

Decision Notice



Decision 104/2014 Mr Alan Laing and the Scottish Ministers

Whether requests were vexatious

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Summary

On 4 November 2013, Mr Laing asked the Scottish Ministers (the Ministers) for information relating to a Ministerial trip to India. The Ministers refused the requests on the basis that they considered them vexatious. Following an investigation, the Commissioner did not accept that the Ministers had provided robust enough arguments to conclude the requests were vexatious and required the Ministers to respond to Mr Laing's requirement for review.

Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. Both Appendices form part of this decision.

Background

1. On 4 November 2013, Mr Laing wrote to the Ministers requesting information relating to a Ministerial visit to India. Appendix 2 contains details of the requests. Mr Laing asked that each of his twenty questions be dealt with as separate requests.
2. The Ministers responded on 3 December 2013. In accordance with section 14(1) of FOISA, they refused to comply with the requests on the basis that they considered them vexatious. They provided reasons for taking this view.
3. On 4 December 2013, Mr Laing wrote to the Ministers requesting a review of their decision. He did not agree with the Ministers' finding that his requests were vexatious and provided reasons for his position.
4. The Ministers responded to Mr Laing's requirement for review on 16 January 2014. They concluded that they had been correct to refuse the request under section 14(1) of FOISA and, in terms of section 21(8)(b) of FOISA, stated that they were not obliged to comply with his requirement for review.
5. On 27 January 2014, Mr Laing 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.



6. The application was validated by establishing that Mr Laing made requests for information to a Scottish public authority and 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

7. The investigating officer subsequently 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 asked to justify their reliance on section 14(1) of FOISA.
8. The Ministers responded with submissions in support of their application of section 14(1).

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Laing and the Ministers. She is satisfied that no matter of relevance has been overlooked.
10. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious. Having reached that conclusion, it is not obliged to comply with a requirement for review in respect of that request (section 21(8)).
11. FOISA does not define the word "vexatious". In her guidance¹, the Commissioner considers the following factors to be relevant in reaching the conclusion that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:
 - It would impose a significant burden on the public authority
 - It does not have a serious purpose or value
 - It is designed to cause disruption or annoyance to the public authority
 - It has the effect of harassing the public authority
 - It would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
12. The Commissioner recognises that other factors may be relevant, depending on the circumstances and provided their impact on the authority can be supported by evidence. These may include the complexity of the request, the volume of information requested, the time and resources that would be required to process it, and the impact on the authority's

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



statutory and/or core operations. Balanced against such considerations should be the wider value and (where known) purpose of the request, bearing in mind that FOISA is designed to give access to information and promote transparency in public authorities.

Submissions from the Ministers

13. The Ministers submitted that Mr Laing's requests placed a significant burden on them, and had the effect of harassing them. They also submitted that some of the requests appeared to have no serious purpose or value.

Significant burden

14. The Ministers believed Mr Laing's requests to impose a significant burden because answering them "on the back of a number of other requests relating to overseas visits" would have resulted in diverting staff from completing core functions, of which they gave examples. The Ministers stated that these requests were among several requests already received from Mr Laing relating to overseas visits: they provided a schedule of these for 2013, confirming that they had complied with all of them and acknowledging that none of them could be considered repeated.
15. The Ministers highlighted the number of different departments, agencies and external organisations involved in planning work for the visit to which the current requests related. They submitted that, while each individual request would not have imposed a significant burden on its own, the information needed to answer all 20 would be held by a number of different teams. They provided details of the time required to locate the information and collate a response, although they acknowledged that doing so would not exceed the £600 cost limit for the purposes of section 12 of FOISA.
16. The Ministers submitted that the timing of Mr Laing's request was an issue, due to the need to carry out other work immediately after the visit, to identify and report learning points and other issues for the relevant work areas (and thus secure best value from the visit). They highlighted that, while work on the request would involve a range of staff across the Scottish Government, a significant part would fall to the International Division. The same staff, they submitted, had experienced the cumulative effect of Mr Laing's previous requests relating to overseas visits. The significant burden, the Ministers argued, was added to by the level of detail of many of the questions

Having the effect of harassing the public authority

17. Referring again to a total of 12 requests in 2013 relating to Ministerial visits overseas, which they considered detailed and often complex, the Ministers submitted that these had the effect of harassing the authority, by detracting from the core business which required to be carried out.
18. The Ministers stated that they had pointed out to Mr Laing previously that their systems and processes did not allow for quick and centralised access to information which had only just been created (for example, emails created overseas which could not be electronically filed



until the completion of the visit, and claims/receipts which might not have been finalised), thus increasing the difficulty of responding to such requests immediately after a visit.

19. The Ministers submitted that Mr Laing's requests appeared to be targeted at seeking information to create negative news stories about particular Ministers, with a view to harassing those Ministers. They referred to a previous newspaper article.

Lacking serious purpose or value

20. With regard to those of Mr Laing's requests seeking information on what food and drink was served at particular events, the Ministers did not consider these to have any serious purpose or value. They believed they were "simply intended to generate elements for a tabloid media story".

Mr Laing's submissions

21. In his requirement for review, Mr Laing noted that his requests had arisen out of the response to a previous request, in which the Ministers had disclosed the itinerary of this particular Minister. He noted that he would not have been concerned had a response been given outwith the FOISA time limit of 20 working days (although the Ministers pointed out that this would be a breach of FOISA, and that they had in fact responded within the time limit, as required).
22. As a political researcher, working for a number of MSPs, Mr Laing did not believe the volume of his requests would differ significantly from others, such as journalists. He submitted that the Ministers were aware of his job, which was reflected in the number of requests he made. He believed it reasonable, and to be expected, that Ministers would be asked about their use of public funds on individual visits: he did not believe this expectation should be conditioned by the fact that Ministers from a particular department made numerous visits abroad.

The Commissioner's findings

23. The Commissioner acknowledges that the Ministers responded to Mr Laing's requests within 20 working days, as required by section 10(1) of FOISA. It does not, of course, follow from compliance with this aspect of FOISA that the Ministers' response to these requests complied with FOISA in all other respects.

Significant burden

24. A request will impose a "significant burden" on a public authority where dealing with it would require a disproportionate amount of time and the diversion of an unreasonable proportion of its financial and human resources, away from other statutory functions. The authority should be able to demonstrate why those other statutory functions take priority over statutory duties under FOI legislation. If the authority does not perform statutory functions, it should demonstrate why its core functions are of a higher priority than the statutory requirement to respond to information requests.



25. The Commissioner notes that the Ministers attempted to quantify the cost of responding to the requests, and the staff time which would be involved. They acknowledged that these were not significantly onerous when considered in isolation. Although cost is unlikely to be the sole indicator of the resources required to deal with a request, the estimate provided here does tend to affirm that the requests were not particularly complex, or seeking a voluminous amount of information.
26. The Commissioner acknowledges that the Ministers' arguments are based, for the most part, on the impact of the requests on particular staff, and the competing demands on the time of those officials following the visit in question.
27. She notes that the Ministers gave examples of tasks the staff in question were required to perform at this time. However, they did not demonstrate why performing these tasks could not reasonably be balanced with performing the statutory function of responding to the information requests.
28. The Commissioner acknowledges that staff involved in responding to these information requests were subject to other significant demands at the same time: but this is not an unusual situation for public authority staff. In the Commissioner's view, something more than simply having competing demands on time is required before a request can be said to present a significant burden.
29. The Commissioner is concerned that a logical extension of the Ministers' argument here is that concluding a significant burden is imposed on public authorities on the basis of having competing demands, without explaining and evaluating the impact in each case, would lead to an authority being able to pick and choose when it is appropriate to respond to information requests and when it is not. She cannot envisage that as being the intention behind section 14(1).
30. Considered in this context, the Commissioner acknowledges the force behind Mr Laing's argument that requests of this nature are not unexpected for the authority. Having considered the Ministers' arguments, she does not believe it reasonable that a public authority can expect to avoid responding to requests during busy periods, even if it has warned that such busy periods are likely to occur. This is especially so in relation to an issue such as this where the Ministers know overseas visits have generated interest in the past.
31. That said, the Commissioner accepts that the collective impact of a number of requests from the same requester may be relevant in assessing the burden of complying. But a large aggregate number of requests will not necessarily lead to any of them amounting to a significant burden.
32. Mr Laing, by the nature of his employment, can be expected to make numerous requests, particularly to the Ministers. The Commissioner has considered the information provided by them about requests received from Mr Laing in 2013. Of the 56 requests he made in that 52 week period, the Commissioner notes that only 13 related to Ministerial overseas visits. There is nothing in the submission to indicate there is a significant pattern in the remainder.



33. Having considered the submissions from both the Ministers and Mr Laing, the Commissioner is unable to accept that Mr Laing's requests, considered either collectively or in isolation, presented the kind of significant burden envisaged for the purposes of section 14(1).

Having the effect of harassing the authority

34. The Ministers submitted that these requests had the effect of harassing them, focusing on the impact on key staff and the diversion of resources away from core business (which is not always the same as statutory duties or functions). For broadly the same arguments relating to the evidence that the requests created a significant burden, the Commissioner cannot accept that their impact could amount to harassment of the staff concerned or the authority as a whole.
35. In support of their claim that the requests amounted to harassment, the Ministers also asserted that the requests seemed to be targeted at the Ministers concerned, with a view to creating negative news stories about them. They referred to previous media coverage following a similar request but provided no evidence to link the applicant to that coverage, or that demonstrated a pattern of behaviour. In any event, it does not follow, and has not been demonstrated, by the Ministers, that the disclosure and subsequent use of this type of information to cast the authority in a negative light will amount to harassment.

Serious purpose or value

36. Even if a public authority believes a request lacks serious purpose or value, the applicant might still (from a subjective and reasonable point of view) have a genuine desire and/or need to obtain the information. The applicant is not obliged to share his motives for seeking the information with the public authority.
37. The Commissioner has considered the submissions made by Mr Laing in relation to transparency as to the use of public funds. Clearly, that is a matter of public interest. The Commissioner can understand the Ministers' view that, in isolation, information on food and drink served might appear to lack serious purpose. However, taken in the context of it being during a Ministerial visit (representing Scotland) and transparency as to the use of public funds, she does not agree that Ministers have made a robust argument that in this case it does.
38. The Commissioner understands that information of this kind may be interpreted so as to cast the public authority in a negative light. Even if that should be a consequence of disclosure, she does not believe it necessarily always follows that the request should be considered to lack any serious purpose or value.

Conclusions

39. In all the circumstances, the Commissioner is not satisfied on the basis of the arguments put forward by the Ministers in this case that responding to Mr Laing's requests would impose a significant burden on them, have the effect of harassing them or have no serious purpose or value.



40. The Commissioner finds that they were not entitled to refuse to comply with Mr Laing's requests on the basis that section 14(1) of FOISA applied. She therefore requires the Ministers to carry out a review in respect of these requests, and to respond to Mr Laing otherwise than under section 14(1). In other words, the outcome of the review should be that the Ministers substitute a different decision for their original one, in accordance with section 21(4)(b) of FOISA.

General observation

41. It is evident from this case that there is considerable interest, and public interest, in transparency relating to Ministerial expenses. The Commissioner would urge the Ministers to consider in light of the experience of dealing with such requests, whether a more proactive approach to publishing such information, within stated timescales, could reduce the burden claimed, both in terms of reducing the likelihood of requests, and the burden of having to respond to them at a time when resources are in high demand. This observation is intended to be helpful to the Ministers and has not been a factor in the Commissioner's decision-making.

DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information requests made by Mr Laing. In particular, she finds that the Ministers were not entitled to refuse to comply with the requests on the basis that they were vexatious and that, in doing so, they failed to comply with section 1(1) of FOISA. She therefore requires the Ministers to respond to Mr Laing's requirement for review, in terms of section 21(4)(b) of FOISA, by 26 June 2014.



Appeal

Should either Mr Laing or the Scottish Ministers 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.

Rosemary Agnew
Scottish Information Commissioner
12 May 2014



Appendix 1 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

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if -

...

- (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.

...



Appendix 2 – Requests

- (1) The guest names and companies who attended the business roundtable attended by the Minister for External Affairs in Shenzhen on 11 October
- (2) The cost of the universities alumni reception attended by the Minister for External Affairs on 11 October
- (3) Who provided any names for the invitation list for the universities alumni reception attended by the Minister for External Affairs in Shenzhen on 11 October
- (4) What food and drink was served at the universities alumni reception attended by the Minister for External Affairs on 11 October
- (5) What food and drink was served at the business roundtable attended by the Minister for External Affairs on 11 October
- (6) The names and positions of who attended the meeting with Kyndal on 12 October
- (7) How many Scottish businesses attended the Team Scotland business networking reception attended by the Minister for External Affairs on 12 October
- (8) The guest names and companies who attended the Team Scotland business networking reception attended by the Minister for External Affairs on 12 October
- (9) The total cost of the Team Scotland business networking reception attended by the Minister for External Affairs on 12 October
- (10) Whether any sponsorship was sought or was achieved for the Team Scotland business networking reception attended by the Minister for External Affairs on 12 October
- (11) The value of any sponsorship achieved for the Team Scotland business networking reception attended by the Minister for External Affairs on 12 October
- (12) What food and drink was served at the Team Scotland business networking reception attended by the Minister for External Affairs on 12 October
- (13) What food and drink was served at the Visit Scotland ScotsAgent graduation attended by the Minister for External Affairs on 15 October
- (14) What the total cost of the Visit Scotland ScotsAgent graduation attended by the Minister for External Affairs on 15 October
- (15) The cost of any other entertainment, drinks, hospitality, food - including what was served for any of the Minister's engagements and for the duration of his trip to India
- (16) Who attended the meeting with the Minister for External Affairs and Zomato
- (17) Who attended the meeting with the Minister for External Affairs and Tata
- (18) Who attended the meeting with the Minister for External Affairs and Piramal Healthcare
- (19) The guest names and companies who attended the young India entrepreneurs attended by the Minister for External Affairs on 13 October.
- (20) The names and positions of those who formally met with the Minister during his trip to India

I ask that each of the requests above be considered as separate requests under the Act.

I would be grateful if you could interpret my request for information as widely as possible. To provide as much background and context to my request, I would be grateful if you can provide the actual documents in which the information is contained wherever possible.

Decision 104/2014
Mr Alan Laing
and the Scottish Ministers

