

Decision Notice 060/2020

Whether request was vexatious

Applicant: The Applicant

Public authority: Clackmannanshire Council

Case Ref: 201902039



Scottish Information
Commissioner

Summary

The Council refused to respond to a request about a consultation to have been carried out at Alva Academy on the basis that it was vexatious.

The Commissioner investigated, but was not satisfied that the Council had demonstrated that the request was vexatious. He required the Council to respond otherwise than in terms of section 14(1) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests)

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 8 October 2019, the Applicant made a request for information to Clackmannanshire Council (the Council). She asked for information about a consultation that was to have been carried out by Alva Academy regarding a review of its pupil leadership structure. Specifically the Applicant asked “...could you therefore inform me [of] details of the consultation, who has been consulted and when this happened.”
2. The Council wrote to the Applicant on 23 October 2019. The Council informed the Applicant that it was relying on section 14(1) of FOISA in refusing to respond, as it considered the request to be vexatious. The Council provided the Applicant with its reasons for reaching this conclusion.
3. On 23 October 2019, the Applicant wrote to the Council, requesting a review of its decision as she disagreed with the Council’s view that the request was designed to cause disruption or annoyance and had the effect of harassing the Council. The Applicant also gave an explanation as to why she did not accept that her information request was being used to “keep open and prolong communication”, as the Council also claimed.
4. The Council notified the Applicant of the outcome of its review on 6 November 2019. It notified the Applicant, in line with section 21(8) of FOISA, that it was not required to carry out a review as it had deemed the original request to be vexatious.
5. On 6 November 2019, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the Council’s decision to treat her request as vexatious.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

7. On 12 November 2019, the Council 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 Council was invited to comment on this application and to answer specific questions, focusing on its application of section 14(1) of FOISA.

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 him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

Section 14(1) of FOISA – 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. FOISA does not define the word “vexatious”. The Commissioner’s general approach, as set out in his guidance on section 14(1)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.
12. 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 relevant 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 the public authority, may be relevant in considering the nature and effect of the request and surrounding circumstances.

The Applicant's submissions

13. In seeking to evidence her position that her information request was not vexatious, the Applicant provided the Commissioner with copies of email communications between herself and the school.
14. These emails demonstrate an intention by the school to carry out a wider consultation, to include parents, carers and teaching staff in addition to pupils, regarding the proposal to review the role of Head Girl and Head Boy within the school. Subsequent email communications evidence a desire by the Applicant to learn more about the background to

¹ http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx

this and the nature of the consultations carried out, with some information being provided to her after the date of her request during a face to face meeting.

The Council's submissions

15. In response to the Applicant's request and requirement for review, an officer for the Council stated that;

"I consider the request is designed to cause disruption or annoyance to the Council and has the effect of harassing the Council. This may not be your intention, however I believe that your request for information is being used to keep open and prolong communication with the school when they have already explained their position in this matter.
16. In submissions to the Commissioner, the Council noted that its decision to treat this request as vexatious was taken with some regard to the Applicant's prior history. The Council explained that the Applicant had, over the years, submitted various pieces of correspondence to the school and what might start as general observations regarding school activity would become a campaign using FOI to ask for information already provided to her, or continued questions for which she had already received an answer (often there being no recorded information to provide).
17. The Council asserted that when the Applicant does not get a satisfactory response to her observations or questions she will keep the conversation going using FOI. In seeking to evidence these submissions, the Council provided the Commissioner with copies of email correspondence between itself and the Applicant relating to a previous information request. The Council acknowledged that it did not treat this request as an information request under FOISA and so no exemptions were applied to its refusal to provide information and the Applicant was not informed of her right to review or appeal.
18. The Council also provided copies of email communications between itself and the Applicant in relation to other requests for information she had submitted.
19. The Council argued that, even when it did treat the Applicant's requests under FOISA, she continued to communicate with the school before as well as after receiving the response.
20. In this case, the Council submitted that this particular FOI request was the result of the school Head Teacher responding to an email from the Applicant: despite the Head Teacher's response explaining the position and that the decision would not be reversed, the Applicant submitted a further email stating that her points had not been addressed. The Council argued that, in this email, the Applicant was also asking for information on the consultation, despite the fact that the Head Teacher had addressed this in his response.
21. The Council explained that the Applicant also requested a meeting with the Head Teacher. This took place on 29 October 2019 and the Council noted that the Applicant subsequently contacted the Head Teacher again, to disagree with school policy and protest that she had not received the information covered by this information request.

The Commissioner's view

22. The Commissioner has carefully considered the submissions made by the Council, intended to demonstrate that the Applicant's request was designed to cause disruption or annoyance to the Council, had the effect of harassing the Council, and that she was using FOISA to keep open and prolong communications with the school on a matter as to which it already explained its position.

23. In this case, the Commissioner is limited to considering whether the Council has provided sufficient evidence and submissions to support its claim that the application of section 14(1) was appropriate in the circumstances.
24. Even if a requester does not intend to cause disruption or annoyance, if a request has the effect of harassing a public authority and/or its staff, it may be deemed to vexatious when considered from the perspective of a reasonable person.
25. The Council argued that the request was intended to cause disruption and annoyance and had the effect of harassing, as well as being used to keep open and prolong dialogue on a matter where it had already explained its position. The Council provided the Commissioner with examples of previous correspondence between the Applicant and itself where the Applicant had made information requests. Having looked at these emails, the Commissioner notes that all of these requests are for different information.
26. Looking specifically at an email dated 31 May 2017, provided as evidence of the Applicant using FOI to request information for matters on which she has already received information, or to ask for information for questions already answered, the Commissioner notes that (as a consequence of the responses received to earlier questions) the Applicant is seeking other/different information on the same matter, or information for part of a request missed earlier on. This does not appear to the Commissioner to be evidence of the Applicant waging a campaign or seeking to prolong a matter on which she has already received all the information.
27. The Commissioner notes the Council's view that an email from the Head Teacher to the Applicant explained the position over the review of the Head Girl and Head Boy roles, but he does not agree that this is the case. The response does not provide the Applicant with details of the consultation, or explain when the consultation occurred. The Commissioner is therefore unable to agree that the Applicant's request of 8 October 2019 was seeking to prolong a matter about which she had already received all of the information.
28. Having read the Applicant's request and the preceding correspondence that led to the request, the Commissioner is not satisfied that it was the Applicant's intention to cause disruption or annoyance to the Council or that the request (taken alone or with other relevant correspondence) had the effect of harassing the Council. It is clear that the Applicant has a genuine concern over the school and Council's policy and decision making in this particular area and is seeking to better understand the reasoning behind it.
29. The Commissioner cannot say whether or not the Council does hold further information that is relevant to the Applicant's request, but he considers that the Applicant does have a right to challenge the Council on this and seek a review on that basis.
30. In all the circumstances of the case, the Commissioner finds that the Council was not entitled to refuse to comply with the request on the basis that section 14(1) of FOISA applied. He requires the Council to carry out a review in respect of the Applicant's request, and to respond to her otherwise than in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that Clackmannanshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. He finds that the Council was not entitled to refuse to comply with the Applicant's request on the basis it was vexatious. In doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Council to carry out a review, in terms of section 21(4)(b) of FOISA, by 31 July 2020

Appeal

Should either the Applicant or the Council 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.

Enforcement

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

12 June 2020

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.

...

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