

Decision Notice

Decision 023/2019: Mr X and City of Edinburgh Council

Whether requests were vexatious

Reference No: 201802118, 201802146 and 201802179

Decision Date: 27 February 2019



Summary

The Council refused to respond to requests on the basis they were vexatious.

The Commissioner investigated and found that the Council was not entitled to refuse to comply with the requests on the basis they were vexatious. He required the Council to respond otherwise than in terms of section 14(1) of FOISA.

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 8 and 16 October and 7 November 2018, Mr X made requests for information to City of Edinburgh Council (the Council). The requests sought information relating to:
 - (i) the handling of a previous information request,
 - (ii) procurement of a report for the Monitoring Officer, and
 - (iii) details of the Council's investigation of a specified decision.
2. The Council failed to respond to the request of 16 October 2018. The Council responded to the other requests on 5 November and 6 December 2018. The Council refused these requests on the basis that they were vexatious, in terms of section 14(1) of FOISA.
3. On 7 and 14 November and 7 December 2018, Mr X wrote to the Council requesting reviews of its decisions. For those requests to which he had received a response, he did not consider his requests to be vexatious. He sought a response to the other request
4. The Council notified Mr X of the outcome of its reviews on 14 and 15 November and 18 December 2018. In the two cases it had responded to previously, the Council notified Mr X that it was not conducting a review as it considered his requests to be vexatious, in terms of section 21(8) of FOISA. In relation to the remaining request, the Council confirmed that it also considered this to be vexatious.
5. On 7, 12 and 18 December 2018, Mr X wrote to the Commissioner. Mr X applied to the Commissioner for decisions in terms of section 47(1) of FOISA. Mr X stated he was dissatisfied with the outcome of the Council's reviews (and refusals to carry out a review) because he did not consider his requests to be vexatious.

Investigation

6. The applications were accepted as valid. The Commissioner confirmed that Mr X made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to him for a decision.
7. On 11 December 2018, and 9 and 21 January 2019, the Council was notified in writing that Mr X had made valid applications.
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 these applications and to answer specific questions, focusing on the requirements of section 14(1) of FOISA.

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 him by both Mr X and the Council. He is satisfied that no matter of relevance has been overlooked.

Section 14(1) – Vexatious or repeated requests

10. 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).
11. During the investigation the Council stated that it had reviewed the requests and decided that it no longer wished to rely on section 14(1) of FOISA. No further submissions were received from the Council.
12. In view of the lack of submissions and the Council's change of position, the Commissioner has no option but to conclude that the Council was not entitled to refuse to comply with these requests on the basis that section 14(1) of FOISA applied. He therefore requires the Council to carry out reviews in respect of these requests, and to respond to Mr X otherwise than in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that the City of Edinburgh Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr X. He finds that the Council was not entitled to refuse to comply with Mr X's requests on the basis they were vexatious. In doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Council to carry out reviews, in terms of section 21 of FOISA, and respond otherwise than in terms of section 14(1) of FOISA, by **13 April 2019**.

Appeal

Should either Mr X or City of Edinburgh Council the 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

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

Margaret Keyse
Head of Enforcement

27 February 2019

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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