



Decision Notice 097/2024

Whether request was vexatious

Authority: Crown Office and Procurator Fiscal Service
Case Ref: 202400309

Summary

The Applicant asked the Authority for the salary of a named staff member. The Authority refused to comply with the request as it considered the request to be vexatious. The Commissioner investigated and found that the request was vexatious and that the Authority was not obliged to comply.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(1) (Vexatious requests); 21(1), (8)(b) and (9) (review by a Scottish public authority); 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. On 22 February 2024, the Applicant made a request for information to the Authority. He asked for the salary of a named staff member.
2. The Authority responded on 26 February 2024. The Authority stated that it considered the Applicant's request vexatious and in line with section 14(1) of FOISA (Vexatious or repeated requests), it was not obliged to comply with his request.
3. On 26 February 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he understands that he has a right under FOISA to receive this information.

4. The Authority notified the Applicant on 26 February 2024 that it had considered his requirement for a review, but would not undertake a review. The Authority referred to section 21(8)(b) of FOISA, which provides that a Scottish public authority is not required to carry out a review of a request considered to be vexatious.
5. On 27 February 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he did not consider his request was vexatious and because the salary of a public servant was a matter of legitimate interest to a member of the public.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 29 February 2024, the Authority was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
8. 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 the Authority's reasons for considering the request vexatious and any earlier efforts by the Authority to address the Applicant's concerns regarding salaries.

Commissioner's analysis and findings

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

Section 14(1) – Vexatious or repeated requests

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.
11. The Commissioner has published [guidance](#)¹ on the application of section 14(1) of FOISA. This states:

There is no definition of "vexatious" in FOISA. The Scottish Parliament considered that the term "vexatious" was well-established in law and chose to give the Commissioner latitude to interpret the term in that context, so that the interpretation might evolve over time in light of experience and precedent.

12. In the Commissioner's view, there is no single formula or definitive set of criteria that allow a formulaic approach to be taken to determining whether a request is vexatious. Each request must be considered on the merits of the case, supported by evidence, clear evaluation and reasoning. Although this is not an exhaustive list, the following factors will be relevant to a finding that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:

¹ [BriefingSection14VexatiousorRepeatedRequests.pdf \(itspublicknowledge.info\)](#)

- (i) It would impose a significant burden on the public authority.
 - (ii) It does not have a serious purpose or value.
 - (iii) It is designed to cause disruption or annoyance to the public authority.
 - (iv) It has the effect of harassing the public authority.
 - (v) It 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, he also acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering whether a request is vexatious.

Submissions from the Authority

14. The Authority provided detailed submissions explaining why it considered the Applicant's request vexatious in terms of section 14(1) of FOISA.
15. The Commissioner is unable to reproduce or summarise those submissions in any detail, within this decision notice, without breaching the obligation of confidentiality in section 45 of FOISA.
16. However, the Authority stated that it considered the Applicant's request vexatious for the following reasons:
- it did not have a serious purpose or value
 - it was designed to cause disruption
 - it had the effect of harassing it and the named employee
 - it was, in the context of all previous communications, manifestly unreasonable.
17. The Authority provided evidence of previous relevant communications from the Applicant and background information to those communications.
18. The Authority explained that it had responded to communications from the Applicant wherever possible, but it had concluded that it was not obliged to comply with this request as it was vexatious in terms of section 14(1) of FOISA.

Submissions from the Applicant

19. The Applicant did not agree that his request was vexatious.
20. The Applicant also submitted that the salary of a public servant was a matter of legitimate interest to a member of the public and information that he was entitled to under FOISA.

The Commissioner's findings

21. Taken in isolation, the Applicant's request might not appear to be vexatious. However, the vexatious nature of a request may only emerge after considering it in the context created by previous correspondence.

22. The Commissioner is satisfied, having reviewed the submissions provided by the Authority, that it was reasonable for the Authority to consider previous correspondence with the Applicant when deciding whether this request should be treated as vexatious.
23. Given the history and nature of the Applicant's correspondence (as set out in the Authority's submissions), the Commissioner is also satisfied that the Authority was entitled to conclude that this request was vexatious.
24. Section 45 of FOISA makes it a criminal offence for the Commissioner or a member of his staff to disclose without lawful authority information which he has obtained, or which has been furnished to him, under or for the purposes of FOISA if the information is not at the time of the disclosure, and has not previously been, available to the public from another source
25. In the circumstances, the Commissioner does not consider it possible to set out in greater detail the reasons for his conclusions without potentially breaching section 45 of FOISA.
26. In this case, having considered all relevant submissions, the Commissioner is satisfied that the Authority was entitled to refuse to comply with the request by virtue of section 14(1) of FOISA.
27. The Commissioner would also like to make clear that, if the request was not vexatious, it is highly likely that the information requested would be exempt under section 38(1)(b) of FOISA as third party personal data.

Decision

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

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

22 May 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.

...

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-

...

- (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.

...

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).