

# Decision Notice



Decision 208/2010 Mr D and the Accountant in Bankruptcy

Whether a request was vexatious

Reference No: 201001381

Decision Date: 9 December 2010

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr D requested from the Accountant in Bankruptcy (the AiB) information on when the law had been “misapplied” in his case. The AiB referred to previous responses which it believed had dealt with this issue. Following a review, as a result of which the AiB relied on section 14 of FOISA (Vexatious or repeated requests), Mr D remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the AiB was justified in dealing with Mr D’s request as vexatious, in terms of section 14(1) of FOISA, and therefore was not obliged to comply with the request.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections (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

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1. On 3 November 2009, Mr D (who had been in correspondence with the AiB for some time regarding the handling of his case) wrote to the AiB requesting the following information: “one question I would like answered is when was the law misapplied in my case”. Mr D explained in his request that a named employee of the AiB had advised him in a telephone conversation that this had happened in 1992.
2. The AiB responded on 23 December 2009, explaining that, since it was not Mr D’s trustee, it had been unable to trace his case file. The AiB referred to responses to previous correspondence from him, which it believed detailed its position on all matters relating to Mr D’s concerns about his original bankruptcy. The AiB stated that all the matters raised by Mr D had already been addressed by it in full on several occasions.
3. On 3 January 2010, and again on 8 March 2010, Mr D wrote to AiB requesting a review of its decision. In particular, Mr D drew the AiB’s attention to the fact that no date had been supplied to him “when the law was misapplied in [his] case”.



4. Following an application by Mr D to the Commissioner, the AiB notified Mr D of the outcome of its review on 5 July 2010. The AiB stated that it did not hold information in relation to whether the law had been misapplied. It submitted that it had repeatedly confirmed this and, as Mr D's case dated from 1992 and the trustee who handled his case (not the AiB itself) was no longer practising, it did not have access to the original case file to determine whether this was the case. The AiB appreciated that a mistake might have been made, but any mistake had since been rectified and an ex gratia payment made to Mr D to settle the matter. The AiB stated that it had issued full responses to Mr D's queries on numerous occasions and had provided him with all his personal data, subject to any exemptions under the Data Protection Act 1998 (the DPA). The AiB therefore considered his request of 3 November 2009 to be vexatious under section 14(1) of FOISA, as there was no serious purpose to what it considered to be his persistent correspondence and harassment of the agency on this matter. It also regarded the request as a repeated request under 14(2) of FOISA, as it had consistently confirmed that the information and circumstances relating to his enquiries had not changed since its prior responses.
5. On 8 July 2010, Mr D wrote to the Commissioner, stating that he was dissatisfied with the outcome of the AiB's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr D 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

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7. The AiB is an agency of the Scottish Ministers (the Ministers). In accordance with agreed arrangements, 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) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their reliance on any provisions of FOISA they considered applicable to the information requested, with particular reference to the tests in section 14(1) and (2) of FOISA.
8. The Ministers responded on behalf of the AiB, and subsequent references to the AiB's submissions should be read as referring to those submissions made by the Ministers on behalf of the AiB. Relevant submissions received from both the AiB and Mr D shall be considered fully in the Commissioner's analysis and findings below.



## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner has considered all the submissions made to him by both Mr D and the AiB and is satisfied that no matter of relevance has been overlooked.

### Section 14(1)

10. 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".
11. The Commissioner has published guidance<sup>1</sup> 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 AiB's submissions

12. The AiB submitted that Mr D's ongoing correspondence created a significant burden, had the effect of causing disruption and harassment to the AiB (which had tried to seek final resolution of the issue), served no serious purpose or value and, to any reasonable person, must be considered manifestly unreasonable.
13. The AiB explained that the argument involved in this case was based on substantial correspondence over a number of years, and that Mr D had been asking the question at issue, in one form or another, since at least 2004. Mr D had been informed on many occasions (in writing and verbally), the AiB explained, that due to the period of time that had passed since his bankruptcy in 1992, no documents had been located to enable it to either confirm or deny that the law had been misapplied to him.

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<sup>1</sup> <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2513&SID=2591>

Decision 208/2010  
Mr D  
and the Accountant in Bankruptcy



14. The AiB advised that Mr D had received copies of all documents it held pertaining to his bankruptcy and the subsequent investigations into his complaints. The AiB informed the Commissioner that it had five substantial correspondence files concerning Mr D's enquiries. Included in these files was material about Mr D's correspondence with MSPs and the Secretary of State for Scotland, and complaints in respect of the AiB and this issue made to other regulatory public authorities.
15. The AiB submitted that, as Mr D was aware of its ruling on his complaint, and had received all information of any relevance, it did not believe that his continuing requests served any serious or useful purpose. The frequency and repetitive nature of Mr D's requests not only caused annoyance and disruption, but, the AiB submitted, had the effect of harassing the authority and its staff.
16. Given the lengthy period of time involved, the AiB submitted, a considerable resource had been taken up in responding to Mr D: this included frequent correspondence and a large number of phone calls on various subjects, including the alleged misapplication of the law. In December 2009, Mr D had been required to put all future enquiries to the AiB in writing and to stop phoning due to the repetitive nature of his calls and the drain on staff resources in dealing with them. In addition, a dedicated official was identified to handle Mr D's correspondence.
17. The AiB referred to two decisions of the Commissioner which it believed relevant: *Decision 012/2010 Mr M W Williams and the Scottish Ministers*<sup>2</sup> and *Decision 123/2010 Eriskay Pony Mother Studbook Society – Comann Each nan Eilean Ltd and the Scottish Ministers*<sup>3</sup>. It submitted that, as with these cases, it may appear possible to view Mr D's request for information concerning a specific misapplication of the law in isolation as a reasonable request unlikely to cause undue burden. However, as in these two decisions, it was not in fact possible to separate the request from the underlying context in which it had been made. The AiB considered it appropriate to take into consideration the extended period of time and overwhelming quantity of communication - on the same theme – to place the request of 3 November 2009 in a wider context. Given this, it believed the request to be vexatious, forming part of a continual pattern of behaviour resulting in significant burden to the AiB when associated correspondence was considered collectively. Moreover, as with the decisions cited, Mr D's prolonged correspondence did not seem to the AiB to serve any purpose other than to prolong a situation which the authority had on several occasions attempted to conclude.

<sup>2</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/200901913.asp>

<sup>3</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/201000761.asp>



### Comments from Mr D

18. In response to the Commissioner's invitation to comment, Mr D explained that he had made subject access requests (in terms of the DPA) of the AiB and received information. From his initial subject access request in May 2003 he had received documents, including one he believed demonstrated that the law had been misapplied in his case. He supplied a copy of this document to the Commissioner. As a result of viewing these documents, Mr D then questioned the actions of his trustee at the time of his sequestration. Mr D supplied other evidence which he believed demonstrated that the AiB was of the view, or admitted, that the law had been misapplied in his case. He alleged that the misapplication of the law had been concealed from him and that this had denied him access to justice.
19. Mr D's request of 3 November 2009 was "when was the law misapplied in my case" and he explained that he had requested this information following a telephone conversation with an AiB employee. As a result of that conversation, which discussed the facts of his case, Mr D believed that he would receive written confirmation of the misapplication of the law. He believed the conversation confirmed that the AiB held information about the misapplication of the law. Not having received such a communication, Mr D then made his information request to the AiB.

### The Commissioner's conclusions

20. The test to be applied is whether the request is vexatious, not the person making it. 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 applicant's past dealings with the public authority may be relevant. 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.
21. Viewed dispassionately, and in isolation from the considerable volume of ongoing correspondence between Mr D and the AiB, the Commissioner recognises that the request under consideration may not necessarily appear to be manifestly unreasonable, unduly burdensome or disproportionate. In considering whether Mr D's request should be regarded as vexatious, however, the Commissioner considers it reasonable and relevant in this case to take into consideration the wider context in which the request was made. In the circumstances, he believes that this is likely to be of assistance in considering whether the request was vexatious in any of the ways the AiB has claimed.
22. The Commissioner notes that Mr D's application refers to a named employee of the AiB advising that a letter would be sent to him giving the dates when the law was misapplied. The Commissioner acknowledges that there is contention between the AiB and Mr D about whether the law was misapplied, and it is not for the Commissioner to make comment on this. Mr D clarified that the information he wished was contained in a letter he believed the AiB to hold in relation to the dates when the law had been misapplied, as referred to in another document he had received from the AiB.



23. The AiB explained that it had five substantial files for Mr D's correspondence and provided the Commissioner with a sample of the correspondence. The Commissioner notes that the correspondence relates to a narrow range of issues about which Mr D regularly corresponds and seeks information from the AiB, the actions of Mr D's trustee, the relevant legislation and the role of the AiB.
24. In a recent decision (*Michael Jacobs and the Information Commissioner* [EA/2010/0041])<sup>4</sup> the Information Tribunal, in interpreting the equivalent section [section 14(1)] of the Freedom of Information Act 2000 (FOIA), listed a series of general principles which it found helpful in coming to a decision about whether a request was vexatious. This included, at paragraph 22:  
*The similarity with previous requests or correspondence will have particular relevance if the information request under consideration appears to have been principally intended to reprise an earlier debate with the public authority, especially one on which the public authority has already provided as complete a response as may reasonably be expected...*
25. Having read the samples of correspondence supplied by the AiB and by Mr D, the Commissioner considers this to be the case here: that is, there is a similarity with previous requests and the information request appears to have been principally intended to reprise an earlier debate with the public authority, one on which the public authority has already provided as complete a response as might reasonably be expected.
26. From the sample of correspondence provided by the AiB, the Commissioner notes that Mr D has made several requests and raised several queries in respect of the alleged misapplication of the law. The relevant letters and faxes contain requests and questions that relate, in some way, to the question of how his then trustee dealt with certain funds, i.e. whether there was a mistake or an error or a misapplication, what was the relevant law, etc. These include correspondence of 23 December 2005, 4 May 2006, 30 May 2006, 4 July 2006, 4 August 2006 and 13 July 2009.
27. From the sample of correspondence, the Commissioner notes that the public authority has already responded on several occasions. The Commissioner notes that within this correspondence the AiB provides information to address Mr D's concerns and attempts to resolve the difficulties: this is done, for example, in letters of 6 March 2006, 18 May 2006, 1 June 2006, 11 August 2006, 20 November 2006, 6 July 2009, 14 September 2009 and 2 November 2009, and is also referred to in notes from a meeting of 1 March 2010.
28. The AiB also stated that it had already provided Mr D with all his personal data, subject to any exemptions under the DPA, and this included all documents specific to Mr D's sequestration and all subsequent correspondence. Mr D has commented about the comprehensiveness of the data provided, but this is something that is outwith the remit of the Commissioner and Mr D has been advised of the (UK) Information Commissioner's jurisdiction in respect of the DPA.

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Jacobs%20v%20IC%20Decision%20EA.2010.0041%2024Aug10%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i426/Jacobs%20v%20IC%20Decision%20EA.2010.0041%2024Aug10%20(w).pdf)



29. The AiB explained that the matter raised by Mr D had independently been investigated in 2006 by Audit Scotland, which was satisfied with the actions taken by the AiB and concluded that there was no foundation on Mr D's allegations of malfeasance on the part of his trustee. The AiB also explained that it had no statutory obligation to investigate Mr D's complaints, and that Mr D had been informed on numerous occasions of this fact. Mr D had been informed of the statutory right for a debtor to bring any concern regarding his Trustee to the attention of a sheriff and for a debtor to apply for recall of their bankruptcy.
30. In this respect, the Commissioner again notes the Information Tribunal's comments in case EA/2010/0041 (at paragraph 25):
- The existence of other litigation or complaints instigated by the person making the information request may in some cases be evidence of an aggressive or obsessive approach, but it may equally represent the legitimate use of available remedies to pursue a genuine grievance. Because it is the request, and not the person making it, that must be assessed under section 14(1), it is likely that only the manner in which those other processes are reflected in the information request or associated communications will carry any weight. Although, therefore, we have not taken into consideration the existence or content of the earlier litigation and complaint to the ACCA, we have taken into account the repetition of the complaints underlying those processes in the communications with the Insolvency Service. As we have indicated already the Appellant deployed arguments in this connection that were derived from those other proceedings. In some cases they clearly had no relevance to freedom of information issues, and/or were covered in excessive depth or with unnecessary repetition. To that extent they certainly support the Information Commissioner's case that the request was vexatious.*
31. In this case, the Commissioner notes that Mr D's request relates to an issue in respect of which he has used legitimate means to pursue a grievance that is genuine to him. However, the Commissioner also notes the substantial repetition of his complaints, in much the same manner as that referred to by the Tribunal.
32. In this context, the Commissioner therefore accepts that the request under consideration, as part of this ongoing series of correspondence, imposed a significant burden on the AiB. He also accepts that this request would appear to serve no purpose other than to extend the prolonged dialogue on a matter which the AiB has taken significant, though ultimately unsuccessful, steps to resolve to the satisfaction of Mr D.
33. Having considered carefully the evidence before him, therefore, the Commissioner accepts that the AiB was justified in refusing to respond to Mr D'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, the limited nature of the subject matter and the efforts made by the AiB to resolve the underlying issues.



Decision 208/2010  
Mr D  
and the Accountant in Bankruptcy



## DECISION

The Commissioner finds that the Accountant in Bankruptcy complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the information request made by Mr D.

## Appeal

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Should either Mr D or the Accountant in Bankruptcy 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**  
**9 December 2010**



## Appendix

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### 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.

...