

# Decision Notice 159/2021

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## **Sexual misconduct, complaints and discipline - were the requests vexatious?**

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**Applicant: The Applicant**

**Public authority: University of Stirling**

**Case Ref: 202100188**



Scottish Information  
Commissioner

## Summary

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The University was asked about complaints of sexual misconduct handled at “Ordinance 2” level. The University informed the Applicant that it considered the requests to be vexatious, and so it was not obliged to respond.

The Commissioner investigated and found that the University had partially complied with FOISA in responding to the requests. While he was satisfied that some of the requests were vexatious, he found that the remaining requests were not.

## 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)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision and forms part of this decision.

## Background

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1. On 9 December 2020, the Applicant made 19 information requests to the University of Stirling (the University). The requests sought information concerning Ordinance 2 allegations involving sexual misconduct, complaints and discipline, how these had been handled by the University, the outcomes and any resulting action.
2. The University responded on 18 December 2020. It informed the Applicant that it was not required to comply with requests that were vexatious and refused the requests in terms of section 14(1) (Vexatious or repeated requests) of FOISA. It provided reasons why it considered the requests to be vexatious.
3. On 21 December 2020, the Applicant wrote to the University, requesting a review of its decision as she disagreed that her requests were vexatious. The Applicant included arguments in support of her view.
4. The University notified the Applicant of the outcome of its review on 21 January 2021, fully upholding its original decision. It informed the Applicant that it was not obliged to comply with a requirement for review where it considered the requests, or the requirement for review, to be vexatious.
5. On 26 January 2021, the Applicant wrote to the University, commenting on her dissatisfaction with the outcome of its review. She offered to reduce the number of requests and asked the University to confirm how many it believed would be reasonable to answer.
6. The University responded on 3 February 2021, referring to its original response and review outcome. It reiterated the Applicant’s rights to appeal to the Commissioner if she remained dissatisfied with its review outcome.
7. On 11 February 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant explained the background to her requests, and her reasons for requesting the information. She argued that the University was not entitled to rely on section 14(1) of FOISA to refuse her requests, providing arguments in support of her view.

## Investigation

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8. The application was accepted as valid. The Commissioner confirmed that the Applicant 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.
9. On 4 March 2021, the University was notified in writing that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The University was invited to comment on this application and to answer specific questions. These focused on its justification for relying on section 14(1) of FOISA.

## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the University. He is satisfied that no matter of relevance has been overlooked.

### Section 14(1) – Vexatious requests

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.
13. FOISA does not define the word "vexatious". The Commissioner's general interpretation, as set out in his guidance on section 14(1)<sup>1</sup>, is that the following factors are relevant when considering whether a request 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 manifestly unreasonable or disproportionate.
14. However, this list is not exhaustive. Depending on the circumstances, other factors may be relevant, provided that the authority can support them with evidence. The Commissioner recognises that each case must be considered on its own merits, taking all the circumstances into account.
15. While the Commissioner's view is that "vexatious" must be applied to the request and not the requester, he acknowledges that the applicant's identity, and the history of their dealings with the authority, may be relevant in considering the nature and effect of a request and its surrounding circumstances. It may be reasonable, for example, for the authority to conclude

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<sup>1</sup> [https://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious\\_or\\_repeated\\_requests.aspx](https://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx)

that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.

#### *The Applicant's submissions*

16. In her application to the Commissioner, the Applicant disagreed with the University's use of section 14(1) in respect of her requests, strongly arguing that neither she, nor her requests, were vexatious. She provided the Commissioner with background information together with her reasons for requiring the information. The Applicant stated her son had been the subject of a miscarriage of justice where the University had broken many of its own procedures. This had led to the Applicant lodging complaints with the Scottish Public Services Ombudsman (SPSO) and the UK Information Commissioner (ICO). The Applicant stated that the SPSO had upheld five of her six complaints; she was challenging the outcome of the sixth one and the ICO case was ongoing.
17. The Applicant explained that the University had furnished her with an apology as a result of the SPSO investigation, but this had flagged up more questions from a public interest perspective. This had led to her submitting her information requests which, she asserted, were genuine requests for further information to gain an understanding of what was common practice.
18. Following the University's review outcome, the Applicant explained, she had offered to reduce the number of requests, but the University's refusal stood. She contested the University's claim that she had been "vexatious", maintaining that all her communications with the University had been measured, fair and reasonable, whereas the University had been most arrogant in its dealings with her.
19. The Applicant strongly believed it was in the public interest to know whether, in respect of its disciplinary processes, the University breached its own protocols or GDPR legislation, and her requests attempted to ascertain whether this was common practice.

#### *The University's submissions*

20. In its submissions to the Commissioner, the University maintained the requests were vexatious. It explained that, in reaching this conclusion, it had carefully considered each of the factors in paragraph 11 of the Commissioner's guidance on vexatious requests (set out above).
21. The University also provided reasons why it believed the requests had no serious purpose or value, were designed to cause disruption or annoyance, had the effect of harassing the University, and would be considered manifestly unreasonable or disproportionate by a reasonable person.
22. The University acknowledged, however, that responding to the requests would not impose a significant burden. It explained that it had not refused the requests based on the number of questions or the burden on the University of responding to them. Even if the scope of the requests had been reduced, the University submitted, they would have still met the criteria for being vexatious.

#### *No serious purpose or value*

23. The University submitted that the requests were not isolated and related to a complaint made by the Applicant regarding its handling of an investigation concerning her son. It stated the Applicant had challenged its actions on this for over three years, involving extensive

communications, complaints to the SPSO, the ICO and the Commissioner, and she had also raised a legal claim in the Court of Session.

24. The University explained why it believed the requests had no serious purpose or value:
- Many of the requests and references were specific to the Applicant's son's circumstances and the University's investigation. As such, the University believed a reasonable person would realise they were highly likely to apply to one specific case and, therefore, several of the requests lacked serious purpose or value as the Applicant had previously been provided with extensive information concerning the ongoing dispute.
  - Certain requests were "leading" in purpose, with a view to encouraging the University to engage in a specific argument about its handling of the investigation, and which required a "judgement" as opposed to a factual response. The University saw this as a way of pressing it to take a particular course of action by continuing to engage regarding the investigation, rather than to extract particular information. It took the view that, had a request with equally leading questions been made by a different individual, it would have reached the same conclusion.
  - The University believed that the Applicant's offer to reduce the number of requests indicated she was not seeking a response to all of them, bringing into question the seriousness of the purpose of the requests.
  - The University provided the Commissioner with examples of communications, evidencing the Applicant's own admission that she would "relentlessly pursue" the issues she has with the University. While the University recognised that the vexatious provision in FOISA focussed on the request, and not the requester, it believed these stated intentions were relevant and should be taken into account when considering the seriousness of the purpose or value of the requests.

Designed to cause disruption or annoyance, and having the effect of harassing the University

25. In its submissions to the Commissioner, the University argued that the Applicant's statement that she would "relentlessly pursue" this matter was evidence of her intention to harass the University and cause disruption and annoyance. Furthermore, it believed the language and tone of the requests confirmed the Applicant's intention to cause disruption and annoyance, and that this would be the perspective of a reasonable person.
26. The University explained that, over the three years during which the dispute had been ongoing, it had recorded 145 emails from the Applicant which she had sent or copied to its Information Governance Team/Depute Secretary, not including emails or telephone calls to other departments and members of staff. It submitted it had responded to the majority of these emails, and had answered all six previous FOI requests made by the Applicant.
27. Recognising that requests for information under FOISA are "applicant-blind", the University submitted it could not disregard the whole circumstances of the case, as indicated in the Commissioner's guidance. It took the view that, even if it was not the Applicant's intention to harass the University, the effect of the requests would be to harass.
28. The University's position was that there was nothing further it could do that would satisfy the Applicant. The Applicant had made it clear she intended to pursue the University, and the University believed her requests were another example of trying to tie up resources and

cause disruption, annoyance and harassment as a reaction to its investigation concerning her son.

#### Manifestly unreasonable or disproportionate

29. The University submitted that the majority of the requests were so specific to the Applicant's ongoing case against the University that they could not be deemed as reasonable or proportionate: a reasonable person would realise the circumstances were unlikely to be relevant to other individuals.

#### History of dealings

30. The University submitted that, in this case, it was appropriate to take into account the Applicant's identity and her history of previous dealings with the University, with regard to her ongoing grievance against it.
31. The University explained that, in addition to the 145 emails to just one area, the Applicant had made six FOI requests, three requests for review, four subject access requests, three complaints to the ICO, two internal complaints, a complaint to the SPSO and the court case against the University. In her correspondence with the University and other authorities, the Applicant raised the same issues repeatedly. This, the University argued, demonstrated an ongoing pattern of behaviour which could be reasonably described as an extended obsessive campaign, as referred to in paragraph 28 of the Commissioner's guidance on vexatious requests.
32. The University further believed that the Applicant's complaints to the SPSO, the ICO and the ongoing legal case, along with the nature of the requests, provided clear evidence that she was trying to pursue an argument, as opposed to primarily obtain information, as referred to in paragraph 30 of the Commissioner's guidance.
33. Referring to paragraphs 32(i) and (ii) of the Commissioner's guidance, the University submitted it had provided the Applicant with extensive information (including 1,840 pages of information in response to four subject access requests), plus responses to all six FOI requests and other correspondence on the same subject. The University took the view it was unable to provide any additional information that would satisfy the Applicant: she had pursued all avenues of complaints and appeals, including the ongoing court case in the Court of Session.
34. The University submitted that, prior to concluding that the requests were vexatious, it had consulted senior colleagues and sought legal advice. In reaching its decision, the University also took into account a number of previous decisions by the Commissioner which, it believed, supported its position that:
- The investigation concerning the Applicant's son had been completed and it was the University's view that it had no further relevant information to provide (*Decision 152/2020*<sup>2</sup> - paragraph 35).
  - It had made numerous attempts to address the Applicant's concerns, and considered these latest requests to be the pursuit of an argument (*Decision 068/2020*<sup>3</sup> - paragraph 32).

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<sup>2</sup> [Decision 152/2020](#)

<sup>3</sup> [Decision 068/2020](#)

- The Applicant's requests had the purpose of pressing an issue which had been addressed extensively and which now formed a case in the Court of Session (*Decision 162/2018*<sup>4</sup> - paragraph 28).
- As a result of the Applicant's history of correspondence and dealings, the requests lacked serious purpose or value, and their aim was to reveal alleged wrongdoing - responding would prolong correspondence which had been fully addressed (*Decision 028/2018*<sup>5</sup> - paragraph 34).

35. The University believed that, having corresponded with the Applicant and other agencies working on her behalf for three years, it would not now be possible to reach a mutually agreeable way forward.

#### *The Commissioner's views*

36. The Commissioner has considered in detail the arguments and explanations presented by both parties. He has carefully considered the submissions made by the University, intended to demonstrate that the Applicant's requests were vexatious due to them lacking serious purpose or value, being designed to cause disruption or annoyance, having the effect of harassing the University and being manifestly unreasonable or disproportionate.
37. FOISA does not require the requester to state why they want the information. However, there are occasions where the intention behind a request cannot, in the whole circumstances of the case, be disregarded. If the intention behind a request is evidently to cause disruption or annoyance to the authority, rather than to access the information that is the subject of the request, the request may be vexatious. To that end, the history of the requester's dealings with an authority may be relevant.
38. An authority could reasonably conclude that a particular request represents the continuation of a pattern of behaviour which it has deemed vexatious in another context. This may arise where a requester has an ongoing grievance against a public authority, or could be described as conducting an extended campaign (for example, to expose wrongdoing), to the point that his or her behaviour can be described as obsessive.
39. Requests might also be deemed vexatious if:
- (i) There is no additional information that can be provided, because all relevant information has already been disclosed; or
  - (ii) It is unlikely that the additional information would shed light on, or alter, the requester's situation (because the subject in question has already been thoroughly addressed through the relevant complaints or appeals procedures).
40. Even if a requester did not intend to cause inconvenience or disruption, if the request has the effect of harassing the public authority and/or its staff, it may be deemed vexatious when considered from the perspective of a reasonable person.
41. The Commissioner has also taken into account the history of the dealings between both parties and the ongoing nature of the Applicant's complaints and requests. He concludes that, in the circumstances, it was reasonable for the University to take account of the history

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<sup>4</sup> [Decision 162/2018](#)

<sup>5</sup> [Decision 028/2018](#)

of its dealings with the requester when reaching a conclusion about whether the requests should be regarded as vexatious.

42. By making the requests currently under consideration, the Applicant was trying to establish whether certain practices, relating to the handling of complaints made, were common practice for the University. The Commissioner recognises this is a matter of high importance to the Applicant, with regard to the University's investigation concerning her son and her pursuit of complaints, in this regard, with other bodies.
43. It is also clear to the Commissioner that, while the University took the view that all other avenues had been exhausted by the Applicant, certain matters were still ongoing, i.e. with the UK ICO, the SPSO and the legal case raised in the Court of Session.
44. It is evident from the submissions made by both parties that there is a difference of opinion between the University and the Applicant as to whether there is information capable of answering her requests. The Commissioner must make a distinction between the outcome of complaints pursued by the Applicant with other regulators and the University providing the specific information sought by the Applicant. Whether any further investigation might be required by any other regulator or body is not a matter upon which the Commissioner has locus to comment. However, he does recognise that the Applicant was entitled to ask the University for information about how it handled complaints, with a view to understanding what was common practice; questions which had only come to light as a result of recent correspondence following the outcome of an SPSO investigation.
45. The Commissioner has some sympathy for the University, and the persistent nature of the Applicant's correspondence, but that does not, in itself, make a request for information vexatious. The Commissioner accepts that an unreasonable pursuit of a complaint, for which all appropriate remedies have been exhausted, might be vexatious. However, in this case, he is not satisfied that he has been presented with sufficient evidence to support that conclusion for all of the requests.

#### The Commissioner's conclusions - requests 1-11

46. Where a requester has an ongoing grievance against a public authority, or could be reasonably described as conducting an extended campaign to the point that their behaviour can be described as unreasonable, then it may be appropriate to apply section 14(1) of FOISA. However, such behaviour in furtherance of legitimate concerns can still be an appropriate course of action in a democratic society.
47. There may be cases where it is reasonable, on the basis of the Applicant's previous dealings with an authority, to conclude that the purpose of a request was to pursue an argument and not to actually obtain information. Depending on the circumstances, this may amount to harassment.
48. The Commissioner sympathises with the University's view that the Applicant's stated intention to "relentlessly pursue" matters was evidence of her intention to harass the University and to cause disruption and annoyance. However, he does not accept, in this case, that this meant all of her requests had the effect of harassing the University, or were designed to cause disruption and annoyance. Taking account of the circumstances behind requests 1-11, and the fact that certain avenues were still being pursued by the Applicant with other bodies, he considers that a reasonable person would concur with this view, for these requests.



49. Even if a public authority believes a request lacks serious purpose or value, an applicant might still, from a subjective and reasonable point of view, have a genuine reason for obtaining the information. While, under FOISA, an applicant is not obliged to share their reasons for seeking information from an authority, the Commissioner notes that, in this case, the Applicant chose to do so, as set out above.
50. It is clear to the Commissioner that, as certain aspects of the University's investigation concerning the Applicant's son appear to remain unresolved, the Applicant has clear reasons for requesting this information. In light of this, and recognising that the strained relationship between the Applicant and the University is also a likely factor here, he is not satisfied that the University has demonstrated that requests 1-11 lacked serious purpose or value. He considers it was not unreasonable for the Applicant to seek the information requested in requests 1-11.
51. Furthermore, the Commissioner does not accept that requests 1-11 were manifestly unreasonable or disproportionate. In his view, these requests seek factual data relating to the outcomes of complaints, described in a generalised nature, which could not be deemed as being so specific they were unlikely to be relevant to any individual. Indeed, the Commissioner notes, from the evidence provided with the University's submissions, that it responded to a previous similar request made by the Applicant, without considering it vexatious.
52. In this case, for requests 1-11, the Commissioner does not believe he has been provided with sufficient evidence to conclude that the requests were vexatious. He is not satisfied that it would be reasonable to regard these requests as being vexatious, as claimed by the University, even viewed in the context of the Applicant's previous correspondence and her history of dealings with the University. In the Commissioner's view, it would not be unreasonable for the Applicant to seek to obtain factual data that might (or indeed might not) satisfy her as to what was common practice in relation to how the University handled certain complaints, even if having that information led nowhere in terms of furthering the resolution of her ongoing complaint with the University.
53. In all the circumstances, therefore, the Commissioner does not consider, viewing requests 1-11 either in isolation or cumulatively, that the threshold for applying section 14(1) of FOISA has been reached in this case. The Commissioner finds that the University was not entitled to refuse to comply with requests 1-11 on the basis that section 14(1) of FOISA applied. He therefore requires the University to carry out a fresh review in respect of these requests, and to provide the Applicant with a revised review outcome, otherwise than in terms of section 14(1) of FOISA.
54. The Commissioner will now go on to consider whether the University was entitled to refuse to comply with the remainder of the requests, on the basis that section 14(1) of FOISA applied.

#### The Commissioner's conclusions - requests 12-19

55. The Commissioner is aware that the vexatious nature of a request may only emerge after considering it in the context of previous or ongoing dealings or correspondence with the authority.
56. On the face of it, requests 12-19 might not appear vexatious. They are politely worded and, for the most part, appear to seek factual data. However, when taken in context of the circumstances behind the request, these requests do appear, to the Commissioner, to relate to situations described in a fairly specific, but somewhat hypothetical manner. Furthermore,

some requests appear to require a judgement to be reached to allow for a response to be made, rather than seeking recorded information.

57. The University claimed the requests lacked serious purpose, as set out above. The Commissioner recognises that the subject matter of the requests is personally important to the Applicant, and that she is seeking information to allow her to determine what was common practice for the University in handling complaints. It is also clear that the Applicant believes there is a public interest in transparency in this regard.
58. The Commissioner's view is that, in determining whether a request is vexatious, an authority should not reach this conclusion lightly. In considering whether these requests lack serious purpose or value, the Commissioner must take into account the Applicant's previous dealings and correspondence with the University and whether, in that context, these requests had a serious purpose.
59. It is clear to the Commissioner that requests 12-19 are more focussed on the circumstances relating to the investigation concerning the Applicant's son. However, he would stress that neither a focus on an individual case, nor a determination to pursue matters relentlessly, are *necessarily* indicators of vexatiousness (as appears to be claimed by the University).
60. The Commissioner notes that, while the SPSO investigation has concluded, one of its findings is being challenged by the Applicant, and that matters are ongoing with the ICO and in the Court of Session. He also recognises that the Applicant's aim is to achieve transparency in respect of alleged wrongdoing by the University.
61. The Commissioner accepts that public authorities should be held accountable for their actions and decisions, and that meeting this underlying commitment to openness and transparency may involve absorbing a certain level of annoyance and disruption. Notwithstanding this, it appears to the Commissioner that requests 12-19 are an attempt to press the University into extended correspondence on a matter which appears to have already been extensively addressed.
62. While doing so is not necessarily an action designed to cause disruption and annoyance, taking into account all the circumstances of the case, it is the Commissioner's view that it is unlikely that the additional information requested in these requests would shed light on, or alter, the Applicant's situation, and there is likely nothing to be learned from the information sought in these requests.
63. As such, he accepts that requests 12-19 lack serious purpose or value and could therefore be deemed vexatious, particularly in light of the Applicant's previous dealings with the University on this matter, and her statements confirming her intention to "relentlessly pursue" matters.
64. The Commissioner also considers that some requests (in particular requests 13, 15, 17 and 18) appear to require the University to make a judgement to be able to respond to them, as opposed to being requests for recorded information. In the Commissioner's view, while this may not have been the Applicant's intention, these could be seen as being designed to cause annoyance or disruption, and as having the effect of harassing the University.
65. Ultimately, taking account of the history of dealings between the parties, the Commissioner takes the view that requests 12-19 were designed to further the Applicant's aim of revealing wrongdoing on the part of the University and to pursue an ongoing grievance.

66. It is the Commissioner's view that the cumulative effect of the correspondence has been such that requests 12-19 had the effect of harassing the University and its staff. The Commissioner has not reached this conclusion lightly and acknowledges that this may not have been the Applicant's specific intention in making these requests. However, the context created by the Applicant's previous correspondence and dealings with the University on this matter, together with the way in which these requests have been worded, suggests strongly that she is now repeatedly pursuing concerns on the same matter, to a point where some of her information requests have become manifestly unreasonable.
67. The Commissioner therefore finds requests 12-19 were vexatious in terms of section 14(1) of FOISA, and the University was not obliged to comply with these requests.

## Decision

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The Commissioner finds that the University of Stirling (the University) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by the Applicant.

The Commissioner finds that requests 12-19 were vexatious in terms of section 14(1) of FOISA, and that the University was not obliged to comply with them.

However, the Commissioner also finds requests 1-11 were not vexatious in terms of section 14(1) of FOISA. The University was therefore obliged to comply with the requests and its failure to do so breached Part 1 of FOISA.

The Commissioner therefore requires the University to carry out a further review of requests 1-11, and to issue a fresh review outcome to the Applicant for these requests, otherwise than in terms of section 14(1) of FOISA, by **29 November 2021**.

## Appeal

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Should either the Applicant or the University 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 the University fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the University has failed to comply. The Court has the right to inquire into the matter and may deal with the University as if it had committed a contempt of court.

**Margaret Keyse**  
**Head of Enforcement**

**14 October 2021**

## Appendix 1: Relevant statutory provisions

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### 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.

...

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**