

# Decision Notice

---

## **Decision 133/2018: Mr Patrick Smith and the Scottish Qualifications Authority**

---

### **Band-to-grade progression data**

Reference No: 201800816

Decision Date: 28 August 2018



## Summary

---

The SQA was asked for band-to-grade progression statistics for National 5 to Higher and from Higher to Advanced Higher. The SQA was asked to output the data to a spreadsheet as a series of tables, one for each subject.

The SQA refused to provide the information, arguing that it was not held in the specified format, and if it was required to produce such summary information it would incur costs exceeding £600.

The Commissioner accepted that complying with the request by providing information in the format specified would not be reasonably practicable, and that the cost of doing so would exceed £600. The SQA was therefore not obliged to comply with the request.

## Relevant statutory provisions

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) General entitlement); 11(1) and (2) (Means of providing information); 12(1) (Excessive cost of compliance); 17(1) (Information not held)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost - prescribed amount)

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 6 September 2017, Mr Smith made a request for information to the Scottish Qualifications Authority (the SQA):  
“I am looking for band-to-grade progression data from N5 to Higher and Higher to AH for either the 2017 diet or combined for all years of the new qualification. This would be output to a spreadsheet as a series of tables – one for teach subject, with rows (1, 2, 3...9, not sat) for the lower qualifications and columns (A/B/C/D/NA) for the higher qualification.”
2. The SQA responded on 19 September 2017. It gave Mr Smith notice, in terms of section 17(1) of FOISA, that it did not hold the information he had requested. The SQA also gave him notice that statistics for 2016/17 would be published in April 2018, and it withheld this information under section 27(1) (Information intended for future publication) of FOISA.
3. On 19 October 2017, Mr Smith wrote to the SQA requesting a review of its decision. Mr Smith noted that the SQA’s response had indicated that grade-to-grade progression data would be published in due course, but that the SQA did not hold band-to-grade progression data. Mr Smith acknowledged that the SQA might not hold the information he had requested in summary form, but he contended that the information itself must be held. Mr Smith argued that the SQA was required to produce the digest he had requested under section 11(2)(b) of FOISA.
4. The SQA notified Mr Smith of the outcome of its review on 17 November 2017. The SQA maintained that it did not hold the information he had requested and it argued that to produce the information in the format he had required would incur costs exceeding the £600 limit.

5. On 15 May 2018, Mr Smith applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of the SQA's review because he considered that the SQA did hold the information he had asked for and that it should not be difficult to provide in summary form.

## **Investigation**

---

6. The application was accepted as valid. The Commissioner confirmed that Mr Smith 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 29 May 2018, the SQA was notified in writing that Mr Smith 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 SQA was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

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

---

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

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

10. Under section 11 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. 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 or
  - (c) a reasonable opportunity to inspect a record containing the information.
11. The Commissioner is satisfied that Mr Smith's request for data output to a spreadsheet as a series of tables was, effectively, a request for a summary of the band-to-grade progression data. Mr Smith was not seeking the raw data upon which this summary information would be based.
12. In his application to the Commissioner, Mr Smith acknowledged that the SQA may not have the information he had requested readily available in summary form, but he contended that it should not be difficult to produce.
13. The SQA submitted that it does not publish band-to-grade progression data; it only publishes grade-to-grade progression statistics. It clarified that, while it does not hold the band-to-grade progression tables requested by Mr Smith, it does hold individual candidate level data for certification purposes. The SQA explained that because it holds this "raw data" it could potentially provide the summary tables requested by Mr Smith, but to do so would take a lot of time and incur significant costs.

14. The SQA noted that it was only on receipt of Mr Smith's request for review that it became aware that Mr Smith may have interpreted its response of "not held" as referring to individual band data, rather than summary tables.
15. The SQA submitted that, in order to produce band-to-grade progression tables from the raw candidate data, its statistics team would have to create bespoke programming code to interrogate the data across a number of datasets.
16. The Commissioner is satisfied that the SQA does not hold the band-to-grade progression statistical summaries requested by Mr Smith, but is satisfied that it does hold the building blocks (i.e. the raw data) that could be used to produce such summaries.
17. Section 11(3) states that, in determining whether it is reasonably practicable to provide information in the format specified by the applicant, 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.
18. The Commissioner must decide whether it was reasonably practicable for the SQA to provide the band-to-grade progression data in the format specified by Mr Smith.
19. Mr Smith has stated that it should not be difficult to produce the summary information, and has suggested ways in which this could be achieved.

*Was it reasonably practicable for the SQA to provide Mr Smith with the information he requested?*

20. The SQA argued that in order to produce the summary information requested by Mr Smith, its statistics team would have to create new programming code to interrogate the raw data across a number of datasets.
21. The SQA holds candidate data at individual entry level for each and every graded unit and course the candidate is registered for, and this is the personal data of the candidate. These entries are combined with the attainment data, which includes the band achieved, to produce the candidate certificates, and this is known as "live data".
22. The SQA's statistics team takes an extract of this "live data" twice annually in August and December and that becomes a statistical archive which is used to produce the national attainment statistics that it publishes. It explained that the data is spread across millions of candidate records and, for 2017 alone, this represents approximately 6.5 million records.
23. The SQA submitted that, because candidate achievement and the national attainment statistics are both reported at grade level, the SQA would require new programming code to produce band-to-grade progression tables for any subject. The SQA submitted that it would also have to carry out appropriate testing, create new templates, and provide supporting notes of the type displayed on its website for the grade-to-grade progression statistics. The SQA contended that it is not simply searching a spreadsheet; the SQA data for a single year is so big it cannot be opened in conventional spreadsheet software, but can only be interrogated in specialist programming software (SAS software).
24. The SQA argued that the work required to produce the summary information requested by Mr Smith is not simply a case of searching records, nor is it work that can be carried out by any member of SQA staff. It submitted that only the SQA statistics team has the skill, software and underlying data knowledge to produce such summary information.
25. The SQA was asked to provide detailed calculations estimating the cost of responding to the request. It explained that the categories of information are not in readily recognisable format,

e.g. each subject is represented by a code number; each centre (i.e. school) is represented by a code number; and each candidate is represented as a code number. As an example, the SQA noted that a higher mathematics record from 2017 will appear as course code "C747" and level "76", not as "Mathematics" and "Higher". It explained that SQA statistical attainment records are not structured in a way to track candidates across time, and records for single learners are not located together. Instead, they are spread across hundreds of attainment files and can only be linked by combining a number of unique identifiers.

26. The SQA argued that programming code has to be written to interrogate this raw data and get it into a recognisable format for easy reading by all. To do this, its statistics team must carry out the following actions (estimated time in brackets):
  - writing SAS code (3 days),
  - independent code audit (1 day),
  - exporting from SAS database to obtain CSV data drop (1/7 of a day),
  - develop tool to select data appropriately in excel (look-up tables, etc for "average user with excel software") (1 day),
  - develop templates for external user (to remove hidden raw data which would be personally identifiable) (0.5 day),
  - Insert output into appropriate templates and format for all 120+ subjects (1 day),
  - develop supporting notes to support the tables (1 day), and
  - send to editors for audit of text for publishing on the web (0.5 day).
27. The SQA explained that, as the staff member involved would either be on grade 7 or 8 (earning either £18.53 per hour, or £22.17 per hour), it has used the £15 per hour maximum hourly rate permitted by the Fees Regulation when calculating costs. It has estimated that the cost of producing the information requested by Mr Smith would be £959.70. The SQA reached this sum by calculating that it would take a member of its statistics team 9.14 days (7 hours a day) at £15 per hour.
28. The SQA submitted that the steps required to produce the summary tables, and the time required for each step, were minimal estimates based on the experience of its Statistics Team when producing over 20 sets of national progression tables in the past two years. The SQA asked the Commissioner to note that the work involved in producing the information requested by Mr Smith was not identical to that already completed by the SQA.
29. The SQA was asked if it had taken any steps to help Mr Smith to reduce the costs involved in providing the information he had asked for. In response, it explained that it had advised him that grade-to-grade progression statistics for 2015/16, along with previous years, would be published on its website in November 2017. The SQA also advised Mr Smith that grade-to-grade progression data for 2016/17 was scheduled to be published in April 2018. (The Commissioner notes that Mr Smith's request did not concern grade-to-grade progression data.)
30. The SQA acknowledged that it had failed to advise Mr Smith that the costs involved in creating band-to-grade progression tables would be the same regardless of the number of subjects, levels or years he asked for, and it apologised for this omission. The SQA submitted that the cost quoted to Mr Smith is based on the work required to write the

programming code to interrogate the raw data and this work would have to be carried out regardless of the number of subjects. The SQA contended that the preparatory work required to produce band-to-grade progression data for a single qualification is almost as involved as doing it for all qualifications within a single level, and that there is no way to reduce the cost of Mr Smith's request.

31. Section 12(1) of FOISA provides that authorities are not required to comply with requests where it is estimated that the cost of doing so would exceed £600 (the figure set out in the Fees Regulations). The Commissioner has examined the estimated costs put forward by the SQA along with its explanations as to why those costs apply.
32. Regardless of whether the Commissioner accepts the SAQ's estimated cost of completing each element of the work, he is satisfied that the work involved in providing Mr Smith with the information in the format he specified would exceed the £600 cost ceiling. He therefore concludes that it was not reasonably practicable for the SQA to provide Mr Smith with the summary information he requested. The Commissioner also finds that, under section 12(1) of FOISA, the SQA was not obliged to comply with Mr Smith's information request.
33. The Commissioner notes that, in its review outcome, the SQA gave Mr Smith notice, in terms of section 17(1) of FOISA, that it did not hold the information he had requested. For the avoidance of doubt, the Commissioner finds that the SQA does hold the information requested by Mr Smith (the raw data), but not in the format specified by Mr Smith. The SQA is not obliged to provide him with the information in the format he specified because it is not reasonably practicable for it to do so and because the cost of doing so would exceed £600. He finds that the SQA was wrong to advise Mr Smith that the information he asked for was not held, without making it clear that this applied only to the summaries and not the raw data.

## Decision

---

The Commissioner finds that the Scottish Qualifications Authority (the SQA) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Smith.

The Commissioner finds that, in terms of section 11(2) of FOISA, the SQA was not required to provide Mr Smith with information it held in the format he requested, because the cost of doing so meant that this was not reasonably practicable.

However, by wrongly notifying Mr Smith that it did not hold the information he had requested, the SQA failed to comply with Part 1 of FOISA.

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

## **Appeal**

---

Should either Mr Smith or the Scottish Qualifications Authority (SQA) 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**

**28 August 2018**

### 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.

...

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

#### 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.

...

#### 12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...



## **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.

...

## **Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004**

### **3 Projected costs**

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
- (a) no account shall be taken of costs incurred in determining-
    - (i) whether the authority holds the information specified in the request; or
    - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
  - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

### **5 Excessive cost - prescribed amount**

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**