

Decision Notice

Decision 070/2017: Dr J and University of St Andrews

Whether a request was vexatious

Reference No: 201602311

Decision Date: 11 May 2017



Scottish Information
Commissioner

Summary

The University was asked about its handling of a complaint and matters associated with the complaint. It refused to comply with the request on the grounds that the request was vexatious.

After investigation, the Commissioner found that the request was vexatious and that the University was not obliged to comply with it.

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) and (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. The Appendix forms part of this decision.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 9 November 2016, Dr J made a request for information to the University. His request was in nine parts and covered a range of matters relating to a complaint which the University had considered. Dr J's request is reproduced in full in Appendix 2. In summary, his request was for:
 - (i) information about procedures by which natural justice was maintained during a Progress Committee Meeting (PCM) which considered his complaint;
 - (ii) a list of the documents and mitigating circumstances taken into account by the PCM;
 - (iii) the procedure the University had relied upon to delay informing him of the destruction of handwritten notes taken at an earlier meeting;
 - (iv) the number of students who had been compelled to leave the course after failing to achieve a certain grade in specified modules;
 - (v) information about the University's investigation of "specified complaint extracts".
2. The University responded on 16 November 2016. It found Dr J's request to be vexatious and stated that, in line with section 14(1) of FOISA (Vexatious or repeated requests), it was not required to comply with his request. It explained why it found the request vexatious (the reasons are considered later in this decision). In summary, the University found that the request formed part of an extended dialogue which had no reasonable prospect of success; involved information which had already been provided; appeared to be intended to reopen issues which had been addressed through the University's complaints process; and suggested an obsessive approach to the disclosure of information.
3. On 18 November 2016, Dr J wrote to the University requesting a review of its decision. He disputed the factual accuracy of some statements in the University's response to his request,

and explained why he did not accept that his request was vexatious for the reasons given by the University.

4. On 13 December 2016, the University notified Dr J that it had considered his request for a review, but would not undertake a review. The University 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 17 December 2016, Dr J applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He challenged the University's decision that his request was vexatious for the reasons cited by the University.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Dr J made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 27 January 2017, the University was notified in writing that Dr J had made a valid application. 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 University was invited to comment on this application and answer specific questions about its decision.
9. As part of its submission, the University provided the Commissioner with details of information which it had already provided to Dr J and which it considered to be covered by his request of 9 November 2016. These details were shared with Dr J, for comment.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Dr J and the University. She is satisfied that no matter of relevance has been overlooked.

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. The Commissioner has published guidance¹ 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.

13. 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

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

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:

- (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.
14. 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 whether a request is vexatious.

Submissions from the University

15. The University provided the Commissioner with documents which showed how and when Dr J's appeal and complaint had been considered by the University, and detailing the information requests he had previously made to the University.
16. The University stressed that it had not taken the decision to find Dr J's request vexatious lightly. It submitted that the context created by the history of Dr J's dealings with the University was relevant in considering whether his request was vexatious.
17. The University made submissions on each of the four reasons it considered Dr J's request to be vexatious.

The request did not have a serious purpose or value

18. The University submitted that the information sought by Dr J was a continuation of issues which have been determined through other processes, and his request could reasonably be viewed as an attempt to re-open those issues. The University found that parts 1 – 6 and part 9 of Dr J's request concerned the complaint which he had progressed (as was his right) through the procedures of the University and the Scottish Public Services Ombudsman (the SPSO). It stated that all of those procedures had been fully exhausted by the time Dr J made his request.
19. The University stated that, in correspondence with the Commissioner, Dr J had suggested that he required information for the purposes of "bringing the matter before court, or before a Judicial Review, or other action that is open to me". It argued that the likelihood of Dr J being able to seek remedy via judicial review is extremely remote, as the time allowed for making such an application to the Court has passed. It considered that he is likely to have a reasonable awareness that he cannot progress his issues of complaint further with the University or the SPSO, and is likely to be aware that judicial review "has no reasonable prospect of success".
20. Parts 7, 8 and 9 of Dr J's request related to the University's management of information requests under FOISA and the Data Protection Act 1998 (the DPA). The University submitted that, in each case, it had responded within the statutory timescale and advised Dr J of his rights of review and appeal. It noted that Dr J was time-barred from applying to the

Commissioner about any of his requests except the one currently under consideration. It argued that several of Dr J's requests were for essentially the same information. The University provided the Commissioner with copies of Dr J's previous requests and an analysis of which elements were repeated.

21. The University submitted that, in most instances, Dr J had already been given the information covered by his current request, or had been given notice that the University does not hold the information. It provided an analysis of the information requested by Dr J with details of when it had given him the information or told him it was not held.
22. Given the extent and nature of Dr J's correspondence, the University believed he had developed an obsessive approach to the disclosure of information relating to a matter which had been investigated, and this was relevant to its decision that his request was vexatious.

Designed to cause disruption or annoyance

23. The University submitted that, when looked at in context, Dr J's request was designed to cause disruption or annoyance, as FOISA was not intended as a vehicle for extending grievances that a person may have with a public authority. It reiterated that Dr J had exhausted all routes or mechanisms available to him in relation to his complaint. It argued:

To ask for information again, or on a slight variation of themes which have been exhausted can be reasonably viewed as having malicious intent.

Has the effect of harassing the University

24. The University submitted that Dr J's request had the effect of harassing the University. It stated that the reasons "are complex and are intertwined throughout the University's submission" but added that Dr J's requests have involved the same areas of the University and the same personnel.

Would be considered manifestly unreasonable or disproportionate

25. The University stated that Dr J's request concerns issues which materialised between September 2013 and January 2014, and submitted that he is now time-barred from raising new complaints relating to these matters, in terms of University and SPSO procedures. The University documented Dr J's history of complaints and information requests to the University and submitted that he has developed a combative pattern of behaviour where every response provided by the University is challenged, either internally or to external regulators.

Submissions from Dr J

26. In his application to the Commissioner, Dr J referred to the reasons for dissatisfaction which he had set out in his request for review. He believed that the University had based its decision on arguments which were not supported by facts.
27. As part of its submission, the University provided the Commissioner with a table which summarised some parts of Dr J's request and listed information previously provided to him. Dr J was asked to comment on this, and explained in detail why he did not accept the position put forward by the University. In summary, he did not accept that any of the summaries of his information requests in the table were accurate, and argued that if the summary was incorrect, then it followed that the details of information previously provided in relation to the summarised request must also be incorrect. He reiterated that he had not received the specific information he had requested from the University, or been advised that the University does not hold the information.

28. In its response to Dr J's request, the University told him that elements of his request involved information which had already been provided under the DPA. Dr J disputed this, in relation to information which had been created *after* the University had provided him with information under the DPA.
29. In relation to the table of information already supplied, Dr J disputed that he had received a minute of the PCM in response to an earlier subject access request under the DPA. He referred to a decision from the SPSO and related correspondence, which supported his claim that he had not received the minute in question. He also questioned whether the specific information he had requested would be found in the minute.
30. In response to the University's view that responding to his request was likely to trigger further requests on a matter already fully considered, Dr J stated that he had no intention of using the requested information to make a further complaint, and was entitled to refuse to disclose what use he intended to make of the information. He provided a list of possible uses for the information. He stated that this would be his final FOI request to the University.

The Commissioner's conclusions

31. The Commissioner has considered carefully whether the University has shown that it was entitled to refuse to comply with Dr J's request on the grounds that it was vexatious.
32. In this case, the Commissioner has no doubt that the subject matter of Dr J's request is important to him, and that he believes that the University has not treated him fairly.
33. Sometimes a request will not appear to be vexatious, when viewed in isolation: the vexatious nature of the request will only appear when it is seen in the context created by previous correspondence and interaction between the public authority and the applicant.
34. Dr J's request must be seen in the context created by his previous dealings with the University. It forms part of a correspondence with the University that can be traced back to a decision it took about him in 2013. Dr J has challenged that decision through the University's Academic Appeals process and through its Complaints Handling Procedure. The way in which the University dealt with Dr J's complaint has been the subject of a decision from the SPSO in 2015. Dr J then made further complaints to the University, which led the University to restrict him from using its complaints procedure for 18 months. He has made three previous multi-part information requests to the University, one in 2013 and two in 2015.
35. In this context, it is reasonable to view Dr J's request of 9 November 2016 as a continuation of his longstanding dispute with the University. Given that his complaint has been through the University's Complaints Handling Procedure and has been the subject of a decision from the SPSO, his request of 9 November 2016 appears to be an attempt to extend correspondence on a matter which has been fully considered.
36. The University has argued that, in most instances, the information requested by Dr J has previously been provided to him, or that it has given him notice that it does not hold the information. Dr J has challenged this, stating that the specific information covered by his request has not previously been provided.
37. The Commissioner accepts that Dr J has not received information which would provide a specific answer to all parts of his request of 9 November 2016. In saying this, she notes that the University has previously provided Dr J with information which relates closely to the matters covered by his request, and which provides some transparency and accountability in relation to the handling of his complaint. In this decision, the Commissioner is required only

to decide whether the University was entitled to refuse to comply with Dr J's request on the basis that it was vexatious, in terms of section 14(1) of FOISA, and she will not consider further whether or to what extent the University was correct to state that most of the information requested by Dr J had been previously provided.

38. Because Dr J's request relates to a matter which has been fully considered, the Commissioner agrees with the University that it lacks serious purpose or value. It appears unlikely that resolution of Dr J's concerns would be brought any closer by providing a response, given the history of his correspondence and dealings with the University. The Commissioner accepts that responding to his request would have the effect of prolonging correspondence on matters which have been exhaustively addressed through the processes established for dealing with such complaints.
39. The Commissioner also accepts that, whatever Dr J's motivation for making the request of 9 November 2016, the effect of his request was to harass the University, given that it related to matters which had already considered in detail by the University.
40. The Commissioner has therefore found that the University was not obliged to comply with Dr J's request of 9 November 2016, on the grounds that it was vexatious and section 14(1) of FOISA applied.

Whether the University was obliged to carry out a review

41. In his application to the Commissioner, Dr J complained that the University had not carried out a review of its response to his request when asked to do so.
42. Section 21(8)(b) of FOISA provides that a Scottish public authority is not obliged to comply with a requirement for review if, by virtue of section 14, it was not obliged to comply with the request.
43. As the Commissioner has found that the University was entitled to treat Dr J's request as vexatious, in terms of section 14(1) of FOISA, she accepts that it was not obliged to comply with Dr J's requirement for review.

Decision

The Commissioner finds that the University of St Andrews complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Dr J.

Appeal

Should either Dr J or the University 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.

Margaret Keyse
Acting Scottish Information Commissioner

11 May 2017

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

- (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.

...

Appendix 2: Dr J's request

(Redacted from published version of Decision 070/2017)

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info