

# Decision Notice 076/2020

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## Whether a request was vexatious

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**Applicant: The Applicant**

**Public authority: University of the Highlands and Islands**

**Case Ref: 201900920**



Scottish Information  
Commissioner

## Summary

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The University refused to respond to a request on the basis that it was vexatious.

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

## Relevant statutory provisions

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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

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1. On 25 April 2019, the Applicant made a request for information to the University of the Highlands and Islands (the University). She asked for the CUR02s and CUR03s for the Post Graduate Diploma in Education (PGDE) course, and also the learning outcomes/aims/objectives for the modules.
2. The University failed to respond.
3. On 26 May 2019, the Applicant wrote to the University requesting a review of its decision on the basis that it had refused to provide her with the information she had requested.
4. The University notified the Applicant of the outcome of its review on 27 May 2019, advising her that it was refusing to comply with her request as it considered it to be vexatious in terms of section 14(1) of FOISA.
5. On 4 June 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 outcome of the University's review because she did not agree that her request was vexatious.

## Investigation

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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 17 July 2019, the University 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 University 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

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9. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to him by both the Applicant and the University. 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)<sup>1</sup>, 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 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.

#### *Applicant's submissions*

13. The Applicant explained that she had requested the information as she wanted to compare the notional learning hours between the PGDE course and another course that the University had previously refused to give her information for. She argued that it is in the public interest to know whether the courses advertised and offered are as described in reality. She did not agree that her request was vexatious.

#### *University's submissions*

14. In response to the Applicant's request for review, the University stated that its decision to consider this request vexatious, in terms of section 14(1) of FOISA, is consistent with its determination that previous requests she had made were also vexatious (it referred to its own references FOI 031 and FOI 032). It noted that the full rationale for refusing the request had been included with its responses to her previous requests.
15. In submissions to the Commissioner, the University argued that the Applicant has maintained an on-going grievance against the University since February 2018. This has included the Applicant initiating multiple formal complaints, submitting subject access requests, initiating

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<sup>1</sup> [http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious\\_or\\_repeated\\_requests.aspx](http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx)

an academic appeal and presenting other correspondence that it would describe as evidence of an individual conducting an extended campaign to the point that their behaviour may be considered obsessive.

16. The University stated that the Applicant made three FOI requests in 2018 and four FOI requests in 2019 (including this one).
17. The University argued that it considers the Applicant's motivation for submitting this request (FOI 049) to be directly relevant to previous requests she has already made (i.e. FOI 031 and FOI 032). The University submitted that, while this request may appear to be a request about a different course, all of these requests should be considered collectively on the basis that they form a series of requests from the same individual and should not be considered on an applicant blind basis.
18. The University noted that the Applicant has argued that her motive for making this request was to compare notional learning hours between courses. The University acknowledged that this may be true, but it submitted that one of the Applicant's previously expressed grievances relates to the University's description of notional learning hours and this request is clearly related to that dispute. The University contended that that dispute has been resolved through its complaints procedures and provided the Commissioner with a copy of a letter it had sent the Applicant.
19. The University argued that, as it has already handled the Applicant's complaint about notional learning hours, disclosure of the information she has requested in this case would not shed any light on, or alter, the Applicant's situation in any way, and it appears that the motivation of the request is actually to cause disruption or annoyance to the University and to harass its staff.
20. The University acknowledged that it is not the identity of the requester that determines whether a request is vexatious, but the nature and effect of the request made in the light of the surrounding circumstances. It noted that a request cannot be judged vexatious simply because a requester has been deemed vexatious in another context, for instance, if they have made another complaint or because they may have submitted other requests that were vexatious.
21. However, the University argued that a requester's identity and the history of their dealings with a public authority may be relevant. It submitted that this request represents the continuation of a pattern of behaviour which it has deemed vexatious in another context and this makes the request vexatious. It reiterated its view that the Applicant's purpose is to pursue an argument and not to obtain information.
22. The University referred to a previous decision issued by the Commissioner as precedent for its approach; *Decision 133/2012 Mr A and the Chief Constable of Dumfries and Galloway Constabulary*<sup>2</sup>.
23. The University also referred the Commissioner to submissions it had made in a previous case (FOI 031), asking him to take those views into account in this case. The Commissioner considered request FOI 031 in his *Decision 032/2020 The Applicant and the University of the Highland and Islands*. Paragraphs 15 to 28 of that decision outline the University's arguments for concluding that that request (and this request) was vexatious. The Commissioner will not repeat them here.

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<sup>2</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201200835.aspx>

### *Commissioner's conclusions*

24. The Commissioner has carefully considered the submissions made by the University intended to demonstrate that dealing with the Applicant's request was unduly burdensome, that it was having a detrimental impact on its staff, and that she was using FOISA to continue dialogue on matters that have already been addressed through other means.
25. In this case, the Commissioner is limited to considering whether the University has provided sufficient evidence and submissions to support its claim that the application of section 14(1) was appropriate in the circumstances.
26. Even if a requester does not intend to cause inconvenience or create a significant burden, if a request has the effect of harassing a public authority and/or its staff, it may be deemed vexatious when considered from the perspective of a reasonable person.
27. The University has argued that the previous request made by the Applicant (FOI 031) was unduly burdensome and has taken up a significant amount of staff time and resources.
28. It is clear that, since February 2018, University staff have spent a considerable amount of time dealing with concerns raised by the Applicant, as well as the time spent complying with the FOI requests she has submitted.
29. As noted above, the University has provided the Commissioner with comments from its staff, along with the estimated amount of hours each staff member spent dealing with request FOI 031, and with other requests and complaints made by the Applicant. The Commissioner notes that some staff have expressed concerns regarding the stress they have been caused by dealing with the Applicant's correspondence, including the processing of FOI requests and other matters of complaint. The University has also argued that the Applicant's motivation in making this information request was not to obtain information, but was to pursue an argument with the University.
30. The Commissioner considers that the University has an obligation to ensure that its staff work in a safe environment and that they are not subjected to unjustified levels of stress. The University has a duty of care to its staff and must consider their wellbeing. However, the University also has responsibilities under FOISA and it cannot deny the Applicant her right to access recorded information without just cause.
31. As noted above, at the time of this request (FOI 049) the Applicant had made four FOI requests in 2019 and three FOI requests in 2018. However, much of the Applicant's engagement with the University, which is detailed on the "Timeline of activity" it provided, concerns course-related complaints and issues. The Commissioner considers it is 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 issues regarding her learning. The Commissioner notes that a number of the complaints raised by the Applicant were partially upheld by the University. In addition, the Applicant has made several requests for her own personal data, which she is entitled to do under the Data Protection Act 2018.
32. The Commissioner notes the University's remarks regarding the Applicant's involvement of the Scottish Public Services Ombudsman (SPSO) and the Qualifications Assurance Agency (QAA), but again he considers that each of these regulators consider different aspects of an authority's discharge of its functions and the Applicant is perfectly entitled to raise her concerns with the relevant regulator. In addition, the Commissioner notes that neither of the

regulators had completed their consideration of the Applicant's concerns at the time of her information request, so the outcomes of those investigations were unknown.

33. The Applicant has argued that she is not trying to pursue an argument with the University, but she is simply trying to obtain information so she can compare the notional learning hours between two courses.
34. The Commissioner has examined the submissions made by both the Applicant and the University and he is not convinced that the Applicant's sole motivation is pursuing an argument with the University. As noted above, the Commissioner understands that the Applicant has raised a number of queries with the University regarding the course she is enrolled on, and that she has also engaged external regulators to investigate her concerns. However, having given consideration to the information requested by the Applicant, the Commissioner has been provided with no compelling evidence to persuade him that the Applicant is only seeking to continue an argumentative dialogue with the University.
35. In any case, in this particular request (FOI 049), the Applicant is not seeking information about the course she is enrolled on. She is seeking information about a different course, and it is information that seems to be fairly mundane. The Applicant has asked for the learning outcomes, aims and objectives for modules CUR02 and CUR 03 for the PGDE course. She has indicated that she wants to see the notional teaching / learning hours for each module so she can compare them to her own course. To the Commissioner's mind, this does not seem to be unreasonable behaviour, and the information the Applicant has requested does not appear to be sensitive information. In fact, the Commissioner considers that it is information that students may expect to access without causing the University any detriment or harm.
36. The Commissioner acknowledges that the Applicant's motive in this request (FOI 049) is to seek information that she can use to compare with her previous request about a different course (FOI 031). However, he considers that request FOI 049 is sufficiently different to request FOI 031 that none of the previous information provided to the Applicant as a result of the University's compliance with FOI 031 would be duplicated by this request.
37. The Commissioner notes the University's argument that the Applicant has already raised a complaint about notional teaching hours and this request is simply trying to have those concerns re-examined and resurrected. However, he does not agree. The specific issues raised in the complaint that the University provided to the Commissioner extend beyond notional teaching hours, and it does not consider comparisons with other courses. The Commissioner does not see this request (FOI 049) to be a continuation of concerns previously expressed by the Applicant.
38. In all the circumstances of the case, the Commissioner finds that the University was not entitled to refuse to comply with the request on the basis that section 14(1) of FOISA applied. He requires the University to carry out a new review in respect of the Applicant's request, and to respond to her otherwise than in terms of section 14(1) of FOISA.

## Decision

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The Commissioner finds that the University of the Highlands and Islands (the University) 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 University 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 University to carry out a new review, in terms of section 21(4)(b) of FOISA, by 15 July 2020.

## Appeal

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Should either the Applicant 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.

## Enforcement

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

**Margaret Keyse**  
**Head of Enforcement**

**28 May 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.

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- (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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**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**