

# Decision Notice

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**Decision 133/2016: Mr George Watson and Dumfries and Galloway Council**

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**Vexatious requirement for review**

Reference No: 201600491  
Decision Date: 23 June 2016



Scottish Information  
Commissioner

## Summary

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On 29 December 2015, Mr Watson asked Dumfries and Galloway Council (the Council) for specific communications with the Scottish Information Commissioner's office. The Council responded on 22 January 2016, stating that the information was not held.

The Council thereafter refused to carry out a review on the basis that the review request was vexatious.

Following investigation, the Commissioner found that the Council was entitled to decline to carry out a review, on the basis that the requirement for review was vexatious.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 21(1), (8) and (9) (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. Mr Watson had previously been in correspondence with the Council and, on 21 December 2015, the Council wrote to him about the conduct of reviews under FOISA. From this, he understood the Council to have consulted (and obtained advice from) the Commissioner on this matter.
2. On 29 December 2015, Mr Watson made a request for information to the Council. He asked for any communication between the Scottish Information Commissioner and the Council regarding the issue referred to in the 21 December letter.
3. The Council responded on 22 January 2016. It informed Mr Watson that it did not hold any recorded information falling within the scope of his request. By way of advice and assistance, it informed him that an officer of the Council had contacted the Commissioner's office with a general FOISA-related compliance enquiry, to support the Council's decision making on the matter.
4. On 1 February 2016, Mr Watson wrote to the Council requesting a review of its decision. He considered the Council's explanation of its position to be misleading and questioned the quality of advice being obtained by the Council. In addition, he did not consider the Council's response to have been provided "promptly" as required by section 10(1) of FOISA.
5. The Council wrote to Mr Watson on 29 February 2016. The Council stated that it was refusing to undertake a review, on the basis that it considered his request to be vexatious.
6. On 18 March 2016, Mr Watson wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Watson disagreed with the Council's characterisation of his request as vexatious.

## Investigation

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7. The application was accepted as valid. The Commissioner confirmed that Mr Watson 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.
8. On 1 April 2016, the Council was notified in writing that Mr Watson had made a valid application. The case was then allocated to an investigating officer.
9. 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 relating to its conclusion that the request was vexatious.
10. The Council responded, submitting that it considered Mr Watson's requirement for review to be vexatious, applying section 21(8)(a) of FOISA. It provided reasons for taking this position (see below).
11. Mr Watson was informed that the Council was applying section 21(8)(a) of FOISA and of its reasons for doing so. He provided reasons why he did not agree with this position.

## Commissioner's analysis and findings

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12. In coming to a decision on this matter, the Commissioner considered all of the submissions, or parts of submissions, made to her by both Mr Watson and the Council. She is satisfied that no matter of relevance has been overlooked.

### **Section 21 of FOISA – Review by Scottish public authority**

13. Section 21(1) of FOISA states that 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 of the requirement. This is subject to qualifications in subsection (2), which are not relevant in this case.
14. Section 21(8) states that subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
  - (a) the requirement is vexatious; or
  - (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.
15. In this case, the Council argued that it considered Mr Watson's requirement for review to be vexatious, therefore applying section 21(8)(a).

### *Whether requirement for review is vexatious*

16. FOISA does not define the word "vexatious". The Commissioner has published guidance on section 14 of FOISA<sup>1</sup>. Each case must be considered on its own merits, but she has identified a number of factors she considers relevant in finding that a request is vexatious. In the Commissioner's view, these factors are equally relevant to the application of section 21(8)(a) of FOISA. They are:

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<sup>1</sup> <http://www.itspublicknowledge.info/uploadedfiles/BriefingSection14VexatiousorRepeatedRequests.pdf>

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

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.

#### *Identity of applicant and dealings with authority*

17. While the Commissioner's view is that the term "vexatious" must be applied to the request (or, in this case, the requirement for review) and not the requester, she also acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of the requirement for review. It may be reasonable, for example, for the authority to conclude that a particular requirement for review represents a continuation of a pattern of behaviour it has deemed vexatious in another context, which may in turn permit it to treat the requirement for review as vexatious.
18. This may be the case particularly where it is unlikely that additional information would inform or alter the applicant's situation. It does not follow that a request or requirement for review should automatically be refused in a case like this: each decision has to be based on its own facts and circumstances.

#### *Submissions by the Council*

19. The Council provided submissions to the Commissioner, to the effect that it considered the Mr Watson's requirement for review to be vexatious because it:
  - had the effect of harassing the authority, and in particular a named staff member
  - had no serious purpose or value
  - was designed to cause disruption or annoyance to the public authority.
20. In addition, on the question of Mr Watson's previous history, the Council referred to a number of recent requests for information from him, submitted at the same time as he contacted other officers of the Council on the same or similar points of information. It also highlighted repeated allegations in relation to a number of members of Council staff, both those dealing directly with Freedom of Information and others elsewhere in the Council. It provided copies of relevant correspondence.

#### *Submissions from Mr Watson*

21. Mr Watson argued that his requirement had purpose or value, focusing in particular on his concern that the Council was required to respond "promptly" and his perception that the Council was formulating Freedom of Information policy based on informal advice and guidance. He believed he had shown his dissatisfaction with the Council's handling of his request clearly.

22. Mr Watson submitted that he had no intention of harassing or disrupting the Council. Rather, he was concerned with the quality of the Council's request handling and staff training, and with the performance of the named member of staff.
23. Mr Watson has presented intelligible reasons for making his requirement for review. He appears to be sincere in pursuing these purposes, and in his assertion that he did not intend to cause disruption or annoyance. What he has not addressed is whether a reasonable person would conclude that his requirement for review had the effect of causing harassment, whether or not that was his intention.
24. As the Commissioner has indicated in her guidance, referred to above, a request (or, as in this case, a requirement for review) may be deemed vexatious where, viewed from the perspective of a reasonable person, it has the effect of harassing the public authority and/or its staff. This may include language and tone which a reasonable person would consider abusive or otherwise inappropriate in the circumstances.
25. The Commissioner will now look in greater detail at the Council's reasons for concluding that the requirement for review had the effect of harassing it and its staff.

*Effect of harassing the authority*

26. The Council understood Mr Watson to be suggesting that it had deliberately delayed its response to his information request and that, in this connection, the relevant staff member had acted in bad faith. It claimed he had alleged the officer in question was incapable of carrying out his duties and did not operate within the spirit of FOISA. It considered these allegations to be serious and denied them.
27. The Council pointed out that the requirement for review raised and repeated previous allegations, which it did not believe he had substantiated, against the named officer. This was in line with his previous treatment of other council officers. It noted that he had already been given what it considered to be a courtesy warning letter, informing him that he would be referred for consideration under its Unacceptable Actions Policy if he did not moderate his tone and the contents of his communications. The Council explained that this warning was issued in relation to Mr Watson's correspondence with other Council services, as well as that with its Freedom of Information Unit.
28. The Council concluded that the requirement for review was designed to harass the authority and, in particular, the named staff member and other officers.
29. The Council provided evidence to the effect that, in previous correspondence, Mr Watson had threatened to take Council officers to court and made statements that their employment might be in jeopardy. It referred to the content of previous correspondence, which it submitted had caused officers to feel intimidated, anxious and offended.
30. In this case, the Council submitted that the requirement for review appeared directed towards the named staff member, who had been the subject of a previous complaint (which it identified). This, the Council submitted had caused significant distress to the officer, especially when it was discovered that any correspondence Mr Watson received in relation to the complaint against the officer was forwarded to the Commissioner.
31. In the Council's opinion, the information request, the review requirement and the application to the Commissioner all focused on allegations it considered to be untrue allegations, and on personal comments against staff, particularly the named officer's and their ability to carry out their functions.

32. The Council also noted that the requirement for review referred to Mr Watson having made “formal representations” to the Scottish Government, which it acknowledged he was free to do so. It was not aware of this having been done in relation to the named officer, but submitted that it had the appearance of being intended to cause anxiety and distress.
33. The purpose of FOISA, the Council submitted, is to give members of the public access to information and not to provide an opportunity to harass public authorities and their officers. In support of its submissions, the Council referred to correspondence with Mr Watson (of which it provided copies).

#### *Commissioner's conclusions*

34. The Commissioner has considered all of the submissions made by both the Council and Mr Watson. She has also considered the supporting documentation provided by the Council. In this case, she is satisfied that it is relevant to take account of Mr Watson’s previous contact with the Council, as evidenced by the copy correspondence provided. From this correspondence and the related submissions, she is satisfied that the requirement for review under consideration here can be viewed as part of a course of conduct by Mr Watson.
35. In all the circumstances of this case, the Commissioner considers it reasonable to conclude that Mr Watson’s requirement for review, read with his other correspondence, had the effect of harassing the Council and its staff. There appears to be a clear pattern in all of this correspondence. Mr Watson’s engagement with the Council appears to result in him:
  - (i) challenging the competence and/or integrity of the Council’s staff, and/or
  - (ii) demanding that the Council takes action under its statutory powers, without allowing it any measure of judgement as to whether such action would be appropriate.

Such an approach may be appropriate on occasion, but here it appears to be adopted indiscriminately, in pursuit of any concern Mr Watson might raise with the Council.

36. Mr Watson’s correspondence, including the requirement for review under consideration here, is expressed in language it would be reasonable to describe as confrontational. It tends to prejudice whatever issue Mr Watson is taking up. It is common for it go beyond what a Scottish public authority should reasonably be expected to accept in the context of such communications, being generally challenging in tone and tending to prejudice matters.
37. In this case, and in others for which the Council has provided copy correspondence, Mr Watson’s comments are focused on particular members of staff, expressed in ways it would be reasonable for the officers in question to find distressing. The Commissioner considers it would be reasonable for those individuals to regard this as harassment, regardless of Mr Watson’s intentions.
38. The Commissioner acknowledges that the Council may not have a perfect record in its procedural compliance with Mr Watson’s requests. The Council acknowledges this itself. While the Commissioner does not condone failures to comply with FOISA, such failures do not in themselves justify behaviour of the kind Mr Watson appears to resort to routinely. He may not be surprised to note that a public authority seeking advice on Freedom of Information practice from her office does not, in the Commissioner’s view, justify criticism of the kind Mr Watson has been making (particularly in this requirement for review).
39. While the Commissioner does not provide particular advice on specific cases to either authorities or applicants, she does provide general advice, through both her enquiries service

and in briefings and guidance on her website, about the interpretation and application of freedom of information law and practice. She actively encourages both applicants and authorities to refer to her guidance and to ask for general advice, as it is in all parties' interests for information (not proactively published) to be properly disclosed or withheld at the time a request is made.

40. Taking account of all of the submissions made by the Council and Mr Watson, with the supporting documentation provided by the Council, the Commissioner is satisfied that Mr Watson's requirement for review had the effect of harassing the Council in general and, in particular, a named member of its staff. Having reached this conclusion, the Commissioner is satisfied that the Council was entitled to rely upon section 21(8)(a) of FOISA, and so was not required to conduct a review in terms of section 21(1) of FOISA.

## **Decision**

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The Commissioner finds that the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in handling the information request made by Mr Watson.

The Commissioner finds that the Council was entitled to refuse to comply with the requirement for review, in terms of section 21(8)(a) of FOISA.

## **Appeal**

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Should either Mr Watson or the 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**

**23 June 2016**

### 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.

#### 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-

(a) the requirement is vexatious; or

(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.

...



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