

Decision Notice



Decision 152/2010 Mr X and East Renfrewshire Council

Whether a request is vexatious

Reference No: 201000150

Decision Date: 6 September 2010

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Kevin Dunion

Scottish Information Commissioner

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Summary

Mr X requested from East Renfrewshire Council (the Council) an explanation of the contents of a letter the Council had sent him, along with an explanation of why the Council had not provided him with information he had asked for some months previously. The Council responded by stating that they considered the request to be vexatious in terms of section 14(1) of FOISA. Following a review, Mr X remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council was justified in treating Mr X's request as vexatious and was not obliged to comply with his 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. The information request under consideration in this decision relates to a long running issue which Mr X has taken up with the Council concerning road safety in his locality. Mr X first raised the issue with the Council 2006 and has been engaged in correspondence with the Council about the issue since then.
2. On 5 October 2009, Mr X wrote to the Council under the heading "freedom of information request". He asked for an explanation of the contents of a letter sent to him by the Council on 2 October 2009. The letter of 2 October 2009 had been sent in response to a letter from Mr X (dated 25 September 2009) which had asked why previous letters (in June and August 2009) had received no response. The letter indicated that all correspondence from Mr X would be processed via a particular director's office, and that the correspondence had been passed on.



3. Mr X also requested an explanation as to why the Council had not provided him with information he had asked for some months earlier, despite his sending two reminders to the Council (in the letters of June and August 2009). The Commissioner understands that the information referred to by Mr X was requested in a previous correspondence dated 28 April 2009 and 6 June 2009.
4. The Council responded on 2 November 2009, stating that it considered Mr X's request to be vexatious in terms of section 14(1) of FOISA. The Council stated that it had not responded to Mr X's previous requests because (i) he had specifically told the Council that these requests (6 June 2009 and 28 April 2009) were not made under FOISA and (ii) because the Council had already informed him that it would no longer correspond with him on his concerns about road safety in his locality. The Council referred to the Commissioner's Guidance¹ on section 14 of FOISA, and highlighted text therein that indicates that it may be appropriate to refuse a request on the grounds that it is vexatious where "[the request] is designed to cause disruption and annoyance to the public authority and/or it has the effect of harassing the public authority."
5. On 20 November 2009, Mr X wrote to the Council requesting a review of its decision.
6. The Council notified Mr X of the outcome of its review on 17 December 2009. The Council upheld in full its original decision. It explained that it considered the request to be vexatious in terms of section 14(1) of FOISA and stated that in doing so it had taken into account the entire history of Mr X's complaints in relation to the road safety issue.
7. On 20 January 2010, Mr X wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr X 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

9. On 6 May 2010, the investigating officer contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The Council was also asked to provide detailed arguments and evidence to support its view that Mr X's request for information was vexatious in terms of section 14(1) of FOISA.
10. The Council responded on 26 May 2010, supplying the Commissioner with an explanation of its reasons for applying section 14(1) of FOISA in this case, along with evidence to show the wider context of Mr X's correspondence with the Council.

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



11. Once submissions were received from the Council, Mr X was provided with an opportunity to comment on the Council's submissions and its application of section 14(1) of FOISA to his request.
12. On 5 June and on 8 July 2010, Mr X wrote to the Commissioner setting out his reasons for making his information request and commenting on the Council's claim that his request was vexatious.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr X and the Council and is satisfied that no matter of relevance has been overlooked.
14. 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".
15. The Commissioner has published guidance (referred to in paragraph 4 above) 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:

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

The Council's submissions



16. The Council accepted that, in isolation, the particular request under consideration would not appear to impose a significant burden on the Council. However, it argued that this request should not be considered in isolation since it formed part of an “extensive” and “exhausting” series of correspondence from Mr X on the single issue of road safety in the environs of his property. The Council indicated that this matter had been considered fully by the Council and maintained that the provision of any further information to Mr X in relation to this matter would constitute a significant burden on the relevant officer’s time.
17. The Council noted that all correspondence from Mr X related to the same issue of road safety and the request under consideration was made in this context. The Council noted the following statement within the Commissioner’s guidance on section 14:

“...an authority could reasonably conclude that a particular request represents the continuation of a pattern of behaviour which it has deemed vexatious in another context and so refuse this request as being vexatious.”

The Council maintained that this was precisely the case with respect to Mr X’s information request.
18. The Council provided the Commissioner with copies of correspondence between itself and Mr X from 2006, which showed that Mr X had exhausted the Council’s complaints procedure (stages 1, 2 and 3) in relation to his complaint and that the Council had advised him that if he was still unhappy to contact the Scottish Public Services Ombudsman. The Council stated that Mr X had not, to its knowledge, taken the complaint to the Ombudsman.
19. Copies of further correspondence were provided by the Council, which showed that when a new Chief Executive was appointed to the Council in January 2009, Mr X wrote to her, raising his concerns and complaints again and stating that a number of issues had still not been addressed.
20. In March 2009, the Council’s Director of Environment wrote to Mr X indicating that he would not be corresponding with him on this subject, and that he had advised his staff similarly. In April 2009, the Chief Executive wrote to Mr X indicating that she considered that all issues had been addressed and that she saw no benefit in further correspondence on the subject. This letter advised Mr X of his right to complain to the Ombudsman, and indicated that if Mr X wished to raise new issues, these would be considered.
21. The Council explained also that, despite being advised that he should address his complaints to the police, Mr X continued to email the secretaries of the Council’s Chief Executive and Director of the Environment on this subject, and some of this correspondence was considered to be offensive and harassing. The Council provided examples of these emails to the Commissioner.
22. The Council explained the particular sequence of correspondence that had been referred to in Mr X’s information request of 5 October 2009.



23. In an email of 28 April 2009, Mr X had requested particular correspondence between the Council and the police. The Council had interpreted this as an information request in terms of FOISA and replied to it as such on 11 May 2009. Mr X's response to this on 2 June 2009 had raised further questions and indicated that he had not asked for the information as part of a freedom of information request. On receiving no response from the Council to this letter, he wrote again to the Council on 4 August and 25 September, prompting the Council's letter of 2 October, explaining that Mr X's correspondence was being processed via the Director or the Environment's Office.
24. It was in response to this letter that Mr X submitted a Freedom of Information request (clearly marked as such), which is the subject of this application to the Commissioner.

Mr X's submissions

25. Mr X submitted that, after looking at the evidence provided by the Council to the Commissioner (with the Council's consent) and having read the Commissioner's guidance on section 14(1) of FOISA, it was clear to him that the Council had no case.
26. He submitted that if the Council's reliance on section 14(1) of FOISA was upheld then he felt it would continue to encourage the Council to tell lies to residents. He stated that neither the Council nor the police have ever done anything about the road safety issues he had raised and submitted that this was a genuine matter of concern and not frivolous.

The Commissioner's conclusions

27. The Commissioner recognises that, looked at separately and in isolation from the volume of correspondence between Mr X and the Council, the request under consideration may not necessarily appear to be manifestly unreasonable, unduly burdensome or disproportionate. However, in considering whether Mr X's request should be regarded as vexatious, he considers it reasonable and relevant to take into consideration the wider context in which the request was made, which might help in considering whether it was without serious purpose or value, was designed to disrupt or cause annoyance to the Council, or otherwise had the effect of harassing the Council.
28. Although the term "vexatious" must be applied to the request and not the requestor, the Commissioner considers that an applicant's identity and the history of their dealings with a public authority may be relevant. He is of the view that, 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.



29. The Commissioner accepts that the Council has provided evidence demonstrating that extensive correspondence has passed between Mr X and the Council dating back to 2006. He also notes that the correspondence relates to one particular issue, the subject of which Mr X regularly raises. The subject matter of this particular request relates to this issue and the correspondence provided by the Council during the investigation shows that there has been considerable correspondence between itself and Mr X already on the subject matter in question, prior to this particular request.
30. The Commissioner also accepts that it was reasonable in the circumstances for the Council to conclude here that the information request process under FOISA was being used by Mr X primarily to continue extended dialogue in relation to his concerns. It also appears unlikely in the circumstances that resolution of the matters raised in Mr X's correspondence would be brought any closer by the provision of a response to the request. The Commissioner notes that Mr X has exhausted the complaints process with the Council, and has been advised of his right to complain to the Scottish Public Services Ombudsman. The Council has on more than one occasion advised Mr X to address his concerns about road safety to the police.
31. Consequently, the Commissioner accepts that the request had no serious value, and had the effect of harassing and causing annoyance to the Council.
32. Having considered the circumstances of this case carefully, the Commissioner accepts that Mr X's request for information was properly viewed in the context of his ongoing correspondence with the Council and that the Council was entitled to consider Mr X's request as vexatious in terms of section 14(1) of FOISA (and to refuse to comply with it on that basis).

DECISION

The Commissioner finds that East Renfrewshire Council 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 the Council 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.

Margaret Keyse
Head of Enforcement
6 September 2010



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish the Council 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 the Council to comply with a request for information if the request is vexatious.

...