The Freedom of Information (Scotland) Act 2002 and Quality

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Adopted: November 2004

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1. Public Information on Quality

1.1 A major plank of the revised “lighter touch” system for enhancement-led quality assessment of institutions was the requirement that they
(a) should have available for the purposes of internal review, and as part of the evidence base for QAA Institutional Review, a range of information on Institutional Context, Student Admission Progression & Completion, and Internal Procedures for Assuring Academic Quality & Standards; and
(b) should also publish a range of Quantitative & Qualitative Data, including their actual & benchmark performance in the annually-published national Performance Indicators in Higher Education figures relating to progression after first year, projected non-completion, and employability.

Fuller details of these requirements are to be found in Annex A to SHEFC Circular Letters HE/19/03 and HE/18/04.

1.2 The Funding Council has recently been reviewing this Guidance, in the light in particular of the Teaching Quality Information (TQI) to be provided by institutions and produced by
HESA for inclusion on the HERO web-site [HEFCE Circular 2003/51 refers], with a target date for implementation across the UK (currently) of 30 June 2005.

1.3 SHEFC is continuing to liaise with key partners including in particular, Universities Scotland (US), HERO and HESA, and also with stakeholder representatives; and once the US Learning & Teaching Committee has concluded its work in developing national guidelines on the three outstanding areas of programme specifications, progression data and entry qualifications, the Council will issue further guidance in late autumn 2004.

1.4 In the meantime, common draft or model texts/templates have been provided by SHEFC for inclusion on the HERO Web site, describing Sector Level Quality Systems, and for individual institutions to describe their Usage of External Examiners’ Reports, and Teaching & Learning Strategies [where institutions elect to produce these]. Institutions have also been asked to nominate Senior Management, Main Information, and Technical contacts, for the HERO TQI project - a seminar on which took place in Glasgow in early September 2004.

1.5 Institutions will wish to take account of these requirements in their FOI Publication Schemes, and in particular may wish to cross-reference to the HEFCE PI and HERO Web Pages. It is suggested that FOI Officers will also wish to identify and liaise with their nominated TQI contacts, as well as with their HESA Student Record Correspondents since the quantitative data to be published on the HERO Portal will be produced by HESA and be signed off as part of the annual Student Record data submission process.

1.6 Samples of the information to which the University of Aberdeen has given access under its Publication Scheme can be found in Section 17(2) of the Scheme, or directly at: http://cmis.admin.abdn.ac.uk:85/crystal/enterprise/ITRData.htm

2. References

1.1 Because these constitute ‘personal data’ they will be exempt from FOISA as such. The position remains as previously under the Data Protection Act – references given are exempt from Subject Access, but references received are not (subject to the data protection rights of the provider). However, institutions will need to take into account in this, and other “personal file”, contexts the implications of the extension under the FOI of data protection law to unstructured manual data sets.

3. Information relating to handling of staff and students complaints, appeals, students’ progress, etc

3.1 Information relating to the discipline or academic progress of, or an academic appeal made by, a named student or member of staff will normally be regarded as part of a process which leads to a decision on her/him as an individual. They will thus constitute “personal data”, and be normally exempt from FOI (though the public interest might outweigh this if, for example, action was taken against a senior officer of the institution for breach of her/his official duties). The proceedings of Fitness to Practice Committees are also specifically exempted under Section 34(3) of FOISA. Whether papers relating to a non-academic complaint would be disclosable will depend on whether they relate to the treatment received or given out by a named individual, where data protection rights would apply, or to the standard of a service (eg catering or library services) more generally, where FOI would apply. In some information may be disclosable subject to redaction of personal references.

3.2 Statistics on numbers of cases heard, and their outcomes, is however disclosable under FOI.

3.3 Many institutions will have included it already in their Publication Schemes.
4. External Examiners’ Reports

4.1 A distinction needs to be drawn between reports on individual research postgraduates – which are likely to be deemed personal data; and those on taught programmes, whether at undergraduate or postgraduate level, which are not.

4.2 Unlike in England, institutions will not be required to publish either reports themselves, nor summaries of them, as part of their published Information on Quality. They are, however, part of the information that institutions are expected by SHEFC to hold and make use of for purposes of internal quality assurance. It is therefore likely that they would have to be made available (subject to removal of any personal references) in response to a Section 1 request, unless, in relation to specific aspects, exemption could be claimed on the basis of expectation of confidentiality (Section 36.2).

4.3 Similar considerations apply to the content of Internal Teaching Reviews.

5. Examination Scripts and Other Assessed Work

5.1 When students submit work for assessment, it is reasonable to assume that they do so in an expectation that it will be confidential between themselves, the staff assessing it, and those involved in the process of Internal Teaching Review or Enhancement-Led Institutional Review (ELIR), or any related Academic Appeal. This applies both to summative assessments, which contribute towards the result of a course or programme, and to formative assessments, which do not and are normally returned to the student. A case can therefore be made that all assessments, including those retained in anonymous form for ITR/ELIR, fall within the Confidentiality exemption in Section 36 (2) of FOISA. Where identifiable assessed work is to be retained and made available in a publicly-available form, eg theses submitted for research degrees or, in some cases, undergraduate Honours or postgraduate taught dissertations, then students should be made aware of this, and where appropriate given an opportunity to opt out, before it is submitted.

5.2 It is also clear that comments made by examiners on scripts continue to constitute “personal data”; and that personal references made to living third parties by candidates within scripts are likewise, even though under Schedule 7 of the DP Act they are exempt from Subject Access.

5.3 Insofar as identifiable examination scripts themselves are concerned (and other in-course work which as counts towards the final summative assessment for a course or programme, and is therefore retained by institutions for subsequent scrutiny by examiners), it is believed that, as well as the general exemption based on an expectation of confidentiality, these can additionally be regarded as constituting part of a process which leads to the forming of an academic judgement upon a student. They will therefore be regarded as “personal data” and be exempt from FOI on that ground also. This is by analogy with the guidance given by the UK Information Commissioner post-Durant on a house valuation undertaken to determine an individual’s net financial worth.

5.4 A personal data exemption would however not apply to formative assessed work, undertaken by students during a course but not contributing towards final assessment of it. In almost all cases, however, such work will have been returned to the student: it would not therefore constitute information “held” by the institution in any event. Nor would it apply to work retained in anonymous form for ITR/ELIR, which someone might request in support of an academic appeal. Both of these however would still be covered by the general expectation of confidentiality exemption contained in Section 36(2).