

# Decision Notice

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## Decision 017/2019: The Applicant and the University of Aberdeen

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### Configuration of bathroom facilities

Reference No: 201801573

Decision Date: 11 February 2019



Scottish Information  
Commissioner

## Summary

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The University was asked about the configuration of the bathroom facilities on its campuses. After investigation, the Commissioner accepted that the University did not hold the information requested.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections (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

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1. On 25 July 2018, the Applicant made a request for information to the University of Aberdeen (the University). The information requested was:
  1. The number and location by building of any single-occupancy gender neutral / unisex bathroom facilities on Aberdeen campuses (not including disabled / accessible facilities).
  2. The number and location by building of any single-occupancy men's bathroom facilities on Aberdeen campuses.
  3. The number and location by building of any single-occupancy women's bathroom facilities on Aberdeen campuses.
  4. The number and location by building of any multiple-occupancy gender neutral / unisex bathroom facilities on Aberdeen campuses.
  5. The number and location by building of any multiple-occupancy men's bathroom facilities on Aberdeen campuses.
  6. The number and location by building of any multiple-occupancy women's bathroom facilities on Aberdeen campuses.
  7. The number and location by building of any gender neutral / unisex disabled bathroom facilities on Aberdeen campuses.
  8. The number and location by building of any gendered (men's or women's) disabled bathroom facilities on Aberdeen campuses.
2. The University responded on 13 August 2018, giving notice under section 17 of FOISA that it did not hold the requested information. The University explained that it had recently committed to produce a list of gender neutral toilets by the start of the academic year (September 2018).
3. On 13 August 2018, the Applicant emailed the University, requesting a review of its response. The Applicant considered that the University was likely to hold blueprints, architectural plans or floor plans for all of the buildings it has on each campus and most of

the information could be compiled from these sources. The Applicant asked if the request had been considered properly and each part considered individually.

4. The University notified the Applicant of the outcome of its review on 3 September 2018. It upheld its previous response without amendment.
5. On 21 September 2019, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant complained that the request had not been considered on a point-by-point manner and had been rejected outright. The Applicant considered that the information must be held for the University to be certified under the Athena SWAN Charter<sup>1</sup> and the information should be held on architectural plans for any of the University's buildings.

## Investigation

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6. 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.
7. On 1 November 2018, the University was notified in writing that the Applicant had made a valid application. The case was then allocated to an investigating officer.
8. On 19 November 2018, the investigating officer asked the Applicant if further evidence could be provided that would substantiate the point made in the application, that the University must hold information on the configuration of bathroom facilities. The Applicant acknowledged that there was nothing within the Athena SWAN Charter that required the University to record details about gender neutral toilets. However, the Applicant considered that the University must hold the requested information in cleaning rotas and logs held by in-house cleaning services.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The University was invited to comment on this application and to answer specific questions. It was asked to provide details of the searches it had conducted, to explain why it did not hold the requested information, and to answer some of the points raised by the Applicant. The University responded on 18 December 2018.
10. On 9 January 2019, the University disclosed a list of some gender neutral toilets to the Applicant. The University explained that it had only recently gathered this information; the list was not complete and would not be completed due to the amount of time that would be required.
11. The University entered into dialogue with the Commissioner's office with regard to various aspects of its submissions, including the information contained within floor plans, internal correspondence regarding the request and information held by the cleaning services team. The University's submissions will be considered below.

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<sup>1</sup> <https://www.ecu.ac.uk/equality-charters/athena-swan/athena-swan-members/>

## Commissioner's analysis and findings

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12. 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 University. He is satisfied that no matter of relevance has been overlooked.

### **Section 17(1) - Notice that information is not held**

13. 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. This is subject to qualifications, but these are not applicable here. If no such information is held by the authority, section 17(1) of FOISA requires the authority to give the applicant notice in writing to that effect.
14. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.

#### *The University's submissions*

15. The University confirmed that, at the date of the request, it did not hold the requested information.
16. The University explained that, on receipt of the request, the Estates department reviewed a selection of building floor plans and blueprints to see how information about toilets was recorded. The University submitted that these plans are not held in any form of searchable database and an individual plan of each floor of each building would need to be searched and reviewed [for the information].
17. The University stated that it has 90 major buildings (academic, non-academic, residential). From its review of the plans, it established that there was not sufficiently detailed information to answer all the questions posed: the plans did not provide all the information required and there were inaccuracies and / or errors in some of the plans. From this assessment, the University concluded that the only way to have a definitive list was to survey all buildings.
18. The University explained that it has now completed a partial survey of its buildings, specifically into availability of gender-neutral toilets and not about the occupancy of the facilities. It provided the investigating officer with a copy of the information it had compiled from the partial survey and also disclosed it to the Applicant on 9 January 2019.
19. The University stated that compiling a list of its gender neutral toilets was more time consuming than first thought. It had taken approximately 65 hours of staff time to survey 43 of the University's 90 buildings. The University stated that, due to the time involved and the resulting abstraction of staff from other work, no further work would be undertaken at the current time. The University provided the Commissioner with a floor plan of one of its buildings to show the detail available.
20. The University was asked whether it recorded information about its disabled facilities. In response, the University provided copies of a further three floor plans and confirmed that it did not hold the information on disabled facilities in the detail requested by the Applicant.
21. The University stated that the cleaning rotas do not hold the information requested by the Applicant. The University provided a copy of the Cleaning Service Guide, which sets out the

level of service provided by the Cleaning Team (part of Facilities Services within the University). This did not contain the information requested by the Applicant.

### *The Commissioner's findings*

22. Having carried out an investigation, the Commissioner has concluded that there is no requirement for the University to hold or record information about the configuration of bathroom facilities. Although it was originally suggested that the Athena SWAN Charter requires members to hold information about gender neutral toilets, the Applicant confirmed during the investigation that while gender neutral toilets are taken into consideration in relation to the certifying members to the Athena SWAN Charter, they are not a requirement.
23. The Commissioner notes that the University provided the Applicant with the list of gender neutral toilets that it had recently compiled. Having considered this information, the Commissioner is satisfied that this list was created after receiving the Applicant's request and the University did not hold this information at the date of the request.
24. Having considered the floor plans provided by the University in detail, the Commissioner notes that toilet facilities are clearly indicated on the floor plans and in a few instances the plans show whether the toilet facilities are for female or male occupancy. However, beyond this information, there is no indication as to the number of actual toilets (single or multiple occupancy). The Commissioner considers that the floor plans do not contain the information requested.
25. One of the floor plans provided did indicate a disabled toilet, but beyond this fact, none of the specific information requested by the Applicant about disabled facilities, such as gender or single / multiple occupancy was recorded on the floor plan.
26. In relation to information held by the University's Cleaning Team, the Commissioner notes that the cleaning services are provided in-house and the service-level statement does not contain any specific numbers about toilets or the locations and/or configuration of bathroom facilities.
27. Having considered all the relevant submissions and the detailed responses provided by the University to the range of questions raised during the investigation, the Commissioner is satisfied that the University does not hold the information requested by the Applicant and correctly gave notice of this, as required by section 17(1) of FOISA.

## **Decision**

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

## **Appeal**

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Should either the Applicant or the University of Aberdeen 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**

**11 February 2019**

### 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.

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#### 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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