



E : ceu@gov.scot

Linda Denton
request-848418-47e7e589@whatdotheyknow.com

Our Reference: 202200291169

27 April 2022

Dear Ms Denton,

REQUEST UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (FOISA)

Thank you for your request dated 29 March 2022 under the Freedom of Information (Scotland) Act 2002 (FOISA).

Your request

You asked the following:

1. Did the Scottish Government receive a copy of this Complaint? (as reported); if so, and as this complaint was raised under the terms of the Public Interest Disclosure Act 1998, please provide a copy of the complaint.
2. The article refers to the “bullying, intimidation, harassment, theft and fraud over many years” within its ranks (in the College)
 - a. Was the Scottish Government aware of these allegations?
 - b. Has the Scottish Government received any Whistleblowing Complaints related to SLC?
 - c. Has the Scottish Government been in receipt of any similar formal complaints from SLC staff?
 - d. Has the Scottish Government been in receipt of any similar formal complaints from other colleges across Scotland?
 - e. What action did the Scottish Government take in response to these Complaints?
3. What action will the Scottish Government take to investigate the recent complaint?

Response to your request



1. The Scottish Government has received the whistleblowing complaint referred to in the Daily Record article of 17 March.

An exemption under section 38(1)(b) of FOISA applies to all of the information you have requested because it is personal data of a third party, and disclosure would risk the identification of the individual concerned, in contravention of the data protection principles in Article 5(1) of the General Data Protection Regulation, and section 34(1) of the Data Protection Act 2018. This exemption is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemption.

2.

a. The Scottish Government has been made aware of these allegations.

b. The Scottish Government has received two whistleblowing communications related to South Lanarkshire College (SLC).

c. The Scottish Government has received one whistleblowing communication from an employee at SLC, in addition to similar complaints from staff at SLC.

d. The Scottish Government has received similar formal complaints from other colleges across Scotland.

e. Colleges operate independently of the Scottish Government, and therefore are responsible for responding to complaints from staff. If a college staff member is not satisfied with the outcome of their complaint, they can raise the issue with the Scottish Public Services Ombudsman (SPSO), whose remit includes the higher and further education sectors. The Ombudsman will determine, in line with the terms of the Scottish Public Services Ombudsman Act 2002, which complaints can be investigated and will make decisions on a case-by-case basis: <https://www.spsso.org.uk/spsso>.

3. Regarding the whistleblowing complaint, in terms of section 43E of the Employment Rights Act 1996, a qualifying disclosure may be made to a minister of the Crown where the worker's employer (SLC) is a body any of whose members are appointed by Ministers of the Crown. As SLC is not a regional college, the board is appointed by the regional strategic body and such appointments are not approved or made by Ministers. A person may make a qualifying disclosure to a prescribed person.

The Scottish Government is not a prescribed person. It is expected that a person who makes a qualifying disclosure to a prescribed person will identify the appropriate body to whom to disclose an alleged failure, as the body with the regulatory remit or powers to remedy or address the failure. The decision on whether a person has made a qualifying disclosure is a matter for an employment tribunal, not the Scottish Government or Ministers.

We do not consider that the whistleblowing disclosure sent to the Scottish Government amounts to a qualifying disclosure in terms of the Employment Rights Act 1996. In any event, qualifying disclosures under the Act do not require the Scottish Government or Scottish Ministers to investigate or take action, however they do provide individuals concerned with protection from detriment from the date of the disclosure.

Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to DirectorofAdvancedLearningandScience@gov.scot. Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish

Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jack Ford', written in a cursive style.

Jack Ford
HES : Higher Education Governance