
Decision Notice 068/2020

Whether request was vexatious

Applicant: The Applicant

Public authority: South Lanarkshire Council

Case Ref: 201901771



Scottish Information
Commissioner

Summary

The Council was asked for the date that a particular piece of information was passed to Police Scotland by the Council.

The Council considered the request to be vexatious and refused to comply with it. The Commissioner agreed the request was vexatious.

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 31 July 2019, the Applicant made a request for information to South Lanarkshire Council (the Council). The information requested was the date that the Council passed a particular piece of information to Police Scotland.
2. The Council responded on 23 August 2019, refusing the request because in its view the request was vexatious.
3. On 23 August 2019, the Applicant wrote to the Council, requesting a review of its decision. He did not consider himself a vexatious complainant and believed this was an excuse not to answer a simple question.
4. The Council notified the Applicant of the outcome of its review on 18 September 2019. It upheld its original decision, referring to two previous decisions of the Commissioner.
5. On 20 September 2019, the Applicant wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review because he did not consider his request to be 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 22 October 2019, the Council was notified in writing that the Applicant had made a valid application. 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 Council was invited to comment on this application, with particular reference to its application of section 14(1) of FOISA.

9. The Council provided comments on its application of section 14(1). The Applicant also provided comments in support of his position that his request was not vexatious.

Commissioner's analysis and findings

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

Section 14(1) – vexatious requests

11. In terms of section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information made under section 1(1) if the request is vexatious.
12. FOISA does not define the word “vexatious”. The Commissioner’s general interpretation, as set out in his guidance on section 14(1)¹, 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.
13. 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.
14. 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 a public 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 that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.

The Applicant’s submissions

15. The Applicant disagreed with the Council’s use of section 14(1) in respect of his request. He stated that his request was not vexatious. His view was that the Council was using this as an excuse not to answer his simple question. The Applicant provided a lot of context in his submissions on the Council’s handling of the request and other related matters.
16. The Applicant also questioned why the Council had made reference to previous decisions made by the Commissioner. He did not see how these were relevant to his current request.
17. He commented that his request:

¹ [http://www.itspublicknowledge.info/Law/FOISthereA-EIRsGuidance/Section14/Vexatious or repeated requests.aspx](http://www.itspublicknowledge.info/Law/FOISthereA-EIRsGuidance/Section14/Vexatious%20or%20repeated%20requests.aspx)

- did not place any burden on the Council
- did have a serious purpose, as it could prove whether the Council did or did not take a particular course of action
- was not designed to cause disruption or annoyance, but to ensure the truth was published
- was not manifestly unreasonable or disproportionate.

18. He commented that, if the Council seeing its “incompetence” reported in the press was judged to be harassment, then his request probably was harassing.

The Council's submissions

19. The Council submitted that in this instance it was appropriate to take into account both the Applicant's reasons for making the request and his previous dealings with the Council.

20. The Council contended that there had been numerous attempts by the Council to resolve previous and current issues raised by the Applicant. It believed the Applicant was using the request process to continue a campaign rather than to access information. The Council also provided reasons why it believed the request was designed to cause disruption and annoyance and had the effect of harassing it.

Designed to cause disruption and annoyance

21. The Council highlighted that the Commissioner had advised in his guidance on vexatious or repeated requests that *“there are occasions where the intention behind a request cannot, in the whole circumstances of the case, be disregarded. For that reason, this factor considers the requester's intention in making the request. If the intention is evidently to cause disruption or annoyance to the authority, rather than to access the information, the request may be vexatious.”*

22. The Council considered this to be such a case.

23. The Council's view is that the Applicant is using Freedom of Information legislation as a means of pressing the Council and its officers to take a particular course of action, rather than to extract particular information. It submitted that this intention was explicit in his request, where he stated that he would withdraw the request if satisfied that the desired course of action was being taken.

Effect of harassing the Council

24. The Council referred to several instances where the Applicant had made abusive and unfounded allegations against the Council and its officers, not only to the Council but to others such as elected representatives and outside bodies.

25. The Council contended that, even after the Applicant had been advised about the unacceptable nature of the tone of his correspondence, the correspondence continued in the same vein.

26. The Council argued that the Applicant has exhausted all avenues available to him for complaining about the Council's actions, for example with the Scottish Public Services Ombudsman, and that his request for information was an attempt to open another channel to advance his purpose.

27. The Council considered documents provided by it to the Commissioner supported its opinion that the information request was designed deliberately to have the effect of harassing the Council and its officers into complying with the Applicant's demands.

Commissioner's conclusion

28. There is no "test" for vexatiousness in the context of FOISA, and the courts have resisted any attempt at a comprehensive definition. Rather, they have interpreted "vexatious" by reference to the ordinary, natural meaning of the word, read in its statutory context (see the judgment of the Court of Session in *Beggs v Scottish Information Commissioner* [2018] CSIH 80²). An objective (and high) standard is required, given the important nature of the right of access to information, and there must be no reasonable foundation for thinking the information in question would be of value.
29. The information requested by the Applicant was the date that the Council contacted Police Scotland to give them information about a particular matter. Although the Applicant's request might seem straightforward on the face of it, his correspondence around it focuses on the Council's actions/inactions relating to an ongoing pursuit of matters that have been the subject of previous information requests and complaints, all already dealt with.
30. The Applicant commented that his request did have a serious purpose, to discover if the Council did or did not take a particular course of action, and was not designed to cause disruption or annoyance, "but to ensure the truth is published". It should be noted that the effect of a request may be to harass a public authority, even if the intention of the requester has not been to harass. Also, as stated above, it is relevant in this context to take account of the value of the information itself, viewed objectively by a reasonable observer.
31. The Commissioner accepts that the supporting documentation supplied to him by the Council is largely relevant, as evidence that the request at issue appears to be a continuation of a campaign or argument conducted by the Applicant, on a single issue (or at least a number of issues which the Applicant believes to be interrelated). Taking account of the history between the parties, the Commissioner accepts the Council's position that the Applicant is pursuing a campaign, unrelated to the extraction of information and with the purpose of harassing the Council with a view to securing a particular course of action. This, indeed, would appear to be the Applicant's stated purpose.
32. The Council has also pointed out (and evidenced) that there have been a number of attempts by it to address the Applicant's concerns, albeit not to his satisfaction. In that context, the Commissioner accepts that it would appear to be reasonable to characterise the request as made for purposes other than the extraction of information, and therefore to find that it had no reasonable foundation (as an information request).
33. The standard for a finding of vexatiousness is a high one, but (for the reasons given above) the Commissioner accepts that it was reasonable, in all the circumstances of this case, for the Council to conclude that the Applicant's request of 31 July 2019 was vexatious, in terms of section 14(1) of FOISA.

² <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/2018csih80.pdf?sfvrsn=0>

Decision

The Commissioner finds that South Lanarkshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant 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.

Margaret Keyse
Head of Enforcement

9 June 2020

Appendix 1: Relevant statutory provisions

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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