of providing information)**

- 10. 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.
- 11. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4).
- 12. Under section 11(1) of FOISA, a Scottish public authority is required, so far as is reasonably practicable, to give effect to the preference(s) of a person requesting information, where they express a preference for receiving information by one or more of three specified means in section 11(2). These means are:

- (a) a copy of the information, in permanent form or another form acceptable to the applicant;
  - (b) a digest or summary of the information and
  - (c) a reasonable opportunity to inspect a record containing the information.
13. Section 11(3) states that, in determining whether it is reasonably practicable to provide information in the specified format, the authority may have regard to all the circumstances, including cost. Where it determines that it is not reasonably practicable to give effect to the preference, it must explain why.
  14. Where section 11(1) does not apply, section 11(4) permits the authority to provide the information by any means which are reasonable in the circumstances.
  15. By way of background, the University explained that the appeals process for the academic years 2012/13 to 2014/15 were governed by its *Academic Appeal Regulations*. These were supported by detailed guidance for students, but there was no other recorded information governing academic appeals by students.
  16. The University confirmed that its annual Appeals Reports for 2010/11 and 2011/12 included flow charts illustrating the appeals process. The process, it explained, was described in prose and in greater detail in *Academic Appeals Procedure – Information for Students*, dated June 2012, but flow charts for subsequent years were not held.
  17. In 2014/15, there was a “simplification” initiative to streamline the number of University policies, procedures and guidance documents, with the aim of consolidating documentation and creating a “one stop shop”. This was to ensure consistency and accessibility of procedures to staff and students.
  18. On 1 August 2015, the *Student Appeals Regulations* (version 1) came into force, consolidating several previous regulations along with the previous supporting guidance. These Regulations govern not only appeals against academic decisions (which, the University submitted, was the subject in which Mr H was interested), but also appeals against exclusion, decisions of Fitness to Practise Panels, and decisions under the Code of Student Conduct.
  19. From 1 August 2016, the appeals processes have been governed by version 2 of the *Student Appeals Regulations*, which incorporates information relating to student responsibility and the taught postgraduate student relationship. The University confirmed that this made no difference to the way an appeal was processed and so one flow chart would satisfy the period covered by both versions of the Regulations.
  20. The University explained this changeover from having separate policies and guidance for each type of appeal process, to a “one stop shop” for all appeals, was the reason why flow charts were no longer produced for subsequent reports. The increased complexity of the document meant that a flow chart could no longer provide a helpful summary, and so producing flow charts was not compatible with the “simplification” initiative.
  21. The University confirmed it held the *Student Appeal Regulations* and supporting guidance for students, describing the appeals procedures covering the period of Mr H’s request. It explained, and provided evidence of, the searches carried out to identify this information. In the University’s view, this was the “raw data” which Mr H wished converted into a flow chart.

22. The University submitted it had originally interpreted Mr H's request to be for a flow chart detailing each possible decision point and the options available, which it considered would require specialist knowledge and analysis, and therefore the creation of information not already held. In its submissions during the investigation, it confirmed that it now understood the request to be for a flow chart(s) that summarised the *Student Appeal Regulations*.
23. With this in mind, during the investigation the University took the decision to test whether it was reasonably practicable to create a flow chart based on its current Regulations and supporting guidance, which it described as a "digest or summary" of the "raw data" in the form of a flow chart.
24. This, the University explained, was carried out by Records Management staff who had no knowledge or experience of the appeals process, working with the "raw data" alone. The initial draft was reviewed by Academic Services staff to ensure it was an accurate representation of the process, and the draft was revised accordingly. The University submitted that the creation of the test flow chart took 4.5 hours, including revision, recognising this was not cost-prohibitive.
25. The University submitted that, while the test flow chart was a visual representation of the process element of the Regulations, it did not aid understanding of the process, could not be relied on (as it required to be read in conjunction with the Regulations and supporting guidance), and was not how the University would choose to summarise the Regulations. Consequently, the University did not consider the chart could be regarded as a digest or summary.
26. The University further submitted that the resultant benefit from the test flow chart could not be regarded as equal to or greater than the effort to create it. In fact, the University considered this to be rather the opposite, as the flow chart could not present the "raw data" in a format that aided understanding of, or summarised, the matter, without consulting the "raw data" itself.
27. The University explained that, in response to a number of information requests from Mr H, it had disclosed to him all information held on the operation of the current appeals process over recent years. This included the provision, in February 2018, of what it considered to be a more helpful digest or summary of the regulations governing the appeals process. The University provided the Commissioner with copies of these previous disclosures in support of its submissions on this point.
28. The University referred to Mr H's application to the Commissioner, where he commented that his request was "driven by a need to provide clarity and transparency, providing comparative data which can be readily assimilated by non-experts who have an interest in the development and operation of the appeals system", and that "summarising the changes in the appeals procedures and processes in a digest, by means of a set of flow charts, will allow the processes of change to be understood through a sequence of holistic snapshots".
29. The University contended that the test flow chart was not comparable with those in earlier Appeals Reports, those having been created at different times with different methodologies, for different purposes and reflecting different Regulations. Neither were they set out in a way that would show changes to the process over the last eight to nine years.
30. In conclusion, the University's position was that it was not reasonable, in the circumstances, to provide Mr H with the Regulations in the form of a flow chart, as this was not a proper

summary of the Regulations, and he was already in receipt of all information relating to the appeals process (including a summary of its operation).

*The Commissioner's view*

31. The Commissioner has considered the submissions put forward by the University together with the *Student Appeal Regulations* and the test flow chart.
32. The Commissioner acknowledges that the test flow chart reflects, to some extent, the information in the Regulations. However, it is clear from the University's submissions that the staff involved in its creation were unable to do so without the involvement of individuals with knowledge of the appeals process, which led to its subsequent amendment.
33. The Commissioner also notes that the University does not consider the test flow chart to be a true summary of the Regulations: it cannot stand alone and requires to be read in conjunction with the Regulations and supporting guidance documentation. He also notes that a flow chart is not a format through which the University would choose to represent this information. It certainly does not appear to the Commissioner to fulfil the primary function of a flow chart, i.e. to provide a clear pictorial representation of the process in question.
34. The matter to be considered by the Commissioner in this case is whether the University was obliged to provide a flow chart to comply with the requirements of section 11 of FOISA.
35. As stated above, section 11 provides for the provision of the information by any one or more of the means mentioned in subsection (2), as set out in paragraph 12 above.
36. The Court of Session stated in *Glasgow City Council v The Scottish Information Commissioner* [2009] CSIH 73 (at paragraph 57):

*When section 11(2)(a) refers to the "form" in which a copy of the information may be provided, it appears to us to have in mind such possible forms as electronic files, paper documents, audio or video tapes, or verbal communication. That is consistent with the sense in which the word "form" is used elsewhere in the Act (e.g. in sections 8(1)(a) and 47(2)(a)).*
37. In the Commissioner's view, Mr H's request does not satisfy subsection (2)(a) or (c), given that the flow chart is not a copy of the information in another form, nor is he seeking to inspect the information.
38. This leaves subsection (2)(b) to be considered. Having considered the University's submissions carefully, the Commissioner is satisfied that the provision of a flow chart which offered a genuine representation of the Regulations and supporting guidance would involve the application of skill and judgement amounting to the creation of new information. A detailed knowledge and understanding of a complex decision-making process such as this will always be required to simplify it effectively in diagrammatic form: it cannot just be a straightforward administrative task, to be performed by anyone.
39. The Commissioner must conclude, therefore, that the creation of a flow chart in fulfilment of Mr H's request was not simply the provision of a "digest or summary" of existing information, as envisaged by section 11(2)(b). It was not, therefore, something the University was required to do by virtue of section 11(1) and there is no need, in the circumstances, to consider section 11(3). Given that Mr H specifically asked for a flow chart, there was no need for the University to consider other reasonable means of providing the information it held, in terms of section 11(4).

40. Consequently, the Commissioner finds that the University was under no obligation to provide the information requested by Mr H, and so complied with Part 1 of FOISA.

## **Decision**

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

## **Appeal**

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Should either Mr H or the University of Edinburgh 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**

**5 March 2019**

### 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.  
...

#### 11 Means of providing information

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.
- (2) The means are-
  - (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
  - (b) such provision to the applicant of a digest or summary of the information; and
  - (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.
- (3) In determining, for the purposes of subsection (1), what is reasonably practicable, the authority may have regard to all the circumstances, including cost; and where it determines that it is not reasonably practicable to give effect to the preference it must notify the applicant of the reasons for that determination.
- (4) Subject to subsection (1), information given in compliance with section 1(1) may be given by any means which are reasonable in the circumstances.  
...



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