

Decision Notice

Decision 074/2016: Mr Mark Irvine and North Lanarkshire Council

Whether requests were vexatious

Reference No: 201501748

Decision Date: 24 March 2016



Scottish Information
Commissioner

Summary

On 23 July 2015, 13 August 2015 and 14 August 2015, Mr Irvine asked North Lanarkshire Council (the Council) for information relating to exit packages and the remuneration of its Chief Executive.

The Council responded to Mr Irvine, stating that it considered his requests to be vexatious (and so it was not obliged to respond).

Following an investigation, the Commissioner was not satisfied that the Council had demonstrated that the requests were vexatious; she required the Council to respond to Mr Irvine's requirement for review 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); 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. The Appendix forms part of this decision.

Background

1. On 23 July 2015, 13 August 2015 and 14 August 2015, Mr Irvine made requests for information to the Council relating to its Annual Accounts for 2014/15. The requests were specifically for information relating to a specific exit package, and to the annual remuneration package of its Chief Executive. The full text of each of Mr Irvine's three requests is reproduced in Appendix 2 to this decision. The Appendix forms part of this decision.
2. The Council responded on 21 August 2015, informing Mr Irvine that it considered his requests for information to be vexatious in terms of section 14(1) of FOISA, and it was therefore under no obligation to respond to the requests. The Council explained to Mr Irvine why it believed this to be the case.
3. On 1 September 2015, Mr Irvine wrote to the Council, requiring a review of its decision. He challenged the arguments put forward by the Council in support of its position, submitting that the Council had not evidenced why it considered his requests to be vexatious.
4. The Council notified Mr Irvine of the outcome of its review on 25 September 2015. In this response, the Council informed Mr Irvine that it would not be carrying out a review relative to Mr Irvine's requests. It explained that, under section 21(8) of FOISA, it was not obliged to do so if the original request was found to be vexatious.
5. On 28 September 2015, Mr Irvine wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr Irvine stated he was dissatisfied with the Council's conclusion that his requests were vexatious, submitting (with reasons) that they were perfectly legitimate. He believed the Council had taken this position to try to withhold information that might be embarrassing or awkward to disclose.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Irvine made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to her for a decision.
7. On 5 October 2015, the Council was notified in writing that Mr Irvine 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 answer specific questions, with particular reference to its claim that it considered Mr Irvine's requests to be vexatious.

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 Irvine and the Council. She is satisfied that no matter of relevance has been overlooked.

Section 14(1) - Vexatious or repeated requests

10. Section 14(1) of FOISA states that section 1(1) (which confers the general entitlement to information held by such authorities) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious. Section 14(1) does not create an exemption, but its effect is to render inapplicable the general right of access to information contained in section 1(1).
11. FOISA does not define the word "vexatious". The Commissioner's general approach, as set out in her 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:
 - would impose a significant burden on the public body
 - does not have a serious purpose or value
 - is designed to cause disruption or annoyance to the public authority
 - has the effect of harassing the public authority
 - 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 the 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.

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

The Council's submissions

13. In its initial response to Mr Irvine, the Council informed him that it considered his information requests to be vexatious:
- It believed the main purpose of the requests was to pursue an argument with the Council, rather than to obtain recorded information. In this regard, the Council referred to the substantial amount of information that it had already provided to Mr Irvine in response to previous requests on matters of equal pay and the remuneration of senior Council officials.
 - Considering the volume and frequency of Mr Irvine's requests, the Council concluded that responding to them was imposing a significant burden on its resources.
 - Referring again to the volume and frequency of the requests, the Council concluded that they were having a harassing effect on the staff required to respond to them. This was compounded by his blog posts relating to these responses, which it considered went beyond reasonable criticism. The Council concluded that it was appropriate to consider such public commentary as distressing to any reasonable person tasked with responding to his requests, particularly bearing in mind the more formal means of recourse available to him.
14. In its submissions to the Commissioner, the Council stated that Mr Irvine was an independent consultant representing clients in relation to equal pay claims, who also maintained a blog to campaign and comment on equal pay issues. It explained it had received many FOI requests from Mr Irvine over a number of years, all concerned with the issue of equal pay and related matters, including the Council's job evaluation process and the remuneration of senior Council employees.

Significant burden

15. The Council acknowledged that it was not unusual for individuals, such as journalists, to regularly submit information requests covering a variety of issues and involving various Council departments. Similarly, in his capacity as a campaigner, Mr Irvine would be expected to submit a higher volume of requests than others. However, in Mr Irvine's case, the Council stated, the requests were all concerned with the same matters of equal pay and the remuneration of senior Council officers, all of which required to be directed to the same Council department.
16. The Council submitted that the volume and frequency of Mr Irvine's requests had recently increased, with the three in question being the latest in an ongoing series of requests relating to the broad issue of equal pay. The Council provided a list of the 24 requests made by Mr Irvine since April 2014, submitting this was significantly higher than it would expect to receive from an individual requester. The majority of Mr Irvine's requests, the Council stated, were multi-faceted and contained multiple questions, some of which had been particularly time-consuming to source and analyse.
17. The Council explained that Mr Irvine's requests accounted for 20% of all requests directed to its Corporate Human Resources department in 2014, and (including the three in question), 32% of those in 2015 (January-August). The Council submitted that this was causing a disproportionate burden on the workload of the same few employees in a relatively small department, diverting them away from other duties.

18. The Council submitted that each response provided to Mr Irvine, often led to him submitting a request for review, a new request or other correspondence requiring a response. The Council submitted that the number of requests for review received from Mr Irvine was significantly higher than it would expect to receive from a single individual.
19. Acknowledging that Mr Irvine's three requests were not, in themselves, particularly burdensome, the Council stated that most of the information he sought had already been provided to him. The Council maintained that the cumulative effect of all of Mr Irvine's requests, as a whole, was imposing a significant burden on the authority.
20. In support of its position, the Council referred to the Commissioner's Decisions *238/2014 Mr Sergio Sabato and Highland Health Board*², and *145/2011 Mr E and the University of St Andrews*³, both of which it considered relevant here. In line with these cases, it considered this one to exemplify the situation where, taking account of the cumulative effect of the current requests and others from the same individual, a point had been reached where the requests were imposing a significant burden on the authority, which showed no sign of abating. It believed in this case, too, (taking account of that cumulative effect) responding would demand a disproportionate amount of time and the diversion of an unreasonable proportion of resources away from other statutory functions.
21. The Council submitted that the requests under consideration could be more accurately portrayed as pursuing an argument rather than seeking recorded information. That being the case, the Council believed Mr Irvine would not be satisfied with any response and would continue to submit further similar requests, thus imposing a significant burden on its resources. It submitted that he knew the answers to the majority of the questions he posed, whether through previous responses to requests or otherwise.

Harassing the Public Authority

22. To evidence its position in this regard, the Council provided examples of blog posts from Mr Irvine's website, which it described as disrespectful of Council officers and disparaging of their responses.
23. The Council provided the Commissioner with copies of exchanges with Mr Irvine in connection with an earlier request he made in June 2015, submitting that these were demonstrative of Mr Irvine's harassing approach when engaging with FOI staff. The Council explained that following its initial response to that request, Mr Irvine had, through his blog, publicly accused the Council of refusing to release information and of having "something to hide". In its review response, the Council challenged these comments, informing Mr Irvine that its responses had answered his questions and that information, which Mr Irvine alleged he had obtained from another source, was publicly available on its website.
24. The Council submitted that Mr Irvine's response to the review outcome was to publish further blog posts alleging he had been "threatened", and that the Council was trying to curb criticism of its performance pay scheme (which it described as a disingenuous account of the correspondence in question). The Council contended that Mr Irvine's requests now

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http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2014/201401774_775_776_777_778.aspx

³ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2011/201002309.aspx>

appeared more concerned with point scoring and arguing with Council officials to generate content for his blog, rather than obtaining recorded information.

25. The Council submitted that it was difficult for Council officers to answer Mr Irvine's requests in an atmosphere of mutual respect. It explained that, rather than exercising his right of appeal to the Commissioner (in respect of the June 2015 request), Mr Irvine had chosen to make disparaging and insinuating comments in a public forum regarding the Council's handling of his requests. The Council argued that this demonstrated that Mr Irvine had no regard for the discomfort and harassing effect such comments could have on the staff involved in responding to his requests, leading the Council to conclude that his latest three requests had not been made in good faith.
26. The Council also provided the Commissioner with a copy of its response to an earlier request from Mr Irvine in September 2014, where it had informed him that information relative to the remuneration of senior employees, including pension information, was published in its annual accounts, providing a link to those accounts. The Council submitted that this contradicted Mr Irvine's claim in his application to the Commissioner that "time and effort" could have been saved had the Council been more helpful in responding to his June 2015 request. The Council claimed that the link to the annual accounts, which Mr Irvine claimed he had been directed to by a third party, had already been provided to him by its FOI section 8 months previously.
27. Given that this information was publicly available, and that Mr Irvine had already been provided with the link to this information for a previous year (the 2013/14 accounts), the Council maintained it was well within its rights as an employer to challenge Mr Irvine's public assertions that unfairly portrayed its staff as withholding and preventing the disclosure of information.
28. The Council provided the Commissioner with a copy of a subsequent information request it had received on 21 August 2015, from a separate requester, which sought information identical to that in Mr Irvine's latest three requests. Believing there were reasonable grounds to consider this request had been submitted on Mr Irvine's behalf, and considering Mr Irvine had not been named as the "true applicant", the Council found this request to be invalid in terms of section 8(1)(b) of FOISA. The Council submitted that this was an attempt by Mr Irvine to circumvent the FOI process and cause disruption and annoyance to Council staff. It was, the Council believed, a further example of Mr Irvine's harassing behaviour, contributing to its conclusion that his latest requests were vexatious.
29. The Council stressed that its submissions on this point were focussed on the unreasonable and unfounded allegations in Mr Irvine's blog posts which were directed at staff, including junior members of staff, who were involved in responding to his requests. The Council recognised that Mr Irvine was entitled to publicly criticise the Council on any matter of public policy he wished, and that all public servants should have an expectation that they might, on occasion, be subject to criticism. However the Council believed that Mr Irvine's comments were not merely general criticism to cast the authority in a negative light, but were directed at individual staff, and that Mr Irvine would continue to make such comments should he receive a response not to his liking.
30. Although it acknowledged that Mr Irvine's actual information requests were worded politely and contained no offensive language, the Council did not believe it should disregard his public comments. In this regard, it referred to decisions of the Information Rights Tribunal and the Upper Tribunal, highlighting instances where "a litany of allegations of deceit,

targeted specifically at individual officers” had been found relevant. It concluded that in this case, a reasonable person would consider the making of unfounded allegations and derogatory statements by Mr Irvine in a public forum was an aggravation to the harassing potential of these comments.

Serious Purpose or Value

31. The Council also submitted that the requests lacked serious purpose or value. It acknowledged that there was an inherent public interest in the issue of equal pay and the remuneration of senior officers. It also recognised that, on occasion, a response to a request under FOISA could prompt follow-up enquiries and requests. The Council submitted these factors were considered when assessing the serious purpose and value of Mr Irvine’s requests. Having considered these factors, it had responded to all of his requests, prior to the three in question.
32. The Council submitted that the serious purpose and value of Mr Irvine’s requests on equal pay matters had diminished. In forming this view, the Council stated it had taken into account the amount of information it had already provided to Mr Irvine in response to his previous requests, and its recent settlement of “second wave” equal pay claims for clients represented by Mr Irvine. In this context, and bearing in mind the detailed information on senior officer remuneration available publicly both on its website and in its annual accounts, the Council considered Mr Irvine’s repeated requests relating to remuneration were unjustified.
33. The Council went on to explain why it considered the questions in Mr Irvine’s three requests to have been answered already, referring to responses to previous requests and to publicly available information.
34. In relation to Request 1, the Council submitted this was the third request Mr Irvine had made seeking information on the retirement/exit package of its former Chief Executive. In responding to the earlier two requests, the Council had confirmed that the Chief Executive would not receive an early retirement/exit package, could access his pension at age 60 given that he was a member of the Local Government Pension Scheme, and that information on his pension was publicly available in the Council’s annual accounts. Nevertheless, the Council submitted, Mr Irvine sought a breakdown of an exit package he presumed was for the Chief Executive. The Council also submitted Mr Irvine was aware that the Chief Executive left the Council in October 2015, so it was obvious that the exit package quoted from the 2014/15 annual accounts could not be his.
35. In relation to Request 2, the Council submitted that Mr Irvine had previously been advised that information regarding its Chief Executive’s remuneration in 2013/14 (including any performance related pay) was publicly available on its website. It provided a copy of an earlier response to Mr Irvine in September 2014, in which he was provided with links to information concerning performance payments to senior officials in 2013/14. It suggested that this request was repeated, in terms of section 14(2) of FOISA, although it provided no further submissions on this point.
36. In relation to Request 3, the Council explained this sought a breakdown of the Chief Executive’s remuneration (and any performance related pay) for 2014/15. The Council submitted that Mr Irvine had accessed the remuneration report section of its 2014/15 annual accounts, which stated that performance related pay for Chief Officers had ended on 31 March 2014. The Council also noted that Mr Irvine had stated, in his application to the Commissioner, that he was aware of this.

37. It concluded that Mr Irvine had already been provided with and directed to the information sought, so the present requests had little serious purpose or value.

Council's conclusions

38. In conclusion, the Council submitted that the limited purpose and value of Mr Irvine's requests were outweighed by the significant burden they imposed on the Council. Referring to the history and pattern of Mr Irvine's previous requests, the Council believed that responding would likely lead to further information requests. It further submitted that Mr Irvine's requests, blog posts and other interactions with the Council were having a harassing effect on, and causing distress to staff, in circumstances where a reasonable person responding to such requests would be justified in feeling harassed.
39. The Council also believed Mr Irvine was using his rights afforded by FOI legislation to argue with and harangue the Council, as opposed to obtaining recorded information, and that as such his requests were manifestly unjustified, inappropriate and an improper use of a formal procedure.
40. The Council also reiterated what it believed Mr Irvine would be aware of already, following responses to previous requests and its publication of related information. As such information had become available, the Council submitted, Mr Irvine's requests had "drifted" towards a vexatious position as a result of their repetitiveness and correlating diminution in serious purpose and value.
41. While the Council reached this conclusion taking a "holistic" approach and considering all these grounds cumulatively, it also believed it could reach the same conclusion considering each vexatious characteristic separately, on its own merits.

Mr Irvine's submissions

42. In his application to the Commissioner, Mr Irvine submitted that the issues raised in his requests and requirement for review were legitimate, believing the Council was relying on the vexatious provision to try to withhold information that might be embarrassing or awkward to disclose. He was dissatisfied that the Council had not provided sufficient reasons why it considered his requests vexatious, so far as the volume or complexity of his requests were concerned. He believed retrieving the information to answer his requests would not be time consuming, submitting it would be readily available in background papers used to prepare the Council's annual accounts.
43. Mr Irvine explained the purpose of his requests was to establish whether the Chief Executive's remuneration package included an element of "performance pay", which he believed to be the case, in spite of the Council's previous statement that it had abandoned its performance bonus scheme in 2013/14. He considered there was a public interest in the Council's ability to justify such bonuses, given what he perceived to be its inadequate handling of equal pay arrangements in recent years. While acknowledging the Council's sensitivity on these matters, he considered this was no reason to determine his requests to be vexatious.
44. Turning to the Council's comments regarding his blog posts, Mr Irvine did not consider that FOISA was the correct route to raise such issues, noting the Council had not raised its concerns in this regard outwith the FOI process.
45. Mr Irvine informed the Commissioner that one of the main reasons for submitting his requests was that he believed the Council's figures to be confusing and often inconsistent,

with differing figures being published to explain the Chief Executive's remuneration package, prior to the publication of a new term "exit package" without any explanation or breakdown of this payment.

46. Mr Irvine was of the view that the Council had abused the FOISA process, as:
- (i) by characterising his requests as vexatious, it had delayed the process for several months, and
 - (ii) by threatening to punish him (in terms of future FOISA requests) over his public criticism of the Council, he believed the Council's behaviour had become an important issue which should be the subject of a full determination by the Commissioner.

The Commissioner's view

47. The Commissioner recognises that Mr Irvine's three requests do not appear, on the face of it, to be vexatious. However, she is aware that the vexatious nature of a request might only emerge after considering the request within, for example, the context of previous or ongoing correspondence between the applicant and the authority.
48. The Commissioner has carefully considered the submissions made by the Council which were intended to demonstrate that Mr Irvine's latest three requests were part of a series of correspondence which imposed a significant burden on the Council due to its volume, frequency and repetitive content. The Council also argued that the requests were designed to cause disruption, had the effect of harassing it, and lacked serious purpose or value. This was within the context of (and as a continuation of) previous correspondence between Mr Irvine and the Council, in conjunction with the comments by Mr Irvine published on his website, on matters relating to equal pay and the remuneration of senior Council officials.
49. The Commissioner accepts that there has been a considerable amount of correspondence between both parties on the matters of equal pay and the remuneration of senior Council officials. That said, having considered all the submissions made by the Council and Mr Irvine, she is unable to accept that the three requests which are the subject of the present application can be viewed as vexatious.

Significant burden

50. 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 resources away from other statutory functions.
51. The Commissioner has considered the Council's submissions on the burden imposed by the requests, specifically on its Corporate Human Resources department, diverting staff away from other duties. She has also noted the Council's submissions that any response would generate a further request, adding to this burden.
52. The Commissioner considers that the Council failed to demonstrate why staff could not balance their normal tasks with answering these (and Mr Irvine's other) requests.
53. While 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, she does not accept that this will necessarily lead to any of them amounting to a significant burden.
54. The Commissioner recognises that some individuals, such as journalists or campaigners, might submit a higher volume of information requests than others. In this case, she does not consider the number of requests submitted by Mr Irvine, as evidenced by the Council, to be

particularly excessive. The Council's arguments appear to be predicated on the fact that, given the subject matter of Mr Irvine's requests, they require to be considered by the same department. While she acknowledges that it is a matter for a public authority to decide how it organises its resources to meet its statutory duties, authorities must remember that the duty is the authority's, and does not fall to a particular team or department. In this case, for example, no evidence has been provided to suggest that responding to any of Mr Irvine's requests requires special skills to be found only in a particular department.

55. In all cases, Scottish public authorities must have appropriate arrangements in place to be able to respond to information requests, and any requests for review that might follow. The Commissioner would remind authorities that the right to seek a review is a statutory one: the fact that a particular individual may seek a large number of reviews in relation to the number of requests they make cannot of itself be indicative of a significant burden. In this case, the Council has provided no further evidence to suggest that Mr Irvine's reviews are themselves burdensome.
56. The Commissioner is of the view that the Council has not provided sufficient evidence to explain why responding to Mr Irvine's latest requests (viewed either in isolation or collectively with others) imposed such a significant burden, nor has it evidenced any attempt to provide any advice, assistance or suggested solution that might reduce any such burden. The Commissioner is therefore unable to accept that Mr Irvine's requests, considered either collectively or in isolation, presented the kind of significant burden claimed by the Council for the purposes of section 14(1).

Harassing Effect

57. When addressing this question, consideration should be given to the effect that a request has on a public authority, regardless of the requestor's intentions. Even if the requestor may not have intended to cause inconvenience or expense, if the request has the effect of harassing the public authority, then it may be vexatious. The Commissioner considers the language and tone of the request may be relevant in assessing this.
58. The Commissioner notes that the Council's arguments on this point are mainly focused on Mr Irvine's blog posts and their impact on individual members of staff involved in responding to his requests.
59. In considering this case, it is clear to the Commissioner that the relationship between both parties is somewhat strained, with both wishing the other to be "brought to task" in relation to their use of the FOI process.
60. The Commissioner notes that Mr Irvine's actual information requests show no evidence of any harassing tone or language. On the other hand, the Council appears to have expressed itself quite confrontationally on at least one occasion (in its review outcome for Mr Irvine's June 2015 request). It might not be appropriate to characterise this as a "threat", but it does appear to come over as a warning, suggesting that the process of responding to Mr Irvine's requests is becoming contentious. It is also a rather vague and general warning, rather than a clear indication of what the Council might do (under FOISA) should the conduct it is concerned about continue: the Commissioner does not consider this to have been helpful in the circumstances.
61. With regard to Mr Irvine's blog posts, the Commissioner notes the Council's view that these comments were directed at specific individuals, with the intent of causing harassment. Those individuals were acting in their capacity as Council employees, and not in a private

capacity. The Commissioner recognises that public servants may be subject to criticism on occasion, in the course of performing their duties. Here, however, any criticism is focused on the public authority itself. It may be made in proximity to references to communications from particular individuals, but the criticism itself refers to staff in general terms only. The actual source of any information obtained by Mr Irvine may have little bearing on any comments he may choose to make on his website, in terms of whether information was obtained through the freedom of information process or by any other means.

62. The Commissioner does not consider the use of information disclosed through freedom of information legislation, to cast an authority in a negative light, amounts to harassment in itself. In this case, while some of Mr Irvine's blog comments may, to the average person, appear antagonistic, the Commissioner does not consider they contain anything which a professional public servant would find particularly intimidating. In contrast, however, the Council appears to have adopted a tone which appears quite officious and at times confrontational, which appears to have gone beyond what was necessary in the circumstances to protect its interests.
63. Turning to the subsequent identical request received from the separate requester, the Commissioner accepts the Council's reasons for believing this to have been submitted on Mr Irvine's behalf, but there is no evidence to support this view. In any event, she cannot accept the mere fact of a request presumed to have been submitted on Mr Irvine's behalf as indicative of ongoing harassment.

Serious purpose or value

64. 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 reason for obtaining the information. The applicant is not obliged to share his motives for seeking the information from the public authority.
65. The Commissioner notes that one of the main reasons for Mr Irvine requesting the information was due to the varying figures published by the Council.
66. Specifically in relation to Request 1 (concerning exit package information for 2014/15), Mr Irvine appears to have presumed this related to the Council's former Chief Executive. This may have been mistaken, but she does not consider this alone rendered the request vexatious. In any event, it could have been explained to Mr Irvine that he was in error. In the Commissioner's view, it was not unreasonable for Mr Irvine to seek clarity on a figure which was "new" in the Council's draft annual accounts, and which appeared to exceed any payment which might have been due to its highest paid officer.
67. In relation to Request 2 (concerning the Chief Executive's remuneration and any performance related pay in 2013/14), the Commissioner notes that the Council believed providing Mr Irvine with a link to its 2013/14 annual accounts, when responding to his earlier request in September 2014, provided the information now requested.
68. In relation to the first part of Request 2, the Council confirmed during the investigation that this was the first time Mr Irvine had requested a breakdown of the Chief Executive's 2013/14 remuneration. The Commissioner cannot accept the Council's argument (on the submissions provided) that this was a repeated request. Weblinks already provided to Mr Irvine may have contained data concerning the Chief Executive's 2013/14 remuneration figure, but the two links provided led to two different figures. It was not unreasonable for Mr Irvine to find the published information was confusing. In the Commissioner's view,

therefore, it was not unreasonable for him to seek information on this matter: equally, it should have been relatively straightforward for the Council to explain any apparent contradictions in the published information.

69. The Commissioner accepts that the second part of Request 2 appears to be a repeat of Mr Irvine's request in September 2014. From that request, Mr Irvine would clearly have known that a performance payment had been made to the Chief Executive in 2013/14. The Commissioner cannot find, however, on the basis of the submissions provided by the Council, that section 14(2) of FOISA applied to this part of the request.
70. In relation to Request 3 (concerning the Chief Executive's remuneration and any performance pay in 2014/15), given the apparent scope for confusion in the figures published by the Council for the corresponding 2013/14 remuneration, the Commissioner accepts that it was not unreasonable for Mr Irvine to seek a breakdown of the Chief Executive's latest remuneration figure. Again, apparent contradictions should have been explicable without difficulty.
71. With regard to the performance payment element of Request 3, it is clear to the Commissioner that Mr Irvine was already aware that the performance payment scheme had ended on 31 March 2014. She cannot accept, however, that in the circumstances of this case, this alone rendered the request vexatious.
72. In conclusion, the Commissioner does not agree with the Council's position that, for the majority of the information requested, Mr Irvine had already been provided with the information, or already knew the answer. It is not for a public authority to assume what an applicant may or not know, nor is it sufficient that the answer to a new request happens to be the same as for a previous request. Things that are obvious to a public authority may not be obvious to even a relatively informed member of the public.
73. In the Commissioner's view, Mr Irvine's requests had a genuine and serious purpose when viewed in the context set out above.

The Commissioner's conclusions

74. In all the circumstances, the Commissioner is not satisfied, on the basis of the arguments put forward by the Council, that Mr Irvine's three requests were vexatious.
75. The Commissioner is not satisfied that the Council has demonstrated that Mr Irvine's requests lacked serious purpose or value, or that they imposed a significant burden upon the authority. There is no doubt that the strained relationship between both Mr Irvine and the Council is a significant factor here. She appreciates that Council staff may have felt a degree of discomfort as a result of Mr Irvine's blog posts, but the Commissioner does not believe this was sufficient to render the requests vexatious, particularly when the tone of the Council's correspondence is taken into account. In conclusion, she does not consider, viewing the requests either in isolation or cumulatively, that the threshold for applying section 14(1) has been reached in this case.
76. The Commissioner finds that the Council was not entitled to refuse to comply with Mr Irvine's requests on the basis that section 14(1) of FOISA applied. She therefore requires the Council to carry out a review in respect of Mr Irvine's requests, and to respond to him otherwise than in terms of section 14(1) of FOISA.

General observation

77. It is evident from this case that there is a considerable interest (and a public interest) in transparency relating to equal pay and the remuneration of senior Council employees. The Commissioner would urge the Council to consider, in light of the experience of dealing with such requests, whether a more proactive approach to publishing such information could reduce the burden claimed, in terms of reducing both the likelihood of requests and the demands in responding to them, particularly in areas where resources may be limited. This observation is intended to be helpful to the Council and is not a criticism of their current approach.

Decision

The Commissioner finds that North Lanarkshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr Irvine. In particular, she finds that the Council was not entitled to refuse to comply with Mr Irvine's requests on the basis that they were vexatious and that, in doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Council to respond to Mr Irvine's requirement for review, in terms of section 21(4)(b) of FOISA, by **9 May 2016**.

Appeal

Should either Mr Irvine or North Lanarkshire 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 North Lanarkshire Council (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.

Rosemary Agnew
Scottish Information Commissioner

24 March 2016

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: Full text of Mr Irvine's requests

Request 1 - 23 July 2015

I refer to North Lanarkshire Council's Annual Accounts for 2014/15 and specifically the section dealing with "Exit Packages" on Page 85. Please provide me with a breakdown of the cost of the Exit Package on that page which is reported as costing a total of £218,000. In doing so, please explain why the £218,000 figure is so much higher than the cost of the pension lump sum due to the Council's Chief Executive which is reported on Page 85 of the same document as £196,220 (excluding an annual pension of £79,300).

Request 2 - 13 August 2015

I refer to North Lanarkshire Council's Annual Accounts for 2014/15 and the section dealing with the remuneration of NLC Chief Officials. Please provide me with a breakdown of the Chief Executive's annual remuneration package which is reported as £149,524 in 2013/14. Please confirm whether the CEO's remuneration package included a "performance bonus" element and, if so, the amount involved.

Request 3 - 14 August 2015

I refer to North Lanarkshire Council's Annual Accounts for 2014/15 and the section dealing with the remuneration of NLC Chief Officials. Please provide me with a breakdown of the Chief Executive's annual remuneration package which is reported as £172,699 in 2014/15. Please confirm whether the CEO's remuneration package included a "performance bonus" element and, if so, the amount involved.

Scottish Information Commissioner

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