

Decision Notice

Decision 037/2015: Mr Alan Milligan and Glasgow City Council

Whether request vexatious

Reference No: 201500028

Decision Date: 18 March 2015



Scottish Information
Commissioner

Summary

On 17 March 2014, Mr Milligan asked Glasgow City Council (the Council) for reports relating to a vehicle taken into the Council's car pound.

The Council failed to respond to this request or requirement for review. Following a decision by the Commissioner (Decision 221/2014), the Council provided Mr Milligan with a response, stating that it considered his request to be vexatious. Following this response, Mr Milligan applied to the Commissioner for a decision.

The Commissioner investigated, and agreed with the approach taken by the Council.

Relevant statutory provisions

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

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

1. On 17 March 2014, Mr Milligan made a request for information to the Council. He asked for all reports in relation to a vehicle which had been impounded.
2. The Council did not respond to this request
3. On 14 May 2014, Mr Milligan wrote to the Council, requiring a review on the basis that it had failed to respond.
4. The Council did not respond to Mr Milligan's requirement for review and, on 15 September 2014, he wrote to the Commissioner's office, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision.
5. On 14 October 2014, the Commissioner issued a decision, finding that the Council failed to respond to Mr Milligan's request and requirement for review within the timescales set out in FOISA. It required the Council to comply with the requirement for review¹.
6. As required by the Commissioner's decision, the Council responded to Mr Milligan on 25 November 2014. In terms of section 21(8)(b) of FOISA, the Council stated that it was not required to conduct a review as it considered the request to be vexatious in terms of section 14(1) of FOISA.
7. On 29 December 2014, Mr Milligan wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Milligan stated he was dissatisfied with the outcome of his requirement for review as he did not agree that his request was vexatious.

¹ [Decision 221/2014 Alan Milligan and Glasgow City Council](#)

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Mr Milligan made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
9. The case was allocated to an investigating officer. On 30 January 2015, the Council was notified in writing that Mr Milligan had made a valid application.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application, with particular reference to its claim that Mr Milligan's request was vexatious.

Commissioner's analysis and findings

11. 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 Milligan and the Council. She is satisfied that no matter of relevance has been overlooked.
12. Section 14(1) of FOISA states that section 1(1) (which confers the general entitlement to information held by such authorities) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious. Section 14(1) does not create an exemption, but its effect is to render inapplicable the general right of access to information contained in section 1(1).

The Council's submissions

13. The Council explained that Mr Milligan's request formed part of a long series of correspondence, dating back to 2007, submitted to the Council by him and members of his family. The Council stated that it was treating all requests from these individuals cumulatively: based on the tone, language and subject matter of the correspondence, the individuals appeared to be working together.
14. The Council considered this substantial volume of correspondence had tied up an unreasonable and disproportionate amount of officer time across various departments, including Parking Enforcement, Legal Services and Customer Services. This, the Council submitted, had placed unacceptable pressure on resources at a time when it was experiencing budgetary constraints and was unable to employ additional staff to allow it to carry out its other statutory functions effectively.
15. The Council explained that the correspondence related exclusively to parking matters. It considered the volume and frequency of the correspondence to be so high as to place a substantial burden on Council resources across these various departments. It provided a sample of the correspondence from the past year.
16. The Council argued that the correspondence was sustained and purposely difficult to interpret, making it difficult for officers to respond (due to both the volume and the references to previous correspondence). It highlighted, throughout the correspondence, what it considered to be serious and unfounded allegations of misconduct against Council officers. The Council argued that this had the effect of harassing the authority and causing distress to the individuals concerned.
17. The Council argued that the underlying reason behind the correspondence was to cause as much disruption to the Council as possible, rather than to obtain information. It believed the

ultimate goal was to harass the Council into a position whereby it no longer had the resources to deal with the requests and would therefore cancel the multiple parking fines that had accrued. It stated that it had brought the appropriate appeals process, to Mr Milligan's attention on a number of occasions.

18. Finally, the Council stated that the requests had been ongoing for almost eight years, all relating to parking matters. The Council provided Mr Milligan with advice and assistance in the early stages of this course of correspondence, but it became apparent that the grievances could not be remedied by providing information. The Council submitted that a reasonable person would not have continued to incur parking fines to a substantial level over the course of eight years, and submit multiple information requests during that period in relation to a variety of related issues.
19. To conclude, the Council argued that this request should be viewed as part of a long series of related correspondence, which should be considered a vexatious request for the reasons stated above.

Mr Milligan's submissions

20. Mr Milligan refuted the Council's claim that his request was vexatious, stating that his request related to a different subject matter (damage sustained by an impounded vehicle, rather than a parking matter).

The Commissioner's view

21. The Commissioner has published guidance on the application of section 14(1)² 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.'

22. It is the Commissioner's view that there is no single formula or definitive set of criteria that enable a totally formulaic approach to determining whether a request is vexatious, and each request must be considered on the merits of the case, supported by evidence and clear evaluation and reasoning. The Commissioner considers the following factors to be relevant to a finding that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:

- (i) it would impose a significant burden on the public authority;
- (ii) it does not have a serious purpose or value;
- (iii) it is designed to cause disruption or annoyance to the public authority;
- (iv) it has the effect of harassing the public authority;
- (v) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

The Commissioner recognises that this is not an exhaustive list: depending on the circumstances (and provided the impact on the authority can be supported by evidence), other factors may be relevant.

² <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.aspx>

23. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requester, she also acknowledges that the applicant's identity, and the history of his/her dealings with a public authority, may be relevant in considering whether a request is vexatious.
24. The Commissioner recognises that Mr Milligan's request on 17 March 2014 might not appear, on the face of it, to be vexatious. But she is aware that the vexatious nature of a request might only emerge after considering the request within its context; for example, in relation to previous or ongoing correspondence with the applicant.
25. The Commissioner has considered carefully the submissions and supporting documentary evidence provided by the Council. These were intended to demonstrate that the request made by Mr Milligan was part of a series of correspondence from him and his family members which had imposed a significant burden on the Council due to its volume, frequency and content - the enforcement of parking regulations. And that it had the effect of harassing the Council.
26. Having considered the evidence, the Commissioner is satisfied that the Council demonstrated that Mr Milligan's request had become a significant burden by the time this particular request was received; particularly when viewed in the context of (and as a continuation of) previous correspondence between him and the Council on parking matters. The Commissioner is also satisfied that the subject matter of this is request was a continuation of the same parking-related theme.
27. The nature of the correspondence supports the Council's assertion that that this was a concerted campaign on the part of Mr Milligan and members of his family. However, in making her decision on this matter, the Commissioner is satisfied that Mr Milligan's correspondence alone imposed a significant burden, irrespective of what his family had sent.
28. The Commissioner also accepts that it was reasonable in the circumstances for the Council to conclude that the information request process under FOISA was being used by Mr Milligan to continue an extended dialogue in relation to his complaints against the Council. The Commissioner notes, from the Council's submissions, its attempts (without success) to resolve these grievances through responding to his correspondence, giving advice and assistance, and directing him to the appropriate route for challenging his parking fines.
29. In all the circumstances, the Commissioner accepts that Mr Milligan's request was part of a course of correspondence which had the effect of harassing the Council. She believes any reasonable person would take this view, given the volume, frequency, nature and content of the correspondence. In the circumstances, she finds that the correspondence was, for the reasons stated by the Council, disproportionate.

The Commissioner's conclusions

30. The Commissioner has therefore found that the Council was not obliged to comply with Mr Milligan's information request of 17 March 2014, on the grounds that it was vexatious in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Milligan.

Appeal

Should either Mr Milligan or Glasgow City Council 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

18 March 2015

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.

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