

Decision Notice 162/2021

Course related information

Applicant: The Applicant

Public authority: Perth College

Case Ref: 202001380



Scottish Information
Commissioner

Summary

The College was asked for course related information and for other examples which supported statements made about a course.

The Commissioner investigated and found that the response issued by the College was based on unrecorded information. Given that the College did not hold the information requested, it should have provided the Applicant with an “information not held” notice.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 17(1) (Notice that information is not held)

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. On 17 April 2019, the Applicant made a request for information to Perth College (the College). The information requested was:
 - (i) Course documentation for the health studies programmes (CUR02s/CUR03s)
 - (ii) Evidence which underpinned statements made related to study hours.
2. The College responded on 16 May 2019. The College refused to comply with the request as it considered the request to be vexatious in terms of section 14(1) of FOISA.
3. On 17 May 2019, the Applicant wrote to the College requesting a review of its decision on the basis that she did not consider the request to be vexatious.
4. The College upheld its decision and notified the Applicant of the outcome of its review on 29 May 2019.
5. On 4 June 2019, the Applicant wrote to the Commissioner for a decision. The case was investigated and, on 22 September 2020, the Commissioner issued *Decision Notice 110/2020*¹ in which he found that the request was not vexatious. He required the College, to issue a revised review the Applicant in terms other than section 14(1) of FOISA.

The revised review response

6. On 6 November 2020, the College issued its revised review response. The College stated that the requested information had been provided by the University of Highlands & Islands (UHI) in a response to a previous information request. However, it provided these documents again and stated that the remaining information was not retained by the College.
7. On 18 November 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant disputed that the information was not held by the College and asked the Commissioner to investigate the matter.

¹ [Decision 110/2020 \(itspublicknowledge.info\)](https://itspublicknowledge.info)

Investigation

8. The application was accepted as valid. The Commissioner confirmed that the Applicant 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.
9. On 1 December 2020, the College was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The College was invited to comment on this application and to answer specific questions. These related to the searches that had taken place and why it was satisfied that the requested information was not held by the College in its own right.
11. The investigating officer engaged in continual correspondence with both the College and the Applicant during the investigation. Explanations as to why the College considered it did not hold the recorded information in the way requested was provided to the Applicant. The Applicant's reasoning, as to why she considered a definitive answer could be provided and recorded information was held, was also provided to the College.
12. The submissions and comments from both parties will be considered below.

Commissioner's analysis and findings

13. 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 College. He is satisfied that no matter of relevance has been overlooked.

Interpretation of request and whether information is held

14. 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 provisions in section 1(6) are not relevant here.
15. 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 the information an applicant believes an authority should hold. If no relevant information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice to that effect.
16. The College submitted that this request was handled in parallel with a number of other requests and complaints to it and other partner Colleges/UHI, which added to the complexity of handling this request.
17. The College explained its relationship with UHI. It explained that it is a further education incorporation created under the provisions of the Further and Higher Education (Scotland) Act 1992, as amended by the Post-16 Education (Scotland) Act 2013, and a charity registered in Scotland. The College is assigned to UHI in law by the Assigned Colleges Order, and has been an academic partner of the UHI since 1999.

18. UHI provides access to both undergraduate and postgraduate study and research opportunities through an academic partnership with 13 colleges and research institutions, including Perth College. However, for the purposes of FOISA, each academic partner is a separate legal entity.
19. Higher Education (HE) students are all students of UHI and their information is held by the University within their database. Each student has a “home” academic partner (College) depending on where and what they are studying. Some information relating to HE courses is held locally (e.g. information related to delivery of the course and the support of students), whereas other data (e.g. quality and academic standards) is held centrally by the UHI. In this case, the Applicant request related to a networked course offered across multiple academic partner colleges, with the home academic partner being Perth College.
20. In normal circumstances, the College submitted, issues are dealt with separately. However, in this case, a decision was taken to centralise the information gathering process.

Information requested

21. The request from the Applicant consists of two parts:
 - course documentation/CUR02s/CUR03s for the health studies programmes [that refer to 80 credit placement]
 - other course examples that supports a statement made, that suggested to the Applicant that other UHI degree modules allocate hundreds of hours to private study but with no aims or objectives for that private study.
22. The Commissioner notes that the request under consideration was dealt with by the College alongside another request from the Applicant, which related to a wide range of information about the DipHE in Person-Centred Counselling and Psychotherapy course.

The College's submissions

23. During the investigation, the College clarified the following points:
 - it does not hold data related to CUR02/03s in its own right: UHI holds this data as owner, the College holds the data for the purposes of local delivery, but it does not have editing rights;
 - it would be more useful to consider “private study” as self-directed study, although the term “private study” may be in broad usage across the UHI partnership;
 - within degree-level courses, it is assumed that there will be an element of self-directed study;
 - with respect to aims and objectives, it is clear that the overall aim of any course of study is to pass the module/programme to achieve certification;
 - individual courses may provide specific aims for private or self-directed study.
24. Following the issue of *Decision Notice 110/2020*, UHI advised the College that all of the information requested by the Applicant had been disclosed to her. In the revised review outcome issued by the College, all information held by the College was again provided. She was advised that further information would be held by UHI.

Information held on CUR02s/CUR03s

25. The College confirmed that it does not hold CUR02s/CUR03s in its own right. They are held by the awarding body (UHI).
26. The College explained that UHI hosts a Sharepoint Server, which allows the capacity for groups to share documents via individual Sharepoint "sites". The individual setting up each Sharepoint site determines membership and access levels within that site. The College staff will not have access to UHI Sharepoint sites unless given express permission, and vice versa.
27. The College stated that UHI holds data related to CUR02/03 as owner, whereas the College holds the data for the purposes of local delivery, i.e. the College uses and distribute the data for the provision of the course, but the College has no editing rights to the data.
28. The College acknowledged that, while it had been trying to be helpful, disclosing CUR02s/CUR03s documentation to the Applicant, when it was also disclosed separately by UHI, may have caused confusion.
29. The College stated that it did not hold in its own right any additional course-related information related to other degree level health studies programmes.
30. In later correspondence, the College reiterated that it has a right of access to the CUR02s/CUR03s for those Health Studies courses which are taught at the College, but that all materials are held by UHI as this is material they own and control. The College explained that, whilst it has access to specific Sharepoint files to those UHI courses it teaches (with this access managed by UHI), it is akin to the College having read-only access to the data contained in these files, including the CUR02s/CUR03s.
31. The College noted that there are a wide range of Health Studies courses taught by other partner colleges which are not taught at the College and that it did not have any sight of documentation related to these courses, via Sharepoint or otherwise.
32. In summary, the College submitted that CUR02s and CUR03s relating to Health Studies programmes are held by UHI.

Recorded information in support of statements

33. The College explained that, following receipt of several concerns raised by student representatives around the placement unit, the Head of Quality arranged an ad hoc meeting (unminuted) with the student cohort for the course in March 2019. The UHI Subject Network Leader was in attendance in order to provide answers to questions from students regarding the programme.
34. During this meeting, UHI Subject Network Leader advised students that it was normal practice for health studies programmes to contain an 80-credit placement element.
35. The College stated that there was no reference to any specific Health Studies programme by UHI Subject Network Leader during this meeting, as the statement was provided in generality.
36. The Head of Quality later reiterated the general position regarding the placement unit, as provided verbally by the Head of Quality during the above-noted meeting, within an email to the Applicant. The College clarified, for the purposes of FOISA, the information requested was not held in a recorded form.

The Applicant's submissions

37. The Applicant submitted she required evidence that supported the Head of Quality's statement that "The hours are not spurious but instead marry with how other degree modules show full notional hours for a module".
38. The Applicant noted that this was very far removed from how other counselling courses allocate hours to their placement modules, and reiterated her request for details of other UHI degree modules which allocate hundreds of hours to private study, but with no aims or objectives for that private study.
39. The Applicant considered that the College staff do have access to UHI servers and all the documentation requested. If the Head of Quality knew of relevant degree modules, she would have been able to access the documentation for these "very easily".
40. The Applicant commented that she had raised issues in the past about the different colleges of the UHI claiming they are separate entities, yet at the same time being part of the UHI.
41. The Applicant understood that, if the UHI is considered a separate entity, then what is on its servers, despite being accessible by the College, might not come under information that UHI holds in its own right.
42. She considered that the College was wrong to state that the information is held by UHI and that College needs to confirm that it does not hold any information to evidence the College's Head of Quality's statements.

The Commissioner's conclusions

43. As specified in the Applicant's request, she is seeking course documentation and examples of courses which would support statements made.

Recorded information in support of statement

44. With regard to the Applicant's request for other course examples, the Commissioner is of the view, that when College staff made the original statements, they did not have specific courses in mind.
45. When considering this request, the Commissioner has had to come to a conclusion based on balance of probabilities. In this case, having considered the request and the comments from both parties in detail, he has concluded that the College does not hold the specific information requested by the Applicant. The statements made by the College at the meeting in question were general and not based on a specific course or courses.
46. It is not the role of the Commissioner to prove that a statement made by an authority is accurate – rather, his role in a case such as this is to determine whether the authority holds recorded information (such as preparatory notes taken to a meeting in the expectation that a particular question would be asked) which record the basis on which the statement was made. As noted above, the Commissioner is satisfied that the statements made by the College were not based on a specific course or courses.
47. The Commissioner has found examples of CUR02s and CUR03s online. Having considered this very small sample, the Commissioner notes that the examples contain details of self-directed study, percentage of the course dedicated to private study and the overall aims and objectives of the course. Beyond this information, it would seem that no further details are held.

48. The Commissioner is satisfied that no recorded information is held that would satisfy the terms of the Applicant's request. The Commissioner finds the College that failed to comply with FOISA, by failing to provide the Applicant notice in terms of the section 17(1) of FOISA that the information is not held.

Course documentation

49. In terms of the course documentation, the Commissioner is satisfied, following the explanation of the relationship between the College and UHI (detailed above), that the information is not held by the College.

Decision

The Commissioner finds that Perth College (the College) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) by failing to provide notice, under section 17(1) of FOISA, that the information requested was not held.

The Commissioner does not require the College to take any action in respect of this failure in response to the Applicant's application.

Appeal

Should either the Applicant or the College 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

14 October 2021

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.

...

- (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.

...

17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-

- (i) to comply with section 1(1); or
(ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,

it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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