

Decision Notice



Decision 123/2010 Eriskay Pony Mother Studbook Society – Comann Each nan Eilean Ltd and the Scottish Ministers

Eriskay Pony studbook realignment process

Reference No: 201000761
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www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Eriskay Pony Mother Studbook Society – Comann Each nan Eilean Ltd (EPMSS) requested from the Scottish Ministers (the Ministers) correspondence relating to The Eriskay Pony Society Ltd (TEPSL) and information relating to the Eriskay Pony studbook realignment process, between specified dates. The Ministers responded by stating that they considered the request to be vexatious in terms of section 14(1) of FOISA. Following a review, EPMSS remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers were justified in treating EPMSS's request as vexatious and were not obliged to comply with its request.

Relevant statutory provisions and other sources

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

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 1 February 2010, EPMSS wrote to the Ministers requesting the following information:
 - Any recorded views expressed by, or information given by or requested by, the Chairman of The Eriskay Pony Society Ltd (TEPSL) to any official/employee of the Rural Directorate between 16 July 2009 and 15 October 2009 as recorded in correspondence, phone notes, meeting notes, emails, faxes.
 - The detail of, and the source of, any necessary information relating to the Eriskay Pony studbook realignment process which any official of the Rural Directorate has/had in his/her possession, or was aware of the existence of, on any date between the 12 and 15 October 2009 (both dates inclusive) which had not been supplied by either Eriskay Pony organisation in July 2009.



2. The Ministers responded on 6 February 2010 stating that it considered EPMSS's request to be vexatious in terms of section 14(1) of FOISA. The Ministers considered the request to place a significant burden on them and that it had the effect of harassing the Scottish Government. Furthermore, the Ministers concluded that this request had no serious purpose other than to involve the Ministers in an ongoing dispute between the two societies.
3. On 18 February 2010, EPMSS wrote to the Ministers requesting a review of their decision.
4. The Ministers notified EPMSS of the outcome of their review on 9 March 2010. The Ministers upheld in full their original decision, that they considered the request to be vexatious in terms of section 14(1) of FOISA.
5. On 9 March 2010, EPMSS wrote to the Commissioner, stating that it was dissatisfied with the outcome of the Ministers' review and applying for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that EPMSS had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 27 April 2010, the investigating officer contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The Ministers were also asked to respond to specific questions. In particular, they were asked to provide detailed arguments and evidence to support their view that EPMSS's request for information was vexatious in terms of section 14(1) of FOISA.
8. The Ministers responded on 27 May 2010, supplying the Commissioner with an explanation of their reasons for applying section 14(1) of FOISA in this case, along with evidence to show the wider context of EPMSS' requests.
9. Once submissions were received from the Ministers, EPMSS were provided with an opportunity to comment on the Ministers' application of section 14(1) of FOISA to their request.
10. On 30 June 2010, EPMSS wrote to the Commissioner, copying a number of other parties, setting out its reasons for seeking the information in question.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both EPMSS and the Ministers and is satisfied that no matter of relevance has been overlooked.
12. Section 14(1) of FOISA states that the general right of access to information in section 1(1) of FOISA “does not oblige a Scottish public authority to comply with a request for information if the request is vexatious”.
13. The Commissioner has published guidance¹ on the application of section 14(1) of FOISA. This states:

"There is no definition of "vexatious" in FOISA. The Scottish Parliament acknowledged that the term "vexatious" was well-established in law and opted to give the Commissioner latitude to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.

The Commissioner's general approach is that a request (which may be the latest in a series of requests) is vexatious where it would impose a significant burden on the public authority and:

 - it does not have a serious purpose or value; and/or
 - it is designed to cause disruption or annoyance to the public authority; and/or
 - it has the effect of harassing the public authority; and/or
 - it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate."

The Ministers' submissions

14. Within their submissions the Ministers provided background information on EPMSS's request. They explained that there are two Eriskay Pony Societies in Scotland, The Eriskay Pony Mother Studbook Society - Comann Each nan Eilean Ltd (EPMSS, known as the Mother Society), and the Eriskay Pony Society Ltd (TEPSL, known as the Daughter Society). EPMSS was founded in 1971, and TEPSL in 1986 after breaking away from the Mother Society. Both Societies are recognised under the European Commission Decision 92/353/EEC. Both Societies are independent bodies but, as Mother and Daughter Societies for the same breed of pony, they are required under EU legislation to collaborate closely with each other.
15. However, the Ministers explained that the relationship between the two organisations has broken down. They noted that the Mother Society questions the legitimacy of the information supplied by TEPSL to gain recognition thus seeking to have its recognition withdrawn.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.asp>



16. According to the Ministers, efforts have been made to try and reconcile the two Societies on multiple occasions and through numerous members of the Rural Directorate. However, this does not appear to have allowed the resolution of EPMSS' concerns. The Ministers explained that EPMSS continue to request any small piece of correspondence or documentation that may have been produced by the Scottish Government in relation to its issues and also any information provided to them by TEPSL. They noted that this has resulted in requests for the same information sent or received by them on numerous occasions in case there have been any comments added after the fact.
17. The Ministers noted that, although the Scottish Government is not responsible for resolving the dispute between the Societies, much time and effort has been expended trying to help the Societies come to a resolution. This has included encouraging discussion between the Societies and hosting meetings, and arranging an independent review of the Societies' compliance with domestic and European legislation. However, the Ministers indicated that these steps have unfortunately not brought an end to the issue.
18. Commenting on their decision that the request under consideration was vexatious in terms of section 14(1) of FOISA, the Ministers acknowledged that, viewed in isolation from the ongoing correspondence between EPMSS and the Scottish Government, the request under consideration would not appear to be manifestly unreasonable or to have the effect of harassing the Ministers. However, they maintained that when considered in the wider context outlined above, the evidence that the correspondence has been long-standing, voluminous and persistent. In support of this claim, the Ministers provided a schedule listing correspondence (including approximately 40 information requests) exchanged between EPMSS and the Scottish Government from September 2005 to March 2010.
19. In coming to a view that this request placed a significant burden on the Ministers, explained that account was taken of the continuing pattern of correspondence and behaviour of the EPMSS over a 5 year cumulative period. The Ministers also took into account the fact that much of the information requested in this instance was similar to that requested in previous FOISA requests submitted by the EPMSS (excepting changes in the requested time periods) and the significant burden of responding to more than 141 emails, letters and phone calls from the EPMSS over the same period.
20. The Ministers submitted that dealing with this volume of correspondence has a disproportionate effect on the core business of the Rural Directorate as there is only one member of staff in a position to deal with this correspondence and doing so diverts their effort from other areas of work. As such, the Ministers stated that they consider this continuing behaviour to be manifestly unreasonable.
21. The Ministers also argued that these requests have no serious purpose other than to try and involve the Ministers in a long running dispute which the EPMSS has had with TEPSL. They maintained that the purposes of the EPMSS was to prove that others are engaging in untruths against them and by doing so are actively harassing the Rural Directorate and the Scottish Ministers.



22. The Ministers argued that over the time that this issue has been running, they have endeavoured to provide the information requested and to provide considerable help and assistance to work towards reconciliation or mutual understanding between the two Societies. By continuing to try and mediate and in organising and paying for an independent review, the Ministers concluded that they have provided more help and assistance than would reasonably be expected. Moreover the Ministers stated that, based on long standing experience of dealing with this correspondence, they do not consider that any substantive response to the request would bring a resolution closer and would almost certainly lead to further correspondence.

Comments from EPMSS

23. In response to the Commissioner's request for comment, EPMSS considered their request not to be overly difficult or burdensome on officials, stating that it requires the information to counter any allegations which might be made by an individual to their organisations recognition.

Commissioner's conclusions

24. Viewed dispassionately and in isolation from the considerable volume of ongoing correspondence between EPMSS and the Ministers, the Commissioner recognises that the request under consideration may not necessarily appear to be manifestly unreasonable, unduly burdensome or disproportionate. However, in considering whether EPMSS's requests should be regarded as vexatious, he considers it reasonable and relevant to take into consideration the wider context in which the requests were made, which might help in considering whether they were without serious purpose or value, were designed to disrupt or cause annoyance to the Ministers, or otherwise had the effect of harassing the Ministers.
25. In many cases, the vexatious nature of a request will only emerge after considering the request within its context and background. As part of that context the past dealings with the public authority can be taken into account. Even if the request appears reasonable in isolation, it may be vexatious if it demonstrates a continual pattern or behaviour or represents a significant burden when considered collectively.
26. The Ministers provided evidence demonstrating that extensive correspondence has passed between EPMSS and the Ministers on various information requests. The Commissioner notes that the correspondence relates to a narrow range of issues about which EPMSS regularly seeks information, in requests that can overlap.
27. In this context, the Commissioner accepts that the request under consideration, as part of this ongoing series of correspondence, would impose a significant burden on the Ministers. He also accepts that this request would appear to serve no purpose other than to extend the prolonged dialogue on a matter on which the Ministers have taken significant, though ultimately unsuccessful, steps to resolve to the satisfaction of EPMSS and TEP SL. He accepts that (whether intended or otherwise) the effect of this request in this context was that of harassing the Ministers.

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28. Having considered carefully the evidence before him, the Commissioner accepts that the Ministers were justified in refusing to respond to EPMSS's request on the grounds that it was vexatious in terms of section 14(1) of FOISA. In reaching this conclusion the Commissioner has taken account of the volume of correspondence (which appears to be increasing over time), the limited nature of the subject matter and the efforts made by the Ministers to resolve the issues in hand.

DECISION

The Commissioner finds that the Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Eriskay Pony Mother Studbook Society – Comann Each nan Eilean Ltd.

Appeal

Should either EPMSS or the Scottish Ministers wish to appeal against this decision, there is an 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 notice.

Kevin Dunion
Scottish Information Commissioner
14 July 2010



Appendix

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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