

Decision Notice



Decision 173/2012 Mr David Rule and the Scottish Ministers

Handling of information requests

Reference No: 201200881

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Summary

Mr Rule asked the Scottish Ministers for correspondence relating to the handling of requests under FOISA and the EIRs. The Ministers refused Mr Rule's requests on the basis that they were vexatious. Following an investigation, the Commissioner did not accept that the requests were vexatious and required the Ministers to respond to Mr Rule's requests in other terms.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 21(1), (8) and (9) (Review by Scottish public authority)

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 22 December 2011, Mr Rule wrote to the Ministers requesting the following information:
 - Correspondence exchanged between a named individual and the First Minister's Office regarding the validity and handling of requests for information under FOISA and the EIRs
 - Correspondence sent or received by three named individuals regarding the validity and requests for information under the same legislation.
2. The Ministers responded on 25 January 2012, notifying Mr Rule that they considered his requests to be vexatious in terms of section 14(1) of FOISA, and so they were not obliged to comply with them. They explained why they considered this to be the case.
3. On 25 January 2012, Mr Rule wrote to the Ministers requesting a review of their decision. He challenged every argument presented by the Ministers in support of their position.
4. The Ministers did not respond to Mr Rule's request for review within the required timescale, and, on 11 March 2012, Mr Rule made a technical application to the Commissioner on the basis that the Ministers had failed to respond.



5. The Ministers responded to Mr Rule's request for review on 4 April 2012. In this response, the Ministers advised Mr Rule that (under section 21(8) of FOISA) they were not required to carry out a review if the original request was considered vexatious. However, the Ministers advised that in this case they had carried out a review to address the points he had raised. They had considered his request afresh and concluded that the original decision should be upheld.
6. On 5 April 2012, Mr Rule withdrew his technical application to the Commissioner. On 3 May 2012, he wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Rule was dissatisfied with the manner in which his requests had been handled (the Ministers' failure to adhere to timescales) and with the Ministers' conclusion that his requests were vexatious.
7. The application was validated by establishing that Mr Rule had made requests 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 those requests. The case was then allocated to an investigating officer.

Investigation

8. On 23 May 2012, the Ministers were notified in writing that an application had been received from Mr Rule. At the same time, the investigating officer gave the Ministers an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA. Specifically, they were asked to justify their reliance on section 14(1) of FOISA and to comment on the manner in which they had handled Mr Rule's requests.
9. The relevant submissions received from both the Ministers and Mr Rule will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all the submissions made to her by both Mr Rule and the Ministers and is satisfied that no matter of relevance has been overlooked.

Section 14(1) of FOISA

11. Under section 14(1) of FOISA, a public authority is not obliged to comply with an information request if the request is vexatious.



12. FOISA does not define the word “vexatious”. The Commissioner’s guidance on section 14 of FOISA¹ sets out a general approach taken in determining whether a request is vexatious; that a request is vexatious where it:
 - (a) would impose a significant burden on the public body; and
 - (b) does not have a serious purpose or value; and/or
 - (c) is designed to cause disruption or annoyance to the public authority; and/or
 - (d) has the effect of harassing the public authority; and/or
 - (e) would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
13. While the Commissioner’s view is that the term “vexatious” must be applied to the request and not the requester, she also 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 the request and surrounding circumstances.
14. Notwithstanding the general approach set out above, she recognises that each case must be considered on its own merits and in all the circumstances of the case. She does not exclude the possibility that, in any given case, a request may not involve a significant burden, but that one or more of the other listed factors may be of such overwhelming significance that it would be appropriate to consider the request(s) vexatious in the absence of such a burden. She also recognises that other factors may result in a request being judged as vexatious.

The Ministers’ submissions

15. The Ministers stated that officials had been responding to requests, reviews and appeals from Mr Rule for a number of years, which frequently appeared to focus on the First Minister’s Office (as they considered these requests to do). The Ministers noted that only one of the requests here did not relate either to an individual working in the First Minister’s Office or to communications with that Office.
16. The Ministers explained that these requests focused on individuals who had issued responses to Mr Rule’s previous requests, in which the Ministers had concluded that the requests were “invalid” for the purposes of FOISA. They considered focussing solely on these individuals to be designed to cause disruption and annoyance to these individuals, adding to their workloads without serious purpose. The Ministers believed Mr Rule could have focussed his requests on the Scottish Government, by asking for information held by its FOI Unit or for access to training and guidance materials relating to dealing with requests as “invalid”. Instead, he had chosen to focus on individual officers (being those best placed to deal with requests focussing on correspondence to or from themselves).
17. The Ministers stated that Mr Rule has previously been advised that the First Minister’s Office comprised a small team and was the busiest office in the Scottish Government, having to deal with a wide-ranging subject base and numerous demands on staff time.

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



18. The Ministers explained, as they had in previous cases, that while the Scottish Government had only one electronic records and document management (eRDM) system, documents relating to the First Minister were held in a secure area, accessible only by the First Minister's Private Office, to ensure that security was maintained around the First Minister, his diary, movements, correspondence, etc. Consequently, the Ministers argued that all requests for information relating to the First Minister must be dealt with by a member of staff from his Private Office, and therefore Mr Rule's requests impacted on the work of the First Minister's Office (with no serious purpose).
19. The Ministers also stated that they had repeatedly informed Mr Rule that the First Minister's Office held correspondence for no more than three months, as information passing through the Office concerned the working of the entire government and was assigned to the appropriate policy area to deal with. As this happened, the information was deleted from the First Minister's Private Office systems. Consequently, the Ministers argued that to identify correspondence to or from individuals would require knowledge of the subject matter or case in respect of which the correspondence had been prepared. They explained that emails were not saved in the eRDM system by email address, but rather by topic/subject matter or area: therefore, they would not be able to identify emails to or from individuals without conducting a considerable search of documents and opening and reading each one.
20. The Ministers could not accept that Mr Rule's requests had a serious purpose other than to add to the burden of work already faced by the officials Mr Rule was "targeting". The Ministers suggested that if Mr Rule believed there is a failure in the training of officials (as they understood from his submissions), then there were more suitable routes through which he could pursue a complaint. In this regard, they noted that the same corporate training and guidance was provided to all staff in relation to Freedom of Information, with a view to consistent responses being provided to all requesters.

Mr Rule's comments

21. Mr Rule disagreed on the level of burden the Ministers believed his requests would impose. While acknowledging that a considerable number of files would require to be searched, he did not accept that this would impose a significant burden. He believed the majority of the relevant records would be stored electronically. Mr Rule emphasised that his requests only sought correspondence sent or received by four specific individuals.
22. Acknowledging that his requests in this instance had been motivated by what he had learned through earlier requests, he pointed out that the subject matter of the current requests was new and unrelated to the subject matter of earlier requests. In the circumstances, he did not believe his previous requests to be relevant in this case. In any event, he noted that his previous requests covered a wide variety of topics with no particular pattern.
23. On the purpose of his requests, Mr Rule stated that all the individuals referred to had been involved in the handling of his earlier requests, where their responses did not comply properly with FOISA. Mr Rule submitted that disclosure of this information would provide a better understanding of why this had happened, saving time and money in the process.



24. In Mr Rule's view, his arguments demonstrated that his requests were not designed to cause disruption or annoyance. He considered that the relatively narrow scope of the requests made them easy to execute and that their format (which he believed followed the Commissioner's guidance on questions of validity) suggested that they should not cause harassment. He believed they could (and should) be dealt with without involving the individuals referred to directly.

The Commissioner's conclusions

25. In this case, the Commissioner has taken account of all of the submissions received from the Ministers and Mr Rule and is not satisfied that responding to Mr Rule's requests would impose a significant burden on the Ministers. The Commissioner has not been provided with evidence of any substance to support the Ministers' arguments that demonstrated the level of burden that would be involved in responding to Mr Rule's requests. As recognised in previous decisions (for example, *Decision 078/2012 Mr David Rule and the Scottish Ministers*²), the Commissioner takes the view that the First Minister's Office, by its nature, should expect to receive a considerable number of requests and should prepare itself for that eventuality.
26. A number of the Ministers' arguments are based substantially on the nature of the First Minister's Office: in short, they would appear to apply to any request received by that Office and therefore cannot, in the absence of other relevant considerations, be considered to justify deeming this request to be vexatious. On the basis of the arguments presented to her by the Ministers, the Commissioner cannot accept that these requests were intended to harass, or cause disruption or annoyance to, either that Office or the individuals referred to, or indeed that they would necessarily be expected by any reasonable person have those effects. In any event, the Ministers' conclusions on harassment, disruption and annoyance appear to be predicated on the requests having no serious purpose.
27. Mr Rule has provided (although not required to do so) what the Commissioner considers to be a reasonable basis for the purpose behind these particular requests. These do not relate simply to adequacy of training, and the Commissioner finds it difficult to characterise as unreasonable a desire to identify any reasons underlying a number of information requests being rejected by the Ministers as invalid over a relatively short period. In the circumstances, the Commissioner does not accept that Mr Rule's requests lacked serious purpose or value.
28. Consequently, the Commissioner has concluded that the Ministers were not entitled to refuse to comply with Mr Rule's requests for information on the basis that they were vexatious.

Handling of Mr Rule's requests

29. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following receipt of the requirement to comply with a requirement for review. This is qualified by section 21(8), which provides that a Scottish public authority is not obliged to comply with a requirement for review if the request for information to which the requirement to review relates was one with which, by virtue of section 14, the authority was not obliged to comply.

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2012/201200271.asp>



30. However, section 21(9) provides that where the authority considers either paragraph of section 21(8) to apply, it must, within the 20 working days allowed by section 21(1), give the applicant notice in writing that it is relying on the relevant paragraph.
31. In any event, in this case, the Ministers chose to carry out a review. As they failed to provide a response to Mr Rule's requirement for review within 20 working days, the Commissioner finds that they failed to comply with section 21(1) of FOISA in this respect. This was acknowledged in the Ministers' submissions.
32. Given that the Ministers subsequently responded to Mr Rule's requirement for review, the Commissioner does not require them to take any action in this respect, in response to Mr Rule's application.

DECISION

The Commissioner finds that the Ministers failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr Rule. Specifically, she finds that the Ministers were not entitled to refuse to comply with the requests on the basis that they were vexatious in terms of section 14(1) of FOISA. The Ministers also failed to comply with section 21(1) of FOISA in responding to Mr Rule's requirement for review.

The Commissioner therefore requires the Ministers to respond to Mr Rule's requests in accordance with Part 1 of FOISA, other than in terms of section 14(1), by Friday 7 December 2012.

Appeal

Should either Mr Rule 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.

Rosemary Agnew
Scottish Information Commissioner
22 October 2012



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.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (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.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.