

Decision Notice



Decision 055/2010 Mr X and South Lanarkshire Council

Whether request was vexatious

Reference No: 200902097
Decision Date: 7 April 2010

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Scottish Information Commissioner

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Summary

Mr X requested from South Lanarkshire Council (the Council) copies of certain records. The Council responded by refusing to comply with Mr X's request on the grounds that it was vexatious in terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mr X remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council was justified in treating Mr X's request as vexatious and therefore was not obliged to comply with his request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement) and 14(1) (Vexatious or repeated requests)

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

1. On 20 October 2009, Mr X wrote to the Council requesting the following information:

...copies of discussions where, "The Nursery people have gone out of their way meet with us regularly to keep us up to date with any issues." (My emphasis added)

In his request, Mr X added:

You also seem to have been provided with a copy of discussions and minutes of at least one [named] residents meeting before me and before the distribution of minutes for a review and comment.

May I also see information/records of how, when and by whom that information was provided and a copy of all of the relevant information. It should include any and all information/records with [named individual and company] and relevant others.



2. The Council responded on 30 October 2009, giving Mr X notice that it was refusing to comply with his requests because it viewed them as vexatious in terms of section 14(1) of FOISA.
3. In support of its view, the Council asserted that for some time it had been having difficulty in understanding what information Mr X wanted, because of the language he used. The Council added that despite its attempts at clarification and assistance, it now believed that he was using requests for information under FOISA to put forward his own views and suspicions rather than as an opportunity to seek information. The Council further stated that it considered the requests to form part of a series of requests which imposed a significant burden on it and which, based on previous correspondence, seemed to be designed to cause disruption or annoyance to the Council and/or certain of its employees, and consequently had the effect of harassing the Council and those employees.
4. Mr X wrote to the Council on 5 November 2009, requesting a review of its decision. He did not agree with the reasons presented by the Council in support of its application of section 14(1) of FOISA.
5. The Council provided Mr X with a response to his request for review on 4 December 2009, where he was notified that the Review Panel had decided to uphold its decision to treat his requests as vexatious in terms of section 14(1) of FOISA. In reaching this conclusion, the Council noted that this was the fifteenth freedom of information review it had carried out on an information request received from him, emphasising that in the Review Panel's view he was using FOISA to pursue a grievance or series of grievances and complaints against the Council, rather than genuinely seeking information in terms of FOISA.
6. On 8 December 2009, Mr X wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr X had made requests 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 those requests. The case was then allocated to an investigating officer.

Investigation

8. On 2 February 2010, the Council was notified in writing that an application had been received from Mr X and was invited to provide comments on the application (as required by section 49(3)(a) of FOISA). In particular, it was asked to provide detailed arguments and evidence to support its view that Mr X's requests for information were vexatious.
9. An initial response was received from the Council on 11 February 2010. A further submission was received on 3 March 2010. These will be considered fully, insofar as relevant, in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr X and the Council and is satisfied that no matter of relevance has been overlooked.

Section 14(1) (Vexatious requests)

11. Section 14(1) of FOISA states that the general right of access to information "does not oblige a Scottish public authority to comply with a request for information if the request is vexatious".
12. The Commissioner has published guidance on the application of section 14(1) of FOISA. This states:
- There is no definition of "vexatious" in FOISA. The Scottish Parliament acknowledged that the term "vexatious" was well-established in law and opted to give the Commissioner latitude to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.*
- The Scottish Information Commissioner's general approach is that a request (which may be the latest in a series of requests) is vexatious where it would impose a significant burden on the public authority and:*
- *it does not have a serious purpose or value; and/or*
 - *it is designed to cause disruption or annoyance to the public authority; and/or*
 - *it has the effect of harassing the public authority; and/or*
 - *it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.*
13. In its submission, the Council cited the foregoing text from the Commissioner's guidance on section 14(1), stating that it would comment on each of the tests applicable to this provision.
14. The Council also provided the investigating officer with copies of correspondence between Mr X and itself, relating to a number of issues and a number of requests for information, which had been ongoing since 2004. The Council was of the view that the correspondence demonstrated that complying with Mr X's requests had often involved incurring a disproportionate amount of time and the diversion of an unreasonable proportion of its financial and human resources away from its core operations. In consideration of this, the Council requested that the Commissioner consider the *cumulative effect* of these particular requests, which it considered to be the latest in a series of requests relating to the same issues. It also outlined the background to Mr X's requests, which it suggested might be relevant to the Commissioner's decision.



15. The Council also stated that it believed Mr X was seeking to re-open through the making of requests for information certain matters it viewed as having been addressed fully already. It argued that as well as using the freedom of information process as a method of expressing his views, Mr X was making requests for information or requirements for review in order to annoy the Council or its employees or to cause disruption to it by diversion of its resources to deal with these requests and requirements, until such time as the Council conceded its position to his own views.
16. The Council further stated that, although it appreciated that each case must be viewed on its own merits, in coming to its decision it had taken into account the Commissioner's previous decisions and guidance and concluded that these requests represented a continuation of a pattern of behaviour which the Council had deemed vexatious in another context, it being unlikely that the additional information would shed light on or alter Mr X's situation because the matters that he was seeking information on had already been addressed through the appropriate channels.
17. In summary, the Council submitted that Mr X's requests for information formed part of a well documented and significant history in relation to the issues alluded to above, and that he was seeking information to which he had already been given access (or trying to seek access to information that had been refused and trying to revive processes he had already exhausted).
18. The Commissioner considers that, viewed dispassionately and in isolation from the considerable volume of ongoing correspondence between Mr X and the Council, the requests under consideration here would not necessarily be manifestly unreasonable, unduly burdensome or disproportionate. However, in considering whether Mr X's requests should be regarded as vexatious, he considers it reasonable and relevant to take into consideration the wider context in which the requests were made, which might help in considering whether they were without serious purpose or value, were designed to disrupt or cause annoyance to the Council, or otherwise had the effect of harassing the Council.
19. The Commissioner accepts that the Council has provided evidence demonstrating that extensive correspondence has passed between Mr X and the Council on various information requests. He also notes that the correspondence relates to a small number of issues about which Mr X regularly seeks information. The subject matter of these particular requests relates to one of these issues and the correspondence provided by the Council during the investigation shows that there has been considerable correspondence between itself and Mr X already on the subject matter in question, prior to these particular requests.
20. The Commissioner also accepts that it was reasonable in the circumstances for the Council to conclude here that the freedom of information process was being used by Mr X primarily to continue extended dialogue in relation to his concerns. It also appears unlikely in the circumstances that resolution of the matters raised in Mr X's requests would be brought any closer by responding to the requests. Consequently, the Commissioner accepts that the requests had no serious purpose or value, other than causing disruption or annoyance to the Council



21. Having considered the circumstances of this case carefully, the Commissioner accepts that Mr X's requests for information were properly viewed in the context of his ongoing correspondence with the Council and that the Council was entitled to consider Mr X's requests as vexatious in terms of section 14(1) of FOISA (and to refuse to comply with them on that basis).

DECISION

The Commissioner finds that South Lanarkshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to respond to Mr X's information requests under section 14(1) of FOISA.

Appeal

Should either Mr X or South Lanarkshire Council 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
7 April 2010



Appendix

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.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...