

# Decision Notice



Decision 189/2010 Mr Jonathan Byrne-Leitch and the University of Edinburgh

Scoring matrix and compliance with timescales

Reference No: 201001485

Decision Date: 17 November 2010

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Byrne-Leitch requested from the University of Edinburgh (the University) the scoring matrix used to determine the success of applications for admission. Following a request for review, the University provided an explanation of how points were awarded to applicants. Mr Byrne-Leitch was dissatisfied with this response and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that while the University did not hold a scoring matrix, it had failed to provide Mr Byrne-Leitch with a notice meeting the requirements of section 17(1) of FOISA.

The University was also found to have failed to respond to Mr Byrne-Leitch's request within the statutory timescales laid down in section 10(1) of FOISA.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (4) (General entitlement); 10(1) (Time for compliance) and 17(1) (Notice that information is not held)

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

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1. On 21 December 2009, Mr Byrne-Leitch, who had been in correspondence with the University regarding his application for admission, wrote to the University requesting the scoring matrix used to assess applications.
2. Mr Byrne-Leitch did not receive a response to his request and on 24 February 2010 wrote to the University, requesting a review on the basis that it had failed to respond.
3. The University responded to Mr Byrne-Leitch's request on 12 March 2010. It provided him with an explanation of how points were awarded to each applicant, with specific reference to points he had raised earlier.



4. On 15 March 2010, the University responded to Mr Byrne-Leitch's request for review, referring him to its letter of 12 March 2010.
5. On 16 March 2010, Mr Byrne-Leith requested further information from the University and drew its attention to the fact that he had not been supplied with the scoring matrix he had requested.
6. On 16 April 2010, in a response to Mr Byrne-Leitch's request of 16 March 2010, the University explained that it did not hold a formal scoring matrix.
7. On 22 July 2010, Mr Byrne-Leitch wrote to the Commissioner, stating that he was dissatisfied with the outcome of the University's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr Byrne-Leitch 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.
9. While Mr Byrne-Leitch provided the Commissioner with copies of various communications with the University, some of which related to other requests for information, his application could be validated only in respect of his request of 21 December 2009 (and therefore only in that respect can the Commissioner consider it).

## Investigation

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10. On 8 September 2010, the University was notified in writing that an application had been received from Mr Byrne-Leitch and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). In particular, the University was also asked to provide the Commissioner with any information withheld from Mr Byrne-Leitch and to provide explanations as to why it had dealt with his request for information as it did.
11. The University responded on 21 October 2010, indicating that it did not hold a scoring matrix and offering an explanation of the way in which it had dealt with Mr Byrne-Leitch's request for information. The University also accepted that it had not responded to the request within the time allowed by section 10(1) of FOISA, for which it offered an apology.
12. The relevant submissions obtained from Mr Byrne-Leitch and the University will be considered fully in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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

### Section 17(1) – Information not held

14. Section 17(1) of FOISA states that where a Scottish public authority receives a request for information which it does not hold, it must, in accordance with section 17(1) of FOISA, give the applicant notice in writing that it does not hold the information.
15. During the investigation, the University informed the Commissioner that it did not hold a formal scoring matrix. It submitted that its method of scoring applications for admission had been explained to Mr Byrne-Leitch at length in the letter of 12 March 2010 responding to his request for information, on the understanding that this was the information he required.
16. The Commissioner notes that it was not until 16 April 2010, in the course of a response to a subsequent request for information, that the University informed Mr Byrne-Leitch that it did not hold a formal scoring matrix, providing other information it held in relation to the scoring of applications.
17. Having considered the submissions received from the University, along with its overall handling of the request, the Commissioner is satisfied that it does not (and did not at the time it received Mr Byrne-Leitch's request) hold a scoring matrix as requested by Mr Byrne-Leitch.
18. The Commissioner notes, however, that while the University believed the response of 12 March 2010 fully answered Mr Byrne-Leitch's request, it failed to inform him that it did not hold a scoring matrix. While the explanations provided were no doubt relevant to the subject matter of the request, the Commissioner considers that the University should have recognised and addressed his reference to a specific form of scoring tool. In not doing so, the Commissioner finds that the Council failed to provide Mr Byrne-Leitch with a notice meeting the requirements of section 17(1) of FOISA.

### Section 10(1) – Time for compliance

19. The Commissioner notes, as the University has acknowledged, that in responding to Mr Byrne-Leitch's request for information the University failed to meet certain requirements imposed by FOISA.
20. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.



21. Given that the University did not respond to Mr Byrne-Leitch's request of 21 December 2009 until 12 March 2010, the Commissioner finds that it failed to respond to the request within the 20 working days allowed by section 10(1) of FOISA.

## DECISION

While satisfied that the University of Edinburgh (the University) did not hold the information requested by Mr Byrne-Leitch, the Commissioner finds that the University failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mr Byrne-Leitch's information request, by failing to respond to the request within the period allowed by section 10(1) of FOISA and by not giving Mr Byrne-Leitch a notice meeting the requirements of section 17(1) of FOISA.

## Appeal

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Should either Mr Byrne-Leitch or the University of Edinburgh 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.

**Margaret Keyse**  
**Head of Enforcement**  
**17 November 2010**



## Appendix

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### 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.

...

##### 10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

...

##### 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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