



Decision Notice 041/2024

Whether request was vexatious

Authority: University of Glasgow
Case Ref: 202200465

Summary

The Applicant asked the Authority for information regarding its support programmes to assist with groupwork. The Authority declined to comply with the request as it considered it to be vexatious. The Commissioner investigated and found that, in the context of historical communications, the request was vexatious and the Authority was not obliged to respond.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 10(1) (Time for compliance); 14(1) (Vexatious or repeated requests); 47(1) and (2) (Application for decision by Commissioner)

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

Background

1. [redacted]
2. On 16 December 2021, the Applicant made a request for information to the Authority. He stated:

“In early November 2021, [redacted] was notified by [named individual] in the School of Law, of various programmes to assist with groupwork. It is of concern that this is wholly new to us. Nobody ever mentioned it to [redacted] – this is especially so after he expressed an interest in, and applied for, the DPLP.

- (i) Will you please now explain to us why [redacted] was never informed about such programmes?
- (ii) Why was [redacted] never invited to participate in such programmes?
- (iii) Why were these programmes not discussed with [redacted] during his discussion re the DPLP?
- (iv) When were these programmes initiated and first made available to students – in University of Glasgow; within the School of Law? Please evidence this.
- (v) How/when were School of Law staff advised of these programmes? Please provide evidence of how and when this happened?
- (vi) What provision is made within these programmes for students with disabilities such as [redacted]? Please evidence this.
- (vii) Do these programmes have involvement from the Disability Service? Please evidence this.
- (viii) Were these programmes raised and discussed with [redacted]? Please evidence this.

Please provide us with copies of all documentation regarding these programmes.”

3. The Authority did not respond to the request.
4. On 4 March 2022, the Applicant wrote to the Authority requesting a review. The Applicant stated that the Authority had failed to respond to the request and that this was a breach of legislation.
5. The Authority notified the Applicant of the outcome of its review on 1 April 2022. The Authority apologised for failing to respond to the initial request, and it argued that the first part of the request was seeking an explanation rather than recorded information and so did not fall within the provisions of FOISA. The Authority argued that the remaining parts of the request were vexatious and it refused to comply with the request under section 14(1) of FOISA.
6. On 26 April 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority’s review because he did not agree that section 14(1) applied to the request.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 25 May 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These related to its reasons for refusing the request under section 14(1) of FOISA, and its failure to respond to the original request within the timescales set out in section 10(1) of FOISA.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 14(1) – Vexatious or repeated requests

11. 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.

12. FOISA does not define the word "vexatious". The Commissioner's general approach, as set out in his [guidance](#)¹ on section 14(1), is that the following factors are relevant when considering whether a request is vexatious. These are that the request:

- (i) would impose a significant burden on the public body
- (ii) does not have a serious purpose or value
- (iii) is designed to cause disruption or annoyance to the public authority
- (iv) has the effect of harassing the public authority
- (v) would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

13. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all circumstances into account. The term "vexatious" must be applied to the request and not the requester, but an 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.

Authority's submissions

14. In responding to the request, the Authority stated that it was mindful of the Commissioner's Guidance on Vexatious or repeated requests, particularly paragraph 28 of this guidance, which concerned the relevance of a requestor's identity and history of dealings with a public authority. The Authority referred to the following text from paragraph 28 of the guidance:

...a requestor having an on-going grievance against a public authority or could reasonably be described as conducting an extended campaign to the point that their behaviour can be described as obsessive.

15. The Authority explained that during the period 2016 to 2022, the Applicant sent a huge volume of correspondence to it staff. In order to manage this correspondence, the Applicant was asked to direct all communications to a single point of contact, apart from any request made under FOISA or the Data Protection Act 2018 (the DPA) which would be dealt with as normal. The Authority explained that the single point of contact was initially a member of staff from the Law School, then the Executive Director of Student and Academic Services, and latterly the Deputy Vice Chancellor.

¹ <https://www.itspublicknowledge.info/sites/default/files/2023-07/BriefingSection14VexatiousorRepeatedRequests.pdf>

16. The Authority submitted that the Deputy Vice Chancellor received over 400 communications from the Applicant. It argued that, given the seniority of the Vice Chancellor and the importance of his role, this represented a disproportionate and unjustified level of disruption to the operation of the Authority and its core functions.
17. The Authority also submitted that the Executive Director of Student and Academic Services estimated that during the period August 2018 to August 2020, he spent between 0.5 and 1 day per week solely responding to correspondence and following up on issues and requests raised by the Applicant [redacted]. The Authority pointed out that the Applicant's [redacted] was just one of over 40,000 students for which the Executive Director had responsibility.
18. The Authority argued that the Applicant exhibited inappropriate and abusive language and tone in some of his correspondence and it provided the Commissioner with examples of his correspondence. It further noted that its staff reported many instances whereby they felt harangued, harassed and undermined by the Applicant's communications.
19. The Authority submitted that during the period 2016 to 2022, the Applicant submitted approximately 646 emails to its Complaints Resolution Office (CRO). Of these 646 emails, the Authority noted that 252 were sent between 18:10 on 17 November 2018 and 13:49 on 18 November 2018. The Authority commented that the Applicant also made 41 complaints to the CRO, 31 of which were taken forward to Stage 2, and 18 of those were referred to the Scottish Public Services Ombudsman (SPSO) of which 8 were taken forward by the SPSO. The Authority argued that dealing with correspondence, complaints investigations and SPSO investigations took up a considerable proportion of staff time and represented a significant burden on its resources in this area.
20. In addition to the general correspondence and complaints, the Authority noted that the Applicant also made 25 Subject Access Requests (SARs) during the period [redacted] and 37 FOI requests/requirements for review.
21. The Authority submitted that when this current information request was made, the Applicant's [redacted]. It argued that the circulation of the message and resources referenced in the request was no longer of any relevance to the Applicant's [redacted]. It noted that [redacted] only received the email message as his student account had not yet been closed (student accounts are normally closed 3 months after graduation) and the message was sent to all undergraduate LLB students within the School of Law.
22. The Authority argued that the request was without purpose other than as a further example of the Applicant's pursuance of a campaign and argument against the Authority and further considers that the requested information would be of no material use to [redacted] given that his studies were complete.
23. The Authority referred to the Commissioner's guidance on vexatious requests, particularly paragraph 36 of that guidance, which states:

...language a reasonable person would consider abusive or inappropriate in the circumstances may be a factor in deciding whether a request meets the criteria specified above.
24. The Authority argued that the Applicant's tone and language in communications to its staff has been frequently inappropriate and abusive. It noted that many of its staff have commented that they have never experienced such behaviour in their professional lives. The Authority stated that it was of the opinion that a reasonable person, when reviewing the

Applicant's correspondence and this current request in that context, would be of the same opinion in relation to the vexatiousness of the request. The Authority referred the Commissioner to the Applicant's requirement for review, dated 1 April 2022. It argued that the text contained in this letter was threatening, abusive and aggressive in tone and language.

Applicant's submissions

25. The Applicant submitted that his request was not vexatious, and the Authority's claim to the contrary was both untrue and distressing. He argued that his request was legitimate and reasonable.
26. The Applicant submitted that In November 2021, he and [redacted] were made aware of various programmes to assist students with tackling groupwork. He noted that this was the very first time that he or [redacted] had ever been made aware of such programmes and so he asked if the programmes had been offered and run before. The Applicant explained that he had searched various websites extensively for information about the programmes but he had been unable to find anything, and so he had written to the Authority requesting this data and explaining why he was asking for this.
27. The Applicant submitted that usually, the kind of information he had requested would be provided quickly by the Team or School offering such programmes. He commented that the programmes in question were likely to be a workshop or a training session for students or an evening class/seminar that might be delivered once or twice a year. The Applicant explained that he had directed his request to the central administrative team with a request for them to provide evidence to support any response. The Applicant argued that there was absolutely nothing vexatious about this request. He explained that he wanted to obtain the information because there had been multiple problems with the support services offered to disabled students. Given this, he wanted to know if these programmes were a new initiative, or if they had been running for a number of years.
28. The Applicant noted that the Authority had stated, in its review outcome, that his request did not have a serious purpose or value because [redacted] when the request was made. The Applicant commented that this was irrelevant. He argued that he was still entitled to find out if such short support programmes were available and being offered to students, and in which academic years they had been run. The Applicant commented that he believed that support programmes were taking place however, [redacted] was never notified or invited to attend any such programmes. The Applicant was concerned that these support programmes were only offered to able-bodied students and not to disabled students.
29. The Applicant noted that, in its review outcome, the Authority had made a number of quite personalised statements regarding [redacted] having made previous complaints. The Applicant argued that [redacted] was entitled to make complaints and it was inappropriate for the Authority to make reference to this entirely separate matter. The Applicant commented that the Authority's comments suggest that it has refused to comply with the request out of spite. He argued that any and all previous information requests that have been made were entirely legitimate, but the Authority has referred to these past requests as a reason for refusing to comply with this latest request.
30. The Applicant referred to the Authority's claim that the request was "manifestly unreasonable or disproportionate". He argued that this was wholly untrue and he suspected that this argument was the result of one individual employee making a malicious intervention and airing their own private and personal hostility. He notes that he responded to the Authority's

review outcome by providing clarity regarding the request and demonstrating that the actual data request is very minor and the information could most likely be collated in an hour or less. The Applicant argued that the information requested would be held by only two or three people in the School. He submitted that normally he would email the team requesting a quick response and in other institutions, this would be answered honestly and quickly. However, he argued that this was not possible with the Authority as it was not open, nor transparent or helpful.

31. The Applicant provided the Commissioner with a copy of the response he had sent to the Authority following its review outcome, in which he lists each request and clarifies the kind of information that would satisfy the request. The Applicant invited the Commissioner to conclude that the request was not unreasonable, nor disproportionate, neither would it cost excessive costs to comply. He argued that all of the requested data is held by multiple staff on their PCs and would have been made available to students, if they had asked. Furthermore, the Applicant commented that if the programmes were not run in previous years, then there is simply nothing to disclose other than confirmation that they were not running.

The Commissioner's findings

32. The Applicant's request may not appear, on the face of it, to be vexatious. The Commissioner is aware, however, that the vexatious nature of a request may only emerge after considering the request in context; for example, a history of previous or ongoing correspondence with the Applicant. The context may reveal the request to be disproportionate in its nature and impact.
33. Having considered the substance of Applicant's request, the Commissioner is satisfied that it does have value and serious purpose. The Court of Session considered the importance of the value and purpose of a request in paragraph 27 of its ruling in [Beggs v Scottish Information Commissioner \[2018\] CSIH 80](#)², where it commented;

If a requester pursues his rights against an authority out of vengeance for some other decision of its, it may be said that his actions were improperly motivated but it may also be that his request was without any reasonable foundation. But this could not be said, however vengeful the requester, if the request was aimed at the disclosure of important information which ought to be made publicly available.

34. It is clear that the Applicant has been disappointed with the support and assistance [redacted] received from the Authority whilst registered as a student. The Applicant has genuine concerns that students with a disability, [redacted], do not receive the same support from the Authority as students without a disability. This is an issue of equality, and is clearly important. The Applicant wants to know whether the programmes offering to assist with groupwork were available during the time that [redacted] was studying for his degree. He suspects that these programmes may not have been offered to students with a disability and he is seeking information to address his concerns. The Commissioner is satisfied that this request does have merit and it has a serious purpose.
35. That said, a request which has value and serious purpose can still be vexatious if it has the effect of harassing, or distressing, the public authority and/or its staff or individuals connected to the Authority.

² <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/2018csih80.pdf?sfvrsn=0>

36. "Harassing" is not defined in FOISA or the Commissioner's own guidance. The First Tier Tribunal (Information Rights) ruling [EA/2011/0224 Roger Conway and the Information Commissioner](#)³ was of the view that "harassing" should be given its ordinary meaning, that is, to disturb persistently, bother continually, pester or persecute. In the Commissioner's view, the question is whether (viewed from the perspective of a reasonable person) the request has the effect of harassing the authority and/or its staff, and not whether the requester intended it to harass.
37. The Commissioner has taken account of all the relevant submissions and supporting evidence from the Applicant and the Authority.
38. The Commissioner notes the Authority's submissions regarding the impact of the Applicant's correspondence on staff, and its unhappiness with the Applicant's tone and wording. The Commissioner also notes the Applicant's concerns with the tone and language used by the Authority in its correspondence to him.
39. From reading the correspondence between the parties, and their submissions, it is clear to him that both the Applicant and the Authority are unhappy with the tone and language used by the other. The Commissioner does not consider that either party has strayed into language that would generally be construed as aggressive or offensive, but in the context of the relationship between the two, he can see how each party has been offended by the words used.
40. However, as noted above, the vexatious nature of a request may only emerge after considering it in the context created by previous ongoing correspondence. The Commissioner is satisfied, having considered the extent of the communications made by the Applicant, as well the details of his previous FOI requests, that it was reasonable for the Authority to consider previous correspondence with the Applicant when deciding whether this request should be treated as vexatious.
41. In [Decision 032/2020](#)⁴, the Commissioner found that it was;
- ...reasonable to expect a University student to contact the University department she is studying at with questions about course materials, assessments, academic appeals and other aspects of the course which are specific to her.*
42. He recognises that, in this case, the Authority dealt with all of the Applicant's correspondence while [redacted], and it has only sought to consider this request vexatious now [redacted]. The Commissioner is generally of the view that individuals should not be penalised for making use of the rights available to them in law. However, he has taken account of the considerable amount of communications made by the Applicant in this case, as well as the time expended by the Authority in dealing with these communications, and the impact this had on the Authority's staff. The Commissioner recognises that it had not been the intention of the Applicant to harass the authority, or to cause disruption and annoyance to it, or impose a significant burden on it. However, when viewed from the perspective of a reasonable person, in conjunction with the other requests and correspondence, the Commissioner accepts that the request would have that effect.

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<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i690/20120301%20Decision%20EA20110224.pdf>

⁴ <https://www.itspublicknowledge.info/decision-0322020>

43. The Commissioner therefore considers that, in the context of the Applicant's relationship with the Authority, this request forms part of pattern of communication that could be considered vexatious.
44. For these reasons, the Commissioner is satisfied that this request should be properly characterised as vexatious in line with section 14(1) of FOISA.

Timescales

45. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
46. The Authority explained that while it received the Applicant's request on 16 December 2021, it only came to the attention of its FOI department on 8 March 2022, when the Applicant complained directly about the lack of response. The Authority submitted that the Applicant's dissatisfaction was taken forward as a request for review and it issued its review outcome, with apologies for the delay, on 1 April 2022.
47. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA. The Authority apologised to the Applicant for this delay.

Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made the Applicant.

While it was entitled to refuse to comply with the request under section 14(1) of FOISA, it failed to meet the requirements of section 10(1) of FOISA fully in respect of complying with the required timescale.

Appeal

Should either the Applicant or the Authority 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.

David Hamilton
Scottish Information Commissioner

21 March 2024

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

..

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.
- ...

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.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and

- (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).