

Decision Notice



Decision 021/2014 Mr James Boyle and the General Teaching Council for Scotland

Repeated requests

Reference No: 201301568
Decision Date: 11 February 2014

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Rosemary Agnew
Scottish Information Commissioner

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



Summary

On 14 March 2013, Mr Boyle asked the General Teaching Council for Scotland (the GTCS) for information concerning inquiries it had undertaken.

The GTCS informed Mr Boyle that these were repeated requests and so (in terms of section 14(2) of FOISA) it was not obliged to respond.

Following an investigation the Commissioner concluded that these were repeated requests for the purposes of section 14(2) of FOISA, and so the GTCS was not obliged to comply with the requests.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(2) (Vexatious or repeated requests); 21(1), (8)(b) and (9) (Review by Scottish public authority)

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 14 March 2013, Mr Boyle wrote to the GTCS with a number of requests concerning investigations undertaken by the GTCS in relation to him. Although some of these requests were clearly seeking recorded information, other requests were expressed as questions seeking views and explanations of the processes followed, and decisions taken, by the GTCS. It is only those requests seeking recorded information which the Commissioner is entitled to consider.
2. The GTCS responded on 23 April 2013 and, in terms of section 14(2) of FOISA, declined to comply with the requests on the basis that they were repeated requests.
3. On 29 April 2013, Mr Boyle wrote to the GTCS requesting a review of its decision. Mr Boyle informed the GTCS that he disagreed with its assertion that the requests were repeated.
4. The GTCS responded to Mr Boyle on 13 June 2013. The GTCS informed Mr Boyle (in terms of section 21(9) of FOISA) that, because it considered his requests of 14 March 2013 to be



repeated, it would not be carrying out a review of its response to his requests (in line with section 21(8) of FOISA).

5. On 26 June 2013, Mr Boyle wrote to the Commissioner, stating that he was dissatisfied with the GTCS's response to his requirement for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Boyle made a request for information to a Scottish public authority and 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.

Investigation

7. The investigating officer subsequently contacted the GTCS, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to justify its reliance on section 14(2) of FOISA.
8. The GTCS subsequently provided submissions explaining why it considered that Mr Boyle's requests of 14 March 2013 were repeat requests. The GTCS also provided copies of documents relating to its handling of Mr Boyle's requests.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Boyle and the GTCS. She is satisfied that no matter of relevance has been overlooked.
10. The Commissioner will consider whether the requests of 14 March 2013 were repeated requests in terms of section 14(2) of FOISA.

Section 14(2) – Repeated request

11. Section 14(2) of FOISA provides:

Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.



12. For section 14(2) of FOISA to apply, the following therefore need to be considered:
- whether Mr Boyle's previous requests were identical or substantially similar to the requests under consideration here
 - whether the GTCS complied with Mr Boyle's previous requests and, if so,
 - whether there was a reasonable period of time between the submission of the previous requests and the submission of the subsequent requests.

Were the requests identical or substantially similar to the previous requests?

13. The GTCS provided the Commissioner with a number of previous requests made by Mr Boyle.
14. The Commissioner has considered the content and context of these previous requests. Whilst not all of these are expressed in exactly the same terms as the requests of 14 March 2013, the Commissioner is satisfied that they are seeking essentially the same information regarding processes followed, and investigations undertaken by, the GTCS. Some of the requests of 14 March 2013 seek sub-sets of information previously requested. The Commissioner is therefore satisfied that the requests of 14 March 2013 are substantially similar to previous requests made by Mr Boyle.

Were the previous requests complied with?

15. The GTCS supplied the Commissioner with details of how and when it had dealt with Mr Boyle's previous requests. The GTCS provided copies of letters from it to Mr Boyle which had provided responses and explanations of a number of matters raised by him.
16. Having considered the content of the GTCS's previous responses to Mr Boyle's information requests, the Commissioner is satisfied that the GTCS complied with those previous requests.

Has a reasonable period of time passed?

17. There is no definition of "a reasonable period of time" in FOISA; what is reasonable will depend on the circumstances of the case. However, consideration can be given to questions such as:
- (i) Has the information changed?
 - (ii) Have the circumstances changed?
18. Having considered the explanations provided to Mr Boyle in response to his previous requests, the Commissioner is satisfied that the information has not changed, and could not have changed, in this time.
19. The Commissioner considers that the simple passage of time between requests may eventually be sufficient to allow the conclusion that a reasonable period of time has passed between two identical or substantially similar requests, irrespective of whether there has been any other change in the circumstances surrounding the requests.



20. In this case, having taken into account the static nature of the information, the Commissioner does not accept that the period in question is sufficient to find that the passage of time alone means that a reasonable period passed between the two requests.
21. Therefore, the Commissioner finds that neither the information nor the circumstances, other than the passage of time, have altered in this case. In all the circumstances, the Commissioner finds that the GTCS was not obliged to comply with Mr Boyle's requests on the grounds that section 14(2) of FOISA applied.

DECISION

The Commissioner finds that the General Teaching Council for Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Boyle on 14 March 2013.

Appeal

Should either Mr Boyle or the General Teaching Council for Scotland 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.

Rosemary Agnew
Scottish Information Commissioner
11 February 2014



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

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-

...

- (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.

- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.

...