

Decision Notice 110/2020

Whether requests were vexatious

Applicant: The Applicant

Public authority: Perth College

Case Ref: 201900919 and 201901406



Scottish Information
Commissioner

Summary

The College refused to respond to two requests on the basis they were vexatious and subsequently refused to conduct reviews.

The Commissioner found that the requests were not vexatious and that the College was therefore obliged to conduct the reviews. He required the College to carry out the reviews and 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(4) and (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 17 April and 5 July 2019, the Applicant made requests for information to Perth College. The information requested was for:
 - Course documentation/CUR03s/CUR02s for health studies programmes referred to in a previous letter.
 - The audit trail for approval of the DipHE in Person-Centred Counselling and Psychotherapy, documentation from all three partner colleges running the course, quality control documentation produced including minutes and documents considered by the panels and those developing the courses, their credentials and communications from any other quality control panel overseeing the approval panel. Policies and procedures relating to appointment of external experts/advisors.
2. The College responded on 16 May and 22 July 2019. The College refused to respond to the requests on the basis that they were vexatious in terms of section 14(1) of FOISA.
3. On 17 May and 23 July 2019, the Applicant wrote to the College requesting a review of its decisions on the basis that she did not consider the requests to be vexatious: the information had not been previously requested and would not be a significant burden to supply.
4. The College notified the Applicant of the outcome of its reviews on 29 May and 21 August 2019. The College upheld section 14(1) and therefore, in line with section 21(8) of FOISA, considered it was not obliged to carry out reviews.
5. On 4 June and 21 August 2019, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcomes of the requests and refusals to carry out reviews. She did not consider the requests to be vexatious and believed the disclosure of the information was required to ensure the integrity of the course in the public interest.

Investigation

6. The applications were 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.
7. On 17 July and 24 September 2019, the College was notified in writing that the Applicant 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 College was invited to comment on the 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 these matters, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the College. 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. On 19 August 2020, following the Commissioner's decision in a related application, the College withdrew its reliance on section 14(1) of FOISA and stated that it would carry out a review of both of the Applicant's requests and provide a review outcome. No further submissions or evidence of revised responses have been received from the College.
12. In view of the College's change of position, and in the absence of submissions to the contrary, the Commissioner has no option but to find that the requests were not vexatious and that the College was not entitled to refuse to carry out the reviews under section 21(8) of FOISA. He therefore requires the College to carry out reviews in respect of these requests and to respond to the Applicant otherwise than in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that Perth College (the College) failed to comply with Part 1 (in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by the Applicant. He finds that the requests were not vexatious and that the College was obliged to carry out reviews of the requests.

The Commissioner therefore requires the College to carry out reviews, in terms of section 21(4) of FOISA, and respond otherwise than in terms of section 14(1) of FOISA, by 6 November 2020.

Appeal

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

Margaret Keyse
Head of Enforcement

22 September 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.

...

21 Review by Scottish public authority

...

- (4) The authority may, as respects the request for information to which the requirement relates-

- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
- (b) substitute for any such decision a different decision; or
- (c) reach a decision, where the complaint is that no decision had been reached.

...

- (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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