

Decision Notice 083/2020

Repeated request

Applicant: The Applicant

Public authority: City of Edinburgh Council

Case Ref: 201900756



Scottish Information
Commissioner

Summary

The Council refused to comply with a request, arguing that it was a repeated request.

The Commissioner concluded that, given that a reasonable period had passed between the making of the request and the previous requests, the request was not repeated for the purposes of section 14(2) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(2) (Vexatious or repeated requests)

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

Background

1. On 5 February 2019, the Applicant made a request for information to the City of Edinburgh Council (the Council). He wished to repeat two of his earlier requests as he understood that the Council had located additional information. The text of the Applicant's request of 5 February 2019 is set out in Appendix 2 to this decision.
2. On 6 March 2019, the Applicant wrote to the Council requesting a review of its decision on the basis that the Council had failed to respond to his request.
3. The Council notified the Applicant of the outcome of its review on 14 March 2019. The Council apologised for not responding to the request, but refused to comply with the request on the basis that it was, in terms of section 14(2) of FOISA, a repeated request.
4. On 10 May 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 did not accept his request was repeated for the purposes of section 14(2).

Investigation

5. 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.
6. 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 to answer specific questions relating to section 14(2) of FOISA.

Commissioner's analysis and findings

7. 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(2) - Repeated request

8. The Council submitted that it was not required to comply with the request as the request was repeated, and therefore fell within section 14(2) of FOISA.
9. Under section 14(2), where an authority has complied with an information request, it is not obliged to comply with a subsequent request from the same person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
10. There is no definition of "a reasonable period of time" in FOISA: what is reasonable will depend on the circumstances of the case, including whether the information or circumstances, have changed.¹

Background to the requests

11. The Council submitted that the Applicant's request was a repeat of previous requests he had made to the Council: the Applicant's request of 5 February 2019 specifically said he "would like to formally repeat the requests under FOI ... made on 26 August 2016 and 16 October 2018". (The text of the 2016 and 2018 requests is set out in Appendix 2.)
12. The Commissioner agrees that the request of 5 February 2019 is identical to the previous requests: one part is identical to the request of 26 August 2016 and the other part is identical to the request of 16 October 2018.
13. However, the Commissioner must consider whether a reasonable period of time has passed between the making of the requests. As noted above, this will include determining whether there has been a change in circumstances.
14. The Applicant argued that there had been a significant change of circumstances. He believed that a different version of the investigation report, with different conclusions, was held by the Council.

August 2016 request

15. The Council had responded to the August 2016 request by telling the Applicant that it held no information.

October 2018 request

16. The Council had refused to comply with the October 2018 request on the basis that the request was vexatious in terms of section 14(1) of FOISA.
17. The Applicant appealed this request to the Commissioner in December 2018. On 10 December 2018, the Council was notified of this appeal. On 12 February 2019, the Council told the Commissioner it no longer wished not to rely on section 14(1) and "by way of potential early resolution" suggested that the outstanding requests could be processed anew, enabling a response within 20 working days.
18. On 18 February 2019, the Council located information which fell within the scope of the earlier requests and, consequently, within the scope of the request which is the subject of this decision, i.e. the request of 5 February 2019.

¹ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.aspx?IID=6159&sID=2591>

19. On 27 February 2019, the Commissioner issued *Decision 023/2019* in relation to the October 2018 request. That decision required the Council to conduct a review of its handling of the October 2018 request. On 11 April 2019, the Council issued a new review to the Applicant and withheld the information under various exemptions in Part 2 of FOISA.
20. The Council noted that the Applicant had referred to becoming aware that there was a different version of the investigation report held by the Council, which led him to believe that the Council would respond differently from how it had in August 2016. The Council said:

“It should be noted that it had long been suggested within the Council that there may have been earlier versions of the report, however, the Council did not locate any record of these until 18 February 2019.”
21. The Council also commented that, at the time the Applicant made his request on 5 February 2019, the nature of the information which it was aware that it held had not changed since the requests in August 2016 or October 2018. The additional information was found on 18 February 2019. The Council added that, if the Applicant has not appealed the October 2018 request to the Commissioner, it would not have applied section 14(2). However, given the live appeal, [redacted for publication], the Council concluded that it was reasonable to refuse the request on the basis that it was repeated.

The Commissioner's views

22. The Commissioner is satisfied that the circumstances have changed. The Council has located information it had previously told the Applicant it did not hold (the August 2016 request). The Council acknowledged that it based its refusal of the October 2018 request on its understanding that it did not hold the information. Although, according to the Council, it had not located the information when it received the February 2019 request – and was not aware it existed – the Council did, in terms of FOISA, hold that information. It is also important to note that, when the Council reviewed its response to the February 2019 request in March 2019, the Council was, by then, aware of the information.
23. The Council has argued that the February 2019 request was part of “a corpus of correspondence relating to a long-standing and extremely complex complaint situation which has existed for a number of years”. The Commissioner acknowledges that this may be the case, but this does not alter the fact that the Council had located information relevant to the Applicant’s request which it had previously said it did not hold.
24. The Council also referred to proportionality and duplication of work, given that the October 2018 request was subject to a live appeal to the Commissioner.” The Council suggested that any response (to the 5 February 2019 request) would cause confusion and duplication.
25. While section 14(2) of FOISA certainly reduces the need for authorities to “duplicate” work, the Commissioner does not accept, in the circumstances, that the existence of the live appeal is directly relevant to deciding if section 14(2) was correctly applied to the request of 5 February 2019.
26. In the circumstances of this case, while the Commissioner accepts that the present request is identical to previous requests made by the Applicant, he is also satisfied that there was a reasonable period of time between the submission of the previous request(s) and the submission of the current request. Therefore, section 14(2) is not engaged and the Council breached Part 1 of FOISA in refusing to comply with the request on this basis.

27. However, given that the information which is the subject of this application is the same as the information which is the subject of [redacted for publication] separate investigation, the Commissioner does not require the Council to take any action in respect of the above failure

Decision

The Commissioner finds that the request made by the Applicant was not a repeated request for the purposes of section 14(2) of the Freedom of Information (Scotland) Act 2002 (FOISA) and that City of Edinburgh Council (the Council) failed to comply with Part 1 of FOISA in treating it as such. For the reasons set out above, the Commissioner does not require the Council to take any action in respect of this failure.

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
25 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

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

Appendix 2 [redacted for publication]

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