



Decision Notice 054/2023

Sexual misconduct, complaints and discipline

Authority: University of Stirling

Case Ref: 202200080

Summary

The Applicant asked the Authority for information about complaints of sexual misconduct handled at “Ordinance 2”. The Authority provided the information requested, but the Applicant believed the Authority’s response was incomplete. The Commissioner investigated and found that the Authority had complied with FOISA in responding to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner)

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 9 December 2020, the Applicant made 19 information requests to the Authority. These requests sought information covering Ordinance 2 allegations involving sexual misconduct, complaints and discipline, how these had been handled by the Authority, the outcomes and any resulting action.
2. The Authority responded on 18 December 2020. It informed the Applicant that it was not required to comply with requests that were vexatious and refused the requests in terms of section 14(1) (Vexatious or repeated requests) of FOISA. It explained why it considered the Applicant’s requests to be vexatious.

3. On 21 December 2020, the Applicant wrote to the Authority, requesting a review of its decision as she disagreed that her requests were vexatious. The Applicant included arguments to support her view.
4. The Authority notified the Applicant of the outcome of its review on 21 January 2021, fully upholding its original decision. It informed the Applicant that it was not obliged to comply with a requirement for review where it considered the request, or the requirement for review, to be vexatious.
5. On 26 January 2021, the Applicant wrote to the Authority, commenting on her dissatisfaction with the outcome of its review. She offered to reduce the number of requests and asked the Authority to confirm how many it believed would be reasonable to answer.
6. The Authority responded on 3 February 2021, referring to its original response and review outcome. It reiterated the Applicant's right to appeal to the Commissioner if she remained dissatisfied with its review outcome.
7. On 11 February 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant explained the background to her requests, and her reasons for requesting the information. She argued that the Authority was not entitled to rely on section 14(1) of FOISA to refuse her requests and provided arguments to support her view.
8. On 14 October 2021, the Commissioner issued [Decision 159/2021](#)¹ finding that the Authority had partially complied with Part 1 of FOISA in responding to the Applicant's requests. The Commissioner found that requests 12-19 were vexatious in terms of section 14(1) of FOISA, and that the Authority was not obliged to comply with them. He found, however, that requests 1-11 were not vexatious in terms of section 14(1) of FOISA, and the Authority was therefore obliged to comply with them. This Decision required the Authority to provide the Applicant with a revised review outcome, otherwise than in terms of section 14(1) of FOISA, for requests 1-11.
9. The Authority notified the Applicant of its revised review outcome for requests 1-11 on 25 November 2021. It explained that it did not record the information asked for in requests 5-6 and provided information for each of the remaining requests.
10. On 19 January 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the Authority's revised review outcome for requests 10 and 11 because she believed that it was in the public interest to disclose the information requested and she did not accept the accuracy of the responses provided. (The Applicant believed that the Authority held further information that would indicate that the information provided for requests 10 and 11 was inaccurate.)
11. This Decision Notice will therefore only consider the Applicant's dissatisfaction with the Authority's revised review outcome for requests 10 and 11 which asked:

*Request 10 - For all upheld complaints at Ordinance 2, in how many cases, were final outcome letters sent to the reporting students confirming the reported student had committed the offences, prior to any disciplinary meetings having taken place?
a. 2016/17, b. 2017/18, c. 2018/19, d. Total*

¹ <https://www.itspublicknowledge.info/decision-1592021>

*Request 11 - For all upheld complaints at Ordinance 2, in how many cases, were final outcome letters sent to the reporting students confirming the reported student had committed the offences of sexual misconduct, prior to any disciplinary meetings having taken place?
a. 2016/17, b. 2017/18, c. 2018/19, d. Total*

Investigation

12. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
13. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These focussed on the searches carried out by the Authority to establish what information it held falling within the scope of requests 10 and 11.
14. The Applicant was also asked to provide additional clarification of some of the specific terms used in requests 10 and 11.
15. Both parties provided submissions to the Commissioner.

Commissioner's analysis and findings

16. The Commissioner has considered all the submissions made to him by the Applicant and the Authority.

The interpretation of the request and the information held by the Authority

17. For background, the responses provided by the Authority for requests 10 and 11, in its revised review outcome, were as follows:

None. Emails were sent to reporting students advising of an outcome of the process and noting that the disciplinary officer would consider the penalty after disciplinary meetings with various students (reporting, responding, witnesses) had taken place for the following however:

2016/17 (1), 2017/18 (7), 2018/19 (0), 2019/20 (0), total (8) (Request 10)

2016/17 (1), 2017/18 (2), 2018/19 (0), 2019/20 (0), total (3) (Request 11)

18. In her application to the Commissioner, the Applicant argued that these responses by the Authority to requests 10 and 11 were inaccurate and she believed that the Authority held information that would evidence this.
19. In terms of section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
20. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities 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.

While it may be relevant as part of this exercise to explore expectations about what information an authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

The Applicant's submissions

21. For background, the Applicant had expressed concern to the Authority about its actions and its complaint procedures in respect of a specific complaint. The Applicant provided documentation to the Commissioner that related to this specific instance. The Commissioner has fully considered these details, and the specific case referred to by the Applicant, but he has not set out this information in detail in this decision notice.
22. In support of her position that the Authority's responses to requests 10 and 11 were inaccurate, including her belief that it held further information that would evidence this, the Applicant outlined the following chain of events and provided documentation to support this:
 - Within the timeframe set out in the requests, the Authority had issued emails to three reporting students confirming the conclusion of the Authority's investigation. These confirmed the completion of the investigation and the conclusion reached by the Authority, they stated that a meeting of the Discipline Committee was being convened, that the Committee would meet to decide on the penalty to be applied, and that the Authority would update the reporting students again once this was known.
 - Also within the timeframe set out in the requests, the Authority wrote a letter to the responding student confirming the completion of the investigation, the findings reached, and the date when the Discipline Committee was to meet to consider the matter (given the Deputy Principal's assessment that the penalties available to him were insufficient in relation to the offences). The scheduled meeting was postponed, adjourned and then reconvened at a later date.
 - The responding student took the case to appeal which, the Applicant stated, was upheld, with the Authority confirming the outcome (i.e. the final conclusion) by letter.
23. In light of this, the Applicant argued that the Authority's responses to requests 10 and 11 could not be "none", but should be at least "one" as, in the specific case she had referred to and supplied documentation for, the Authority had written to reporting students confirming the outcome, prior to the responding student being invited to attend a disciplinary meeting.
24. The Applicant further argued that, in terms of the principles of natural justice, a person would not be expected to be treated as "guilty" of alleged offences before they attended a disciplinary meeting. In the Applicant's view, the role of the Discipline Committee was to hear the case of the reported student and give them the opportunity to put forward information to defend their position before a decision was made. This, the Applicant believed, explained why the Authority's answer to request 10 was inaccurate.
25. For the specific complaint that the Applicant provided documentation to the Commissioner about, the Applicant stated that the specific complaints against the responding student were not upheld, and the appeal against those specific complaints was upheld (i.e. overturned by the Appeal Board). She stressed that the relevant point here was that the Authority had written to reporting students, confirming the outcome of the investigation and that the case was being referred to the Discipline Committee to decide on the penalty, prior to the reported/responding student attending any disciplinary meeting. She believed this statement

was highly important as it communicated that this was the end of the process, given it was being referred to decide on the penalty.

26. The Applicant described the three processes in the Ordinance 2 Code of Student Discipline (the Code) in place at the relevant time:
- Investigation Procedure (paragraphs 29-33) - where a complaint has been made, which the Authority investigates and decides if it will be thrown out or referred to a disciplinary panel for further scrutiny.
 - Disciplinary Process (paragraphs 68 to 76) - where someone who has had a complaint upheld in the investigative stage then is referred to the Discipline Committee to review the case. The role of the Discipline Committee is not just to apply a penalty but rather to review the case, hear additional evidence which the reported student is permitted to put forward as well as any witnesses they wish to call.
 - Appeal Board (paragraphs 77 to 90) – where a student may appeal against the decision of the Discipline Committee in writing within 10 working days on any one of the following three grounds – the decision or penalty was made in excess of the jurisdiction conferred on the Authorised Officer by the Code; there was a defect in the procedures employed by the Authorised Officer such as to render the decision or penalty unfair; or the decision or penalty was unreasonable in terms of its impact on the student relative to the offence.
27. The Applicant submitted that the process could conclude at investigation stage if the complaint was not upheld and was thrown out. She stated that, if it was upheld (i.e. where a student was deemed to be guilty of the complaint) and the penalty could not be applied by the Authorised Officer, it would pass to the Discipline Committee to review the case, with the student permitted to submit further evidence, witnesses etc., so at this stage the case would continue to be live. The Applicant stated that the Discipline Committee had the power to throw out the case or apply penalties up to the level of expulsion. If a student then appealed the decision of the Discipline Committee, on one of the three grounds listed above, then the case would continue to be live until it was heard by an Appeal Board, to which the student could bring new evidence and witnesses. The Appeal Board would then make a final decision and issue final communication letters.
28. The Applicant provided further clarification of the terminology used in her request as follows:
- “Upheld complaints” – The Applicant explained that this was where a complaint had been made, it had been investigated by the Authorised Officer and Investigative Officer and they had decided to uphold the complaint.
 - “Final outcome letters” – The Applicant submitted she would not have expected these final outcome letters (referred to in paragraph 22 above) to be sent to reporting students at this stage (following the investigation where the complaints were upheld) because the case was still live. As both the Discipline Committee and the Appeal Board could still overturn the views of the Authorised Officer, following the investigation where the complaints were upheld, then writing out to the reporting students at this stage (while the case was still live and was being referred to the next stage in the process) was wholly inappropriate and was also illegal as it breached data protection rights.

- “Any disciplinary meetings” – The Applicant clarified that this solely captured the meetings of the Discipline Committee.

The Authority’s submissions

29. In its submissions to the Commissioner, the Authority noted that requests 10 and 11 referred to “disciplinary meetings”. It submitted that both the current version of the Code, and the version in place during the time period covered by the requests, clearly used the term “disciplinary meeting” to cover meetings with reporting students, responding students and witnesses, which were different from meetings of the Discipline Committee and the Appeal Board.
30. The Authority noted that the Applicant had, in her application to the Commissioner, referred to previous correspondence it had issued (as specified above), namely:
 - three emails sent to reporting students confirming the completion of the investigation and the conclusion reached by the Authority, and advising that a meeting of the Discipline Committee was to be convened to decide on the penalty to be applied;
 - a letter to the responding student confirming the completion of the investigation, the findings reached, and the date when the Discipline Committee was to meet to consider the matter, and
 - a letter confirming the outcome of the Appeal Board following its meeting.
31. The Authority argued that none of these communications referred to “disciplinary meetings”, rather they all referred to the Discipline Committee or the Appeal Board.
32. The Authority submitted that “disciplinary meetings” could relate to any meeting that takes place as part of a process of student disciplinary action, including as part of an investigation and a meeting of a Discipline Committee or Appeal Board. It confirmed that “disciplinary meetings” captured interviews with reporting students, responding students and witnesses during the investigation stage, as well as meetings of the Discipline Committee or Appeal Board.
33. The Authority referred the Commissioner to the sections of the Code (both the version that was in place during the time period covered by the requests, and the current version) that discussed disciplinary meetings which occurred prior to meetings of the Discipline Committee or Appeal Board. It submitted that, in the earlier version, the Investigation Procedure (paragraphs 29-33) included reference (at paragraph 30) to “interviewing complainants”, and these interview meetings would fall within the scope of “disciplinary meetings”.
34. The Authority confirmed that a definition of “disciplinary meetings” was not currently documented.
35. In the Authority’s view, it had issued correct responses of “none” (to both requests) on the basis that no reporting students had ever been sent any communications regarding the outcome of a disciplinary process prior to any disciplinary meetings having taken place. This was because meetings had always taken place with reporting students, responding students and/or witnesses.
36. The Authority submitted that it was mindful of its responsibilities under section 15 (Duty to provide advice and assistance) of FOISA. In light of this, in addition to providing correct responses of “none”, it had also provided the Applicant with additional narrative and data (for each of the time periods stated in the request) in respect of cases where “...*emails were sent*”

to reporting students advising of an outcome of the process and noting that the disciplinary officer would consider the penalty after disciplinary meetings with various students (reporting, responding, witnesses) had taken place however.” The Authority explained that this related to cases in which a communication had been sent to a reporting student regarding an outcome of the process (but at a stage when the disciplinary officer was still to consider the penalty) which would be prior to any meeting of the Discipline Committee or Appeal Board taking place. In the Authority’s view, it had not only correctly answered the requests, but also the questions that, in its view, the Applicant believed she had asked.

37. The Authority submitted that its response had sought to provide clarification that there were a range of “disciplinary meetings”: in addition to meetings of the Discipline Committee or Appeal Board, there were also meetings with students and witnesses that formed part of an investigation, and which varied in purpose and scope compared to Discipline Committee or Appeal Board meetings.
38. The Authority believed that, by focussing on this element of its response to her request (i.e. its responses of “none”), the Applicant did not appear to have considered the additional narrative and data supplied to her, i.e. the figures for the number of times reporting students were advised of the outcome, prior to the disciplinary officer having considered the penalty. The Authority submitted that this action corresponded with paragraphs 38 and 47 of the version of Code in place during the time period covered by the requests. In the Authority’s view, the Applicant appeared to have disregarded this additional information provided to her.
39. The Authority noted the Applicant’s concern, in her application to the Commissioner “...*if this custom and practice carries on*”. It submitted that the figures it had provided demonstrated that no communications about the outcome of the process had been sent to reporting students *before* the penalty had been considered since 2017/18, due to a change in corresponding procedures.
40. In its submissions, the Authority explained that, following the issue of Decision 159/2021 on 14 October 2021, its Senior Academic Governance Officer was asked to provide a response to requests 1-11. Subsequently, on 3 November 2021, a meeting was held to discuss the requested information, including the relevant Authority process which would have a bearing on providing a response to requests 10 and 11.
41. In considering the submissions to be provided to the Commissioner in this case, the Authority took the view that the difference between “disciplinary meetings” and “Discipline Committee” had a bearing on the Applicant’s dissatisfaction with the responses it had provided to requests 10 and 11. In doing so, the Authority considered it was important to explain that:
 - the answers to these requests were “none” as no reporting students had ever been sent any communications regarding the outcome of a disciplinary process prior to “any disciplinary meetings having taken place”;
 - disciplinary meetings included meetings with reporting students, responding students and witnesses, that form part of an investigation, as well as meetings of the Student Discipline Committee or Student Discipline Appeal Board;
 - it would therefore be impossible for an outcome to be sent before “any” disciplinary meetings had taken place;
 - it had not simply provided the response of “none” and had not refused to provide a response, and

- it had provided narrative and data to set out the cases in which a communication had been sent to a reporting student regarding an outcome of the process, but at a stage when the disciplinary officer was still to consider a penalty.

The Commissioner's view

42. The Commissioner has carefully considered all of the relevant submissions from both parties, along with the information provided by the Authority to the Applicant in response to requests 10 and 11.
43. The Commissioner has also taken regard of the background to the Applicant's request. The Commissioner considers it is important to highlight that he has no locus to comment on, or issue a finding on, any of the following matters, as these do not fall within his remit:
- (i) the accuracy of information held by the Authority falling within the scope of the request;
 - (ii) any complaints made to and/or investigations carried out by other bodies, including the outcomes of any such complaints and/or investigations, and
 - (iii) how the Authority carries out or complies with its policies and procedures in relation to student discipline.
44. The Commissioner therefore considers that, in this case, he must determine whether the Authority provided the Applicant with all of the information that it held, falling within the scope of requests 10 and 11, which the Applicant was entitled to receive, subject to any provisions or exemptions in FOISA. He notes that the Authority has not submitted that any provision or exemption in FOISA applies to request 10 or 11 as a reason not to provide the information requested, rather it has submitted that it fully responded to requests 10 and 11.
45. It is therefore clear to the Commissioner that there is a different interpretation of these two requests by both parties, specifically the information the Applicant expected to receive in response to her requests, and the actual information provided by the Authority based on its interpretation of those requests. He must therefore also decide whether the Authority took a reasonable interpretation of the Applicant's requests.
46. From the submissions provided by the Applicant, it is evident to the Commissioner that she believed she asked for data relating to:
- (i) cases where allegations had been upheld following an investigation ("upheld complaints");
 - (ii) communications issued, confirming the outcome of the investigation ("final outcome letters"), and
 - (iii) cases where both of these occurred prior to any meeting of the Discipline Committee ("any disciplinary meetings").
47. From the submissions provided by the Authority, it is equally evident to the Commissioner that the Authority believed that the Applicant had asked for data relating to:
- (i) cases where allegations had been upheld following an investigation ("upheld complaints");
 - (ii) communications issued, confirming the outcome of the investigation ("final outcome letters"), and

- (iii) cases where both of these occurred prior to any meeting having taken place with reporting students, responding students and/or witnesses, or prior to any meeting of the Discipline Committee or Appeal Board (“any disciplinary meetings”).
48. As such, the interpretation of “any disciplinary meetings” appears to be where the difference in interpretation lies.
49. The Commissioner has considered the information in the Code (both the version that was in place during the time period covered by the requests, and the current version).
50. In the earlier version, the Commissioner notes that there is no clear definition of “disciplinary meeting” listed in the “Definitions” section of the Code. He also notes that the Code uses the term “disciplinary meeting” on only two occasions, both of which are contained within the “Disciplinary Process” section. This, in the Commissioner’s view, would appear to align with the arguments put forward by the Applicant.
51. The Commissioner also notes that (in that earlier version), paragraph 30(iii) of the “Investigation Procedure” section explains that the Investigative Officer should proceed by “... *interviewing complainants, witnesses and the person(s) alleged to have carried out the offence...*”. The Commissioner recognises that such interviews, although not described as “disciplinary meetings”, form part of the overall disciplinary process under the Code. To that extent, the Commissioner’s considers that this would appear to align with the arguments put forward by the Authority.
52. Looking at the current version of the Code, the Commissioner notes that, again, there is no definition of “disciplinary meeting” listed in the “Definitions” section. However, this version appears to indicate that “disciplinary meetings” take place at various stages in the process: for example, paragraph 50 states that “... *any electronic recording of disciplinary meetings will not be admissible to the investigation and they will not form part of the disciplinary process or decision-making...*”. This suggests, to the Commissioner, that disciplinary meetings can take place prior to meetings of the Discipline Committee (so on that basis would therefore not be limited to meetings of the Discipline Committee). While the Commissioner acknowledges that this, again, appears to support the Authority’s interpretation of “disciplinary meetings”, as set out in its submissions, he also recognises that this version of the Code was not in place at the time when the Authority considered the specific allegations that the Applicant has referred to.
53. The Commissioner also notes that much of the Applicant’s dissatisfaction in this case appears to stem from the Authority’s decision to inform reporting students of the outcome of the investigation into the specific case that she has referred to, before it was considered by the Authority’s Discipline Committee. Whether or not this course of action did, or did not, accord with the Authority’s policies and procedures, or indeed the terms of the Code in place at the material time, this is not a matter on which the Commissioner has any locus to comment, as rehearsed above.
54. The Commissioner notes that the Authority’s primary responses to requests 10 and 11 were “none”. Taking the Authority’s interpretation of “any disciplinary meeting”, the Commissioner accepts this would be a reasonable response, in light of the Authority’s explanation that, in any investigation into student conduct, meetings would always take place with the parties described in its submissions (for example, interviews with reporting students, responding students and witnesses). As such, he accepts that, on the balance of probabilities, the Authority would hold no information falling within the scope of these two requests, using that interpretation.

55. He also recognises that, using the Applicant's interpretation of "any disciplinary meeting" (i.e. solely meetings of the Discipline Committee), the information held by the Authority and captured by these two requests would, in all likelihood, be different, in light of the evidence provided by the Applicant in her submissions.
56. The Commissioner notes that, in addition to providing responses of "none" to requests 10 and 11, the Authority provided additional narrative and data relating to cases in which allegations had been upheld following an investigation, where communications had been issued after disciplinary meetings had taken place with reporting students, responding students and witnesses. These communications (referred to in paragraph 22 above) confirmed the outcome of the investigation, and advised that the disciplinary officer would consider the penalty.
57. In the Commissioner's view, this additional narrative and data appear to align with the Applicant's interpretation of the information she expected to receive in response to requests 10 and 11, i.e. where cases had been upheld following an investigation, and the outcome of the investigation had been communicated prior to any meeting of the Discipline Committee.
58. The Commissioner notes that, in providing this additional narrative, the Authority used the term "disciplinary meetings" which, he considers, may (to some extent) have contributed to the confusion. In his view, had the Authority described these meetings more fully (e.g. interviews with students and witnesses during the investigation process), or confirmed that these communications had been issued prior to meetings of the Discipline Committee, this may have given full clarification of the additional information being provided. Notwithstanding this, the Commissioner recognises that, had the Authority done so, this may not have prevented the Applicant making her application, given that the Authority's primary responses to requests 10 and 11 were "none".
59. The Commissioner has given this case full and thorough consideration. He can find no reason for believing the Authority holds any further recorded information, falling within the scope of the Applicant's requests 10 and 11, to that which it has already provided to the Applicant. In his view, he considers that, in the absence of anything more specific, the Authority took a reasonable interpretation of the Applicant's request as it stood. He also acknowledges that, in providing the additional narrative and data, the Authority recognised the information the Applicant's request was intended to capture.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information requests made by the Applicant.

Appeal

Should either the Applicant or the Authority 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

31 May 2023

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).