

# Decision Notice

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**Decision 055/2015: Mr James Milligan and Glasgow City Council**

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**Whether a request was vexatious**

Reference No: 201500140

Decision Date: 17 April 2015



Scottish Information  
Commissioner

## Summary

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On 27 October 2014, Mr James Milligan asked Glasgow City Council (the Council) for information relating to parking restriction signs in a specified area.

The Council did not respond to Mr Milligan's request and informed him that it was not obliged to comply with his subsequent requirement for review. This was on the basis that it considered his request to be vexatious and it considered it had already given notice to this effect in relation to a previous identical or substantially similar request.

The Commissioner did not accept that the request was vexatious and found that the Council was not entitled to refuse to give notice to Mr Milligan to this effect in terms of section 16(5) of FOISA. She required the Council to comply with Mr Milligan's requirement for review.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 16(5) (refusal of request); 21(4)(b) and (8)(b) (Review by Scottish public authority)

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

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1. In this decision, references to "Mr Milligan" relate to the applicant, Mr James Milligan.
2. The background to Mr Milligan's request is as follows:
  - (i) On 10 October 2007, Mr Allan Milligan made an information request to the Council. The request was for installation, inspection and maintenance reports for parking restriction signage in a specified area.
  - (ii) The Council responded to that request on 24 October 2007. The Council informed Allan Milligan that there was no statutory responsibility for it to retain the information that had been requested and it was unable to comply with the request.
  - (iii) On 22 April 2014, a named Glasgow City Councillor forwarded to Mr Milligan a response to an enquiry which the Councillor had received from a named Council officer. The response was in relation to an enquiry made on Mr Milligan's behalf by the Councillor. Within that response, the officer provided information on the exact dates when parking signs had been installed in 2005 and re-erected in 2007. The signs in question were those that had been the subject of the earlier request by Allan Milligan in October 2007.
3. On 27 October 2014, Mr Milligan made a request for information to the Council. Mr Milligan referred to the information provided to the Councillor concerning the dates when the parking signs had been installed and re-erected. Mr Milligan asked the Council to provide a copy of the records from which the officer had obtained the information which had been provided to the Councillor.

4. The Council did not respond. On 26 November 2014, Mr Milligan emailed the Council requesting a review of its failure to respond.
5. On 18 December 2014, the Council wrote to Mr Milligan informing him that, in terms of section 21(8)(b) of FOISA, it did not consider it was obliged to comply with his requirement for review. This was on the basis that it considered his request for information to be vexatious in terms of section 14(1) of FOISA. The Council considered it had not been obliged to give notice to Mr Milligan of this decision (that the request was vexatious) under section 16(5) of FOISA. This was because the Council considered it had previously given notice to Mr Milligan under section 16(5) in respect of a substantially similar request and it was unreasonable to expect it to serve a further such notice.
6. On 19 January 2015, Mr Milligan wrote to the Commissioner. Mr Milligan applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Milligan stated he was dissatisfied with the Council's decision that his request was vexatious.

## **Investigation**

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7. 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 failure to respond to that request before applying to her for a decision. The case was then allocated to an investigating officer and, on 13 February 2015, the Council was notified in writing that Mr Milligan had made a valid application.
8. 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 and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested. The Council was asked to explain why, in terms of section 16(5) of FOISA, it did not consider it was obliged to comply with Mr Milligan's requirement for review. The Council was also asked to explain why it considered Mr Milligan's information request of 27 October 2014 to be vexatious.
9. In response, the Council stated that it wished to amend its position: it had not previously given notice to Mr Milligan in terms of section 16(5) of FOISA in relation to a similar request (as had been stated in its review response). The Council's position was that information requests from Mr Milligan on parking matters were vexatious and that no responses were required in accordance with section 16(5). The Council also provided submissions explaining why it considered Mr Milligan's request of 27 October 2014 to be vexatious in terms of section 14(1) of FOISA.

## **Commissioner's analysis and findings**

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10. 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.

### *Section 16 of FOISA – Refusal of request*

11. In terms of section 16(5) of FOISA, if an authority has decided that there are grounds for refusing a request under section 14(1), it must issue a notice to this effect to the applicant within 20 working days unless:

- (i) A notice has already been given to the applicant in relation to a previous identical or substantially similar request; and
  - (ii) In all the circumstances, it would be unreasonable to expect it to serve a further such notice.
12. In this case, the Council did not provide Mr Milligan with a notice under section 16(5) of FOISA. In its review response of 18 December 2014, the Council stated that it was not required to do so because it had previously issued Mr Milligan with a notice under section 16(5) in relation to a substantially similar request. In its submissions to the Commissioner, the Council revised its position and explained that it had not previously given notice to Mr Milligan in terms of section 16(5) of FOISA in relation to a similar request. However, the Council's amended position was that it considered requests from Mr Milligan on parking matters to be vexatious. Consequently, no response was required in terms of section 16(5).
13. The Council referred to a previous decision where Allan Milligan's requests had been found to be vexatious (*Decision 235/2011 Mr Allan Milligan and Glasgow City Council*<sup>1</sup>). The Council referred to paragraph 31 of that decision where the Commissioner stated that "*correspondence between him (Allan Milligan) and the Council on parking matters had become a significant burden (on the Council)*". The Council further referred to paragraph 33 of the decision where the Commissioner stated that "*it was reasonable in the circumstances for the Council to conclude that the information request process under FOISA was being used by (Allan) Milligan to continue extended dialogue in relation to his complaints against the Council which the Council considers have been fully addressed. The Commissioner notes that the Council has addressed similar matters in previous correspondence.*" The Council stated that, on this basis, it had decided it was not obliged under section 16(5) of FOISA to issue initial responses to Mr Milligan which fell into the category of "parking matters".
14. The Council referred also to *Decision 191/2012 Mr James Milligan and Glasgow City Council*<sup>2</sup> where the Commissioner accepted that it was reasonable to conclude that Mr Milligan and Allan Milligan were working together. In the Council's view, this supported the presumption that Mr Milligan and Allan Milligan were working together and therefore removed the requirement to serve a separate notice on Mr Milligan.
15. The Commissioner considers it was reasonable for the Council to conclude that Mr Milligan and Mr Allan Milligan have liaised with each other when making information requests to the Council on the subject of parking enforcement. However, the Commissioner does not accept that this permits the Council to decline to give notice under section 16(5) of FOISA in the present case.
16. In the circumstances of this case, the Commissioner considers there are only two scenarios where it would be unnecessary for the Council to give notice to Mr Milligan under section 16(5). These are: where the Council had established that Mr Milligan and Allan Milligan were the same person or, where it was clear that Mr Milligan was acting on behalf of Allan Milligan (or vice versa). The Council has provided no evidence to the Commissioner showing that either of these scenarios exist in this case. Consequently, the Commissioner does not accept that the Council was entitled to treat Mr Milligan and Allan Milligan essentially as a single person for the purposes of section 16(5) of FOISA. Accordingly, the Commissioner finds, that

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<sup>1</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2011/201101784.aspx>

<sup>2</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201201597.aspx>

by failing to give notice to Mr Milligan in terms of section 16(5), the Council breached Part 1 of FOISA.

*Section 14(1) of FOISA – vexatious requests*

17. Under section 14(1) of FOISA, a public authority is not obliged to comply with an information request if the request is vexatious.
18. The Council stated that there was a long history of correspondence from Mr Milligan and Mr Allan Milligan since 2007. The Council argued that this had tied up an unreasonable and disproportionate amount of officer time across various departments. The Council stated that this had placed unacceptable pressure on resources at a time when it was experiencing budgetary constraints.
19. The Council also argued that the purpose behind the Milligans' requests was not to obtain information, but to cause as much disruption to the Council as possible. The Council considered 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 any outstanding parking fines that had accrued. The Council stated that it had brought the proper appeals process (for parking fines) to Mr Milligan's attention on numerous occasions previously.
20. Additionally, the Council submitted that the correspondence from the Milligans was sustained and purposely difficult to interpret. This made it difficult for officers to respond due to its volume and references to previous correspondence. The Council argued that the correspondence had the effect of harassing the authority and causing distress to individuals as a result of unfounded allegations of misconduct.
21. Finally, the Council argued that the request would be seen as manifestly unreasonable or disproportionate to a reasonable person. The Council stated that the Milligans had, over the past 7 – 8 years, continued to park in areas which they knew to be restricted parking zones. They subsequently refused to pay any parking fines incurred or to follow the appeal process to the Scottish Parking Adjudication Service. The Council stated that it had provided advice and assistance at the outset, but it became apparent that the grievances could not be remedied by providing information. In the Council's view, a reasonable person would not have continued to incur significant parking fines over the course of eight years and to submit multiple information requests during that period in relation to a variety of matters surrounding this, including parking signage.
22. Mr Milligan disagreed that his request could be viewed as vexatious. He accepted that he had made numerous information requests to the Council and that, although some could be viewed as repeated, he did not consider any were vexatious. In the present case, as the Council had provided no information, nor any explanation as to why information was not provided, he did not consider that re-requesting the information could be viewed as vexatious.

*The Commissioner's view*

23. The Commissioner has published guidance on the application of section 14(1) of FOISA<sup>3</sup>. 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

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<sup>3</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.aspx>

to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.”

24. There is no single formula or definitive set of criteria that enable an entirely 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.

25. While the Commissioner’s view is that the term “vexatious” must be applied to the request and not the requester, she acknowledges also that the applicant’s identity and the history of their dealings with the authority may be relevant in considering whether a request is vexatious.
26. The Commissioner recognises that Mr Milligan’s request of 27 October 2014 does not appear, on the face of it, to be vexatious. However, she is aware that the vexatious nature of a request might only emerge after considering the request within, for example, the context of previous or ongoing correspondence between the applicant and the authority.
27. The Commissioner has considered carefully the submissions made by the Council which were intended to demonstrate that Mr Milligan’s request was part of a series of correspondence which had imposed a significant burden on the Council due to its volume, frequency and repetitive content. The Council has also argued that the request was designed to cause disruption, had the effect of harassing it and was manifestly unreasonable. This was within the context of (and as a continuation of) previous correspondence between Mr Milligan and the Council on parking related matters.
28. The Commissioner accepts that there has been voluminous correspondence on the general subject of parking related matters. That said, having considered all of the submissions made by the Council and Mr Milligan, the Commissioner is unable to accept that Mr Milligan’s request of 27 October 2014 can be viewed as vexatious.
29. In the Commissioner’s view, Mr Milligan’s request had a genuine and serious purpose when viewed in the context of the response provide to Allan Milligan in 2007. On that occasion, the Council stated that it held no information on parking restriction signage in the specified area. The Council subsequently provided information to a Councillor which appeared to contradict its position that no information was held. In the Commissioner’s view, it was not unreasonable for Mr Milligan to seek clarity on this apparent contradiction and to ascertain how the Council was able to provide information which it had previously stated was not held.

30. The Commissioner does not accept that the Council should be able to treat any request from Mr Milligan on parking related matters as vexatious. To do so risks moving beyond a vexatious *request* to a vexatious *requester*. The Council is still required to consider each request on its individual merits before deciding on the appropriate response, or whether any response is required.
31. On this occasion, when viewed in the context of previous correspondence, the Commissioner accepts that the request may impose a burden on the Council. However, for the reasons given above, she is unable to accept that the request is designed to cause disruption, has the effect of harassing the authority or could be considered manifestly unreasonable or disproportionate.

#### *The Commissioner's conclusions*

32. In all the circumstances, the Commissioner is not satisfied, on the basis of the arguments put forward by the Council, that Mr Milligan's request of 27 October 2014 was vexatious.
33. The Commissioner finds that the Council was not entitled to refuse to comply with Mr Milligan's request on the basis that section 14(1) of FOISA applied. She therefore requires the Council to carry out a review in respect of this request, and to respond to Mr Milligan otherwise than in terms of section 14(1). In other words, the outcome of the review should be that the Council substitutes a different decision in accordance with section 21(4)(b) of FOISA.

## Decision

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

The Commissioner finds that the Council was not entitled to refuse to comply with the request on the basis that it was vexatious in terms of section 14(1) of FOISA and that, in doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner also finds that, by failing to give notice to Mr Milligan in terms of section 16(5), the Council failed to comply with Part 1 of FOISA.

The Commissioner therefore requires the Council to respond to Mr Milligan's requirement for review, in terms of section 21(4)(b) of FOISA by **1 June 2015**.

## Appeal

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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.

## **Enforcement**

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If Glasgow City Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that Glasgow City Council has failed to comply. The Court has the right to inquire into the matter and may deal with Glasgow City Council as if it had committed a contempt of court.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**17 April 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.

...

#### **16 Refusal of request**

...

- (5) A Scottish public authority which, in relation to such a request, claims that section 14 applies must, within that time, give the applicant a notice which states that it so claims; except that the notice need not be given if-

- (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and
- (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.

...

#### **21 Review by Scottish public authority**

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- (4) The authority may, as respects the request for information to which the requirement relates-

...

- (b) substitute for any such decision a different decision; or

...

...

- (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.

...

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