

Decision Notice



Decision 098/2011 Mr Ian Benson and Glasgow Caledonian University

Suspension of staff

Reference No: 201100291
Decision Date: 24 May 2011

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Summary

Mr Ian Benson (Mr Benson) asked Glasgow Caledonian University (the University) for information as to the number of staff suspended. The University responded by advising Mr Benson in terms of section 14(2) of the Freedom of Information (Scotland) Act 2002 (FOISA) that it was not obliged to comply with this request as it considered it to be a repeated request. Mr Benson was dissatisfied with these responses and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the University had acted in accordance with Part 1 of FOISA when responding to Mr Benson's information request. He concluded that this was a repeated request for the purposes of section 14(2) of FOISA, and so the University was not obliged to comply with the request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(2) (Vexatious or repeated requests); and 21(1) and (8) (Review by Scottish public authority).

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 26 April 2010, Mr Benson requested the following information from the University:
 - a. How many staff at the university were suspended over the period from January 2007 to December 2009? Mr Benson asked for this information to be broken down into those on full pay, reduced pay and no pay.
 - b. How many staff were suspended at the time of the request? Mr Benson asked for this information to be broken down as above.
2. The University responded to this request on 1 June 2010. With respect to the information sought by part a), it indicated that the number of staff suspended was less than 5. It withheld the precise figure on the grounds that this information was exempt from disclosure under section 38(1)(b) of FOISA. In response to part b), the University indicated that no staff were suspended at that time.



3. On 28 December 2010, Mr Benson wrote to the University to ask that it carry out a review of this decision. Mr Benson recognised that this request was made outwith the 40 working day period in which a requirement for review should be made (as required by section 20(5)(a) of FOISA). He requested that if the University declined to conduct a review, it should deal with this as fresh a request under FOISA with the same wording as that submitted on 26 April 2010.
4. The University responded on 5 January 2011. It declined to conduct a review of its previous response, since Mr Benson had not submitted his request for review within the required 40 working day timescale
5. The University consequently considered Mr Benson's email of 28 December 2010 as a fresh request for information with the same wording as that submitted on 26 April 2010. It notified Mr Benson that it had determined that it was not obliged to comply with this new request because it was a repeated request for the purposes of section 14(2) of FOISA.
6. Section 14(2) of FOISA states that where a public authority has complied with an information request, it is not obliged to comply with a subsequent request from the same person which is identical or substantially similar, unless a reasonable period of time has passed between the making of the two requests.
7. On 23 January 2011, Mr Benson wrote to the University requesting a review of its decision. In particular, Mr Benson drew the University's attention to his view that it had not provided him with all relevant information in its response to his request of 26 April 2010. Mr Benson argued that when discussing repeated requests, FOISA is addressing situations where requests had been responded to in full, not ones where the key elements were withheld.
8. Mr Benson agreed with the University that the information he requested had not changed, but he argued that the circumstances had changed, because he was now in a position to cite as evidence the fact that other Universities provided the requested information to him and did not rely on any exemptions in FOISA. He noted that a number of other universities had failed to provide timely responses to similar requests for information.
9. The University responded to Mr Benson on 11 February 2011. The University advised Mr Benson that, because it considered his request of 28 December 2010 to be repeated, in line with section 21(8)(b) of FOISA it would not be carrying out a review of its response to his request.
10. On 13 February 2011, Mr Benson wrote to the Commissioner, stating that he was dissatisfied with the University's response to his request for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
11. The application was validated by establishing that Mr Benson had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

12. On 22 February 2011, the University was notified in writing that an application had been received from Mr Benson and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The University was also asked to respond to specific questions, in particular, it was asked to justify its reliance on section 14(2) of FOISA.
13. A response was received from the University on 16 March 2011. The University provided submissions setting out how it handled and responded to both Mr Benson's request of 26 April 2010 and his request of 28 December 2010, and why it considered that section 14(2) was applicable to the latter. The University also provided copies of the documents relating to its handling of Mr Benson's request of 26 April 2010.
14. All submissions received from the University and Mr Benson, in so far as relevant, are considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

15. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Benson and the University and is satisfied that no matter of relevance has been overlooked.

Section 14(2) – Vexatious or repeated requests

16. As noted above, section 14(2) of FOISA provides that where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
17. When considering section 14(2) of FOISA, the following points need to be considered:
 - Whether the University complied with Mr Benson's first request of 26 April 2010;
 - Whether the subsequent request (dated 28 December 2010) was identical or substantially similar to the first request (26 April 2010); and
 - If so, whether there was a reasonable time between the submission of the first request and the submission of the subsequent request.
18. The Commissioner has considered these three questions in turn below.



Was the first request complied with?

19. Mr Benson's request of 26 April 2010 and the University's response of 1 June 2010 are summarised in paragraphs 1 and 2 above. The University provided the information sought by one part of Mr Benson's request, but refused to supply the actual number of staff suspended over the period specified in part a) on the grounds that this information was exempt from disclosure.
20. The University's response informed Mr Benson that he was entitled to request a review of its decision, and it explained how he should do so. It also made clear that any request for review should be made within 40 working days of the receipt of that response.
21. In his request for review of the subsequent request of 28 December 2010, Mr Benson highlighted that the University's response of 1 June 2010 had not supplied all of the information requested. He argued that section 14(2) is applicable only in cases where the public authority has not disclosed all information in response to a previous identical request.
22. The Commissioner has considered this point, but he is not able to accept it. The University's letter to Mr Benson of 1 June addressed his request in full, and notified him appropriately of how he could challenge its decision if he was dissatisfied with that response provided. Mr Benson did not challenge that decision within the timescale required by FOISA.
23. In the absence of any review being sought at the time, the Commissioner is unable to conclude that the response given on 1 June 2010 did not comply with Mr Benson's information request. The Commissioner is therefore satisfied that the University complied with Mr Benson's original request in line with the requirements laid down in FOISA.

Was the second request identical or substantially similar to the first?

24. Mr Benson's email of 28 December 2010 specified that (if his request for review of the response of 1 June 2010 was not accepted) he wished his correspondence to be considered as a fresh request with the same wording as that of 26 April 2010.
25. In the circumstances, it is clear that the request of 28 December is identical to that of 26 April 2010.

Had a reasonable period of time passed?

26. In his guidance on the application of section 14(2) of FOISA, the Commissioner has commented that there is no attempt to define "a reasonable period of time" in the legislation, because it will depend on the circumstances of the case. Consideration should be given to two questions which will help to assess whether a reasonable period of time has elapsed. These are:
 - Has the information changed
 - Have the circumstances changed



Have the information and circumstances changed?

27. In his request for review, Mr Benson accepted that the requested information had not changed in the period between the University issuing its response to the original request and his further request being submitted.
28. However, he maintained that the circumstances had changed in the period since that response was issued. He argued that having made similar requests to other universities and higher education institutions, and been provided with the information, he was in a position to cite this as evidence in support of disclosure.
29. The University has argued that the circumstances surrounding Mr Benson's case are exactly as at the time of its previous response.
30. The Commissioner has considered the comments made by both Mr Benson and the University carefully. He recognises neither the information requested by Mr Benson nor the circumstances surrounding that information has changed in the period between Mr Benson's original request being lodged, and it being repeated on 28 December 2010.
31. However, Mr Benson has argued that his own circumstances have changed, as a result of him receiving responses to similar information requests from other public authorities, which have led him to believe that the information withheld by the University could be disclosed to him. The period that passed between the two requests was that in which he gathered those other responses (in some cases following delays in the public authorities concerned responding to his requests).
32. Mr Benson has noted that if the University was correct in its application of section 14(2) in this case, it would encourage him to change his practice when making similar information requests to multiple public authorities; to challenge any refusal received, rather than to submit review requests and applications to the Commissioner only in cases where he believed he has a strong chance of success.
33. The Commissioner recognises that where the exemption in section 38(1)(b) of FOISA has been applied to information, changes in the applicants' circumstances may influence further consideration of whether information should be disclosed. Relevant changes, might for example, be where with the passage of time, the legitimacy of the applicant's interest in the information or the necessity of disclosure of the information is stronger than previously.
34. In this case, however, the Commissioner does not think that such changes have been demonstrated by Mr Benson. While Mr Benson states that he has been given equivalent information in full in response to similar requests to other universities, the evidence of other universities' disclosure does not demonstrate that the circumstances surrounding the particular information held by the University have changed, or that it should have reached a different decision.



35. Each institution would have to deal with the request submitted to it by Mr Benson in light of the circumstances applying to their staff and the information falling within the scope of the request. Similarly, any challenge to that decision must focus on that authority and the circumstances surrounding the particular information held. The Commissioner therefore considers that there was nothing to prevent Mr Benson from seeking a review of the University's response to his request of 26 April 2010 at that time, if he considered that the University had failed to appropriately apply the tests leading it to conclude that the precise information he had requested was exempt from disclosure.
36. Although Mr Benson learned more of the practice of other public authorities in response to equivalent requests for information in the period after that response, the Commissioner does not consider that the factors that would influence the University's decision with respect to the application of section 38(1)(b) of FOISA changed in the period leading to Mr Benson's second request for information.
37. Having considered all of the above, the Commissioner does not consider that there have been changes of circumstances which prompt the conclusion that a reasonable period had passed between Mr Benson making his first request on 26 April 2010 and his repeated information request of 28 December 2010.
38. The Commissioner does consider that the simple passage of time between requests will eventually be sufficient to allow the conclusion that a reasonable period has passed between two identical or substantially similar requests, irrespective of whether there have been any changes in the circumstances surrounding the request. He therefore considers that the application of section 14(2) will eventually fall away.
39. In this case, however, the period between the requests was only 8 months (with just over 6 months having passed since the University provided its response). The Commissioner does not consider that this period is sufficient to find that the passage of time alone means that a reasonable period has passed between the two requests.
40. The Commissioner has found that the University was entitled to refuse to comply with the request of 28 December 2010 on the grounds that section 14(2) was applicable. In so doing it acted in compliance with Part 1 of FOISA.

DECISION

The Commissioner finds that Glasgow Caledonian University acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to comply with his request dated 28 December 2010 on the grounds that it was a repeated request in line with section 14(2) of FOISA.



Appeal

Should either Mr Benson or Glasgow Caledonian University wish to appeal against this decision, there is an 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 notice.

Kevin Dunion
Scottish Information Commissioner
24 May 2011



Appendix

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.

....

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

14 Vexatious or repeated requests

....

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
- (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.