

Decision Notice 038/2020

Whether a request was vexatious

Applicant: The Applicant

Public authority: University of the Highlands and Islands

Case Ref: 201901405



Scottish Information
Commissioner

Summary

The University refused to respond to a request on the basis that it was vexatious.

The Commissioner investigated, but was not satisfied that the University had demonstrated that the request was vexatious. He required the University 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); 21(8) (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

1. On 18 July 2019, the Applicant made a request for information to the University of the Highlands and Islands (the University). The information requested was:
All documentation concerning the ethical approval of the research aspect (clinical case study) for the final year of the DipHE in Counselling and Psychotherapy including but not limited to:
 - *The application for ethical approval for the Case Study assignment and consent form*
 - *The granting or otherwise of this approval and the ethical approval reference number*
 - *Minutes from the REC meetings concerning this proposal and approval*
2. The University responded on 14 August 2019. It notified the Applicant that it was refusing to comply with the request as it considered it to be vexatious, in terms of section 14(1) of FOISA. The University referred to previous requests that the Applicant had made and which it also had considered to be vexatious. It noted that the Commissioner was currently investigating whether or not these previous requests were vexatious. The University commented that it was not going to provide the Applicant with a response to this request, until the Commissioner had issued his determination of the previous requests.
3. On 16 August 2019, the Applicant wrote to the University requesting a review of its decision not to comply with her request. .
4. On 21 August 2019, the University notified the Applicant that it was refusing to carry out a review on the basis that it considered her request to be vexatious, in accordance with section 14(1) of FOISA. (Under section 21(8) of FOISA, a public authority is not obliged to carry out a review if the request for information to which the review relates was vexatious.) It again referred to the previous “vexatious” requests she had made, which were being considered by the Commissioner, noting that it would not conduct a review of this request until the Commissioner had issued his determination in relation to the appeals about the previous “vexatious” requests.

5. On 21 August 2019, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the University's review because she did not believe her request was vexatious.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 24 September 2019, the University was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
8. 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 related to its reasons for believing that the request was vexatious.

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 the Applicant and the University. He is satisfied that no matter of relevance has been overlooked.

Section 14(1) of FOISA – Vexatious or repeated requests

10. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.
11. FOISA does not define the word "vexatious". The Commissioner's general approach, as set out in his guidance on section 14(1), is that the following factors are relevant when considering whether a request is vexatious. These are that the request:
 - (i) would impose a significant burden on the public body
 - (ii) does not have a serious purpose or value
 - (iii) is designed to cause disruption or annoyance to the public authority
 - (iv) has the effect of harassing the public authority
 - (v) would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
12. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all circumstances into account. The term "vexatious" must be applied to the request and not the requester, but an applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of the request and surrounding circumstances.

The Applicant's submissions

13. The Applicant did not accept that the University should have considered this request alongside a previous request for information she had made (and which the University had also argued was vexatious) as this request concerns a completely different aspect of the course. The Applicant argued that if the information exists it should be straightforward to retrieve as it should be easily accessible for governance purposes. The Applicant noted that she had not previously requested any information on this particular subject.
14. The Applicant also noted that the University has claimed that she has made false allegations against it. However, she contended that, in relation to other issues she may have raised with the University, she had only ever gone through the proper grievance procedures. The Applicant suggested that the University is claiming her requests are vexatious to prevent it from being embarrassed.
15. The Applicant also argued that it was in the public interest to know whether a student project involving the use of external client (mental health services) information has gone through ethical approval procedures, and to be able to see the evidence of that. The Applicant submitted that the clients involved (who are, in her view, potentially very vulnerable in light of being in counselling) should have a right to know this information before agreeing to participate.

The University's submissions

16. The University asked the Commissioner to take into account all of the submissions it had made in a previous application that was considered in *Decision 032/2020 The Applicant and the University of the Highlands and Islands*¹. Paragraphs 15 to 28 of that decision outline the University's arguments for concluding that that request (and this request) was vexatious. The Commissioner will not repeat them here.
17. The University did not provide any submissions specific to this request. The University relied purely on submissions made in a related application, which considered a different request.

The Commissioner's view

18. The Commissioner has carefully considered the submissions made by the University, intended to demonstrate that dealing with the Applicant's request was unduly burdensome, that it was having a detrimental impact on its staff and that she was using FOISA to continue dialogue on matters that have already been addressed through other means.
19. In this case, the Commissioner is limited to considering whether the University has provided sufficient evidence and submissions to support its claim that the application of section 14(1) was appropriate in the circumstances.
20. Even if a requester does not intend to cause inconvenience or create a significant burden, if a request has the effect of harassing a public authority and/or its staff, it may be deemed vexatious when considered from the perspective of a reasonable person.
21. The University has argued that the request made by the Applicant in *Decision 032/2020* was unduly burdensome and has taken up a significant amount of staff time and resources. However, the University has not provided the Commissioner with any submissions or evidence that explains how much information would be covered by this particular request,

¹ <https://www.itspublicknowledge.info/201900917.aspx>

nor how much effort would be required to identify and collate it. In light of this, the Commissioner cannot reach a view on whether or not this particular request is unduly burdensome.

22. It is clear that, since February 2018, University staff have spent a considerable amount of time dealing with concerns raised by the Applicant, as well as the time spent complying with the FOI requests she has submitted. In this particular request, the University refused to comply with the request on the grounds that it was vexatious, so no information has been provided to the Applicant.
23. As noted above, the University has provided the Commissioner with comments from its staff, along with the estimated amount of hours each staff member spent dealing with the Applicant's previous requests and complaints made by the Applicant. The Commissioner notes that some staff have expressed concerns regarding the stress they have been caused by dealing with the Applicant's correspondence, including the process of FOI requests and other matters of complaint. The University has also argued that the Applicant's motivation in making information requests was not to obtain information, but was to pursue an argument with the University.
24. The Commissioner considers that the University has an obligation to ensure that its staff work in a safe environment and that they are not subjected to unjustified levels of stress. The University has a duty of care to its staff and must consider their wellbeing. However, the University also has responsibilities under FOISA and it cannot deny the Applicant her right to access recorded information without just cause.
25. The Commissioner notes, at the time of her application, the Applicant had made four FOI requests in 2019 and three FOI requests in 2018. However, much of the Applicant's engagement with the University, which is detailed on the "Timeline of activity" it provided, concerns course-related complaints and issues. The Commissioner considers it is reasonable to expect a University student to contact the University department she is studying at with questions about course materials, assessments, academic appeals and other aspects of the course which are specific to her. The Commissioner notes that a number of the complaints raised by the Applicant were partially upheld by the University. In addition, the Applicant has made several requests for her own personal data, which she is entitled to do under the Data Protection Act 2018 (the DPA 2018).
26. The Commissioner notes the University's remarks regarding the Applicant's involvement of the Scottish Public Services Ombudsman (SPSO) and the Quality Assurance Agency (QAA), but again he considers that each of these regulators consider different aspects of an authority's discharge of its functions and the Applicant is perfectly entitled to raise her concerns with the relevant regulator. In addition, the Commissioner notes that neither of the regulators had completed their consideration of the Applicant's concerns at the time she made her information request, so the outcome of those investigations was unknown. The Commissioner does not consider the Applicant's decision to pursue matters with the SPSO or QAA to be evidence of a pattern of vexatious behaviour.
27. As noted above, the Applicant has argued that her request has merit and that it is in the public interest to know whether a student project involving the use of external client information (from mental health services) has gone through ethical approval procedures.
28. The Commissioner has examined the submissions made by both the Applicant and the University and he is not satisfied that the Applicant's sole motivation is pursuing an argument with the University. The Commissioner understands that the Applicant has raised a number

of queries with the University regarding the course she is enrolled on, and that she has also engaged external regulators to investigate her concerns. However, having given consideration to the information requested by the Applicant, the Commissioner has been provided with no compelling evidence to persuade him that the Applicant is only seeking to continue an argumentative dialogue with the University.

29. The term vexatious must be applied to the request and not the requester. It is not the identity of the requester that determines whether a request is vexatious, but the nature and effect of the request made in light of the surrounding circumstances. A request cannot automatically be judged vexatious simply because a requester has been deemed vexatious in another context, for instance if they have made another complaint or because they may have submitted other requests that were vexatious.
30. In all the circumstances of the case, the Commissioner finds that the University was not entitled to refuse to comply with the request on the basis that section 14(1) of FOISA applied. He requires the University to carry out a review in respect of the Applicant's request, and to respond to her otherwise than in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that the University of the Highlands and Islands (the University) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. He finds that the University was not entitled to refuse to comply with the Applicant's request on the basis it was vexatious. In doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the University to carry out a review, in terms of section 21(4)(b) of FOISA, by **14 April 2020**.

Appeal

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

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

25 February 2020

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.

...

21 Review by Scottish public authority

...

- (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.

...

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