

Decision Notice

Decision 126/2017: Mr X and the Chief Constable of the Police Service of Scotland

Whether request was vexatious

Reference No: 201700860

Decision Date: 1 August 2017



Scottish Information
Commissioner

Summary

Police Scotland were asked for information about the circumstances in which a death at Kittybrewster police station was not recorded on its CCTV system. Police Scotland refused to provide this information because they considered the request to be vexatious. After investigation, the Commissioner found that, whether intentional or not, the request had the effect of harassing Police Scotland and they were entitled to refuse to comply with the request on the grounds that it 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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. The request under consideration in this case relates to an issue identified with the CCTV system in the Kittybrewster custody facility shortly after it became operational on 24 June 2014. The Crown Office and Procurator Fiscal Service (COPFS) instructed the Police Investigations and Review Commissioner (PIRC) to carry out an independent investigation into the circumstances leading up to the death of a man at the Police Scotland Custody Centre at Kittybrewster in Aberdeen on Sunday 29 June 2014. A full report has been submitted by PIRC to COPFS¹.
2. On 22 February 2017, Mr X made the following request for information to the Chief Constable of the Police Service of Scotland (Police Scotland).

"A young man died while being held in custody at Kittybrewster police station on July 2014.

[Named Police officer] shared with me on the 6th November 2014 that the death was not recorded due to the server having limited capacity.

1. At which date after the death was the capacity of the server exchanged to a larger card, so that more memory could be stored/retained/captured.

2. The death took place on the 3rd 4th July 2014. The family were told that it was not recorded. Was the server change out left for a further +- 30 days before being changed out?"
3. Police Scotland notified Mr X on 21 March 2017 that his request was vexatious. They explained that they had already provided him with information about the equipment failure,

¹ http://pirc.scotland.gov.uk/investigations/investigations_archive/1561_pirc_investigati

but he continued to ask the same questions on this subject in a slightly different format. The death in police custody was the subject of an ongoing investigation and Police Scotland had provided as much information as they could without jeopardising that investigation. Police Scotland told Mr X that his request had the effect of harassing them and was designed to cause disruption and annoyance. Accordingly, they had concluded that, in terms of section 14(1) of FOISA, his request was vexatious.

4. On 2 April 2017, Mr X wrote to Police Scotland requesting a review of their decision on the basis that Police Scotland had not supplied him with the information he had requested.
5. Police Scotland notified Mr X of the outcome of their review on 27 April 2017. They upheld their original decision that his request was vexatious.
6. On 12 May 2017, Mr X applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was dissatisfied with the outcome of Police Scotland's review as he did not agree that his request was vexatious.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr X made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and answer specific questions including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.
9. Mr X was given the opportunity to comment on the reasons put forward by Police Scotland and did so.

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 her by both Mr X and Police Scotland. She 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 her guidance² on section 14(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 body
 - (ii) it does not have a serious purpose or value
 - (iii) it is designed to cause disruption or annoyance to the public authority

² http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx

- (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. 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 the circumstances into account.
14. While the Commissioner's view is that "vexatious" must be applied to the request and not the requester, she 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.

Police Scotland's submission

15. In their submission to the Commissioner, Police Scotland provided background information and evidence to support their view that Mr X's request was vexatious in terms of section 14(1) of FOISA.
16. In 2013, Police Scotland wrote to Mr X to ask him to direct all correspondence to them via a designated single point of contact. Police Scotland did this in terms of their *Unacceptable, Persistent and Unreasonable Actions by Complainers Standard Operating Procedure*³. These arrangements, which are subject to periodic review, remain in place today.
17. The justification for this special measure was that Mr X was submitting a large number of complaints and requests for information. Police Scotland referred to 13 online complaints submitted in one day and, during eight months, over 100 questions under FOISA or the Data Protection Act 1998 (DPA) submitted to Police Scotland's Information Management Unit. Police Scotland explained that, at times, one individual had to work full-time to manage Mr X's requests.
18. Police Scotland stated that Mr X "continually flouts the contact policy in place" and submits FOI requests to another specific email address. They considered that dealing with these valid requests significantly undermines the integrity of the contact policy "which remains in place for good reason". They commented that the bulk of Mr X's contact could be categorised as complaints and expressions of dissatisfaction.
19. Police Scotland acknowledged that the volume of information requests from Mr X has decreased substantially over the past few years, but said that his requests had now become repeated requests for information on the same subject.
20. Police Scotland did not argue that Mr X's request was without serious purpose or value. However, they considered that his request had the effect of harassing Police Scotland and was designed to cause disruption or annoyance. Police Scotland described Mr X as having an on-going grievance in relation to the custody facility at Kittybrewster and said he had been conducting an extended campaign to the point that his behaviour could be described as obsessive. Mr X continued to make requests for information regarding the equipment failure

³ www.scotland.police.uk/assets/pdf/151934/184779/unacceptable-persistent-and-unreasonable-actions-by-complainerssop

in the custody facility although these had been addressed previously (insofar as Police Scotland had explained that they do not hold information showing the exact dates of some events or actions relating to that failure).

21. The Commissioner's guidance on vexatious requests states that a request may be vexatious if there is no additional information that can be provided because all relevant information has already been disclosed. Police Scotland believed this was the case in relation to Mr X's request. They provided copies of nine separate letters which had disclosed information relating to the same incident, including a letter dated 1 February 2017 in which Police Scotland had attempted to provide a comprehensive summary of the information they held about the sequence of events relating to the CCTV failure. In that letter, Police Scotland warned Mr X that future requests on the same subject might be considered vexatious.

Mr X's submission

22. Mr X strongly disagreed with Police Scotland's use of section 14(1) in respect of his request. He did not believe that Police Scotland do not keep maintenance records for their equipment: he thought this would be a legal requirement, if simply for the warranty alone. He highlighted that a young man had died in custody days after the establishment was opened and that the deceased person's family were told that no footage was retained as the recording equipment installed in the custody facility had insufficient memory capacity. He found it hard to believe that questions were not asked as to why all equipment was not tried and tested prior to use in a similar way to any other new build establishment.
23. Mr X also explained his personal interest in information about the Kittybrewster custody facility. The Commissioner will not set out Mr X's interest in detail here, but she has considered it fully. In essence, Mr X himself had concerns about circumstances where there was no CCTV recording within that facility. He was of the view that Police Scotland saw it as in their own interests not to supply the information he had asked for.

The Commissioner's findings

24. Mr X's request of 22 February 2017 might not appear, on the face of it, to be vexatious: it is politely worded and on a matter of public interest. The Commissioner is aware, however, that the vexatious nature of a request may only emerge after considering the request in context; for example, a history of previous or ongoing correspondence with the applicant.
25. The Commissioner appreciates that the matters raised by Mr X are important to him. However, a request which has value and serious purpose can still be vexatious, if it has the effect of harassing, or distressing, the public authority and/or its staff. "Harassing" is not defined in FOISA or the Commissioner's guidance. The First Tier Tribunal (Information Rights) ruling EA/2011/0224 *Roger Conway and the Information Commissioner*⁴ was of the view that "harassing" should be given its ordinary meaning, that is, to disturb persistently, bother continually, pester or persecute. In the Commissioner's view, the question is whether (viewed from the perspective of a reasonable person) the request has the effect of harassing the authority and/or its staff, and not whether the requester intended it to be harassing.
26. The Commissioner has considered, in detail, the arguments and explanations presented by both parties. The Commissioner has taken account of the history of Mr X's requests on the issue of the custody facility at Kittybrewster, and concludes that it is reasonable for the Police Scotland to take this into account, in relation to the decision to rely on section 14(1) of

⁴ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i690/20120301%20Decision%20EA20110224.pdf>

FOISA. Given the Commissioner accepts that it is appropriate to consider this request in the context of previous correspondence, it is also appropriate that she considers the issue of harassment in this wider context.

27. It is clear to the Commissioner that Mr X has previously asked Police Scotland for the same, or very similar information as he requested on 22 February 2017. Mr X has received several responses from Police Scotland all providing similar information, or giving notice that certain information is not held, or relying on other provisions in FOISA. All the responses from Police Scotland have fully stated to Mr X his rights under FOISA.
28. Mr X has serious concerns about events which have taken place in the custody facility at Kittybrewster. The Commissioner does not believe resolution of Mr X's concerns would be brought any closer if Police Scotland had complied with his request of 22 February 2017. Mr X has been making requests on this subject since late 2014. Police Scotland has attempted to provide him with a comprehensive account of what information is held, in relation to the CCTV failure in the custody facility. Police Scotland had previously warned Mr X that his requests were becoming vexatious, because they covered the same ground and because he had not co-operated with the procedures put in place to help the Police Scotland cope with his voluminous correspondence.
29. The Commissioner accepts that, whether intentionally or not, Mr X's request of 22 February 2017 had the effect of harassing Police Scotland. The Commissioner therefore finds that Police Scotland were not obliged to comply with the request, on the grounds that it was vexatious in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr X.

Appeal

Should either Mr X or Police Scotland 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
Acting Scottish Information Commissioner

1 August 2017

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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Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info