

Decision Notice

Decision 090/2015: Mr N and South Lanarkshire Council

Whether request vexatious

Reference No: 201500469

Decision Date: 22 June 2015



Scottish Information
Commissioner

Summary

On 5 January 2015, Mr N asked South Lanarkshire Council (the Council) to confirm receiving specified payments for land and leases previously owned by him.

The Council responded to Mr N stating that it considered his request to be vexatious.

The Commissioner investigated and found that the Council had acted correctly in its use of the vexatious provisions and in how it responded to Mr N's request for information.

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 5 January 2015, Mr N made a request for information to the Council, asking it to confirm receiving the following recorded payments for the land and leases of a specified plot previously owned by him:
 1. CPO/GVD 2005/2006 land Scottish Ministers registered with Lands Register - £225,000.
 2. Scottish Ministers November 2006 land and leases - £320,400.
 3. Scottish Ministers land 11 March 2010 confirmed FOI 2014 - £244,500.
 4. Transport Scotland land 13 April 2010 confirmed - £241,500.
2. The Council did not respond to this request.
3. On 9 February 2015, Mr N wrote to the Council, requesting a review on the basis that it had failed to provide him with a response within 20 working days.
4. The Council notified Mr N of the outcome of its review on 6 March 2015. It explained why it had not provided a response to his initial request and apologised for this. The Council informed Mr N that it was not obliged to comply with his request for information, as it deemed the request to be vexatious in terms of section 14(1) of FOISA.
5. On 9 March 2015, Mr N wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. Mr N stated he was dissatisfied with the outcome of the Council's review because he had not been provided with the information he had requested and disagreed with the application of section 14(1) of FOISA.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr N 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. The case was allocated to an investigating officer and, on 17 April 2015, the Council was notified in writing that Mr N had made a valid application.
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, with particular reference to its claim that Mr N's request was 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 N and the Council. She is satisfied that no matter of relevance has been overlooked.
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).

Background

11. Both parties provided a number of files containing evidence in support of their submissions. These files included correspondence between Mr N and various public authorities and other persons, including the Council, in respect of Mr N's property and business.
12. From this information, the background to this request was established. Mr N's property was previously subject to a Compulsory Purchase Order (in 1995) in relation to a proposed construction project. Mr N served a Blight Notice on the Council, but the parties did not agree on an appropriate compensation figure. Mr N subsequently lodged his case for compensation in the Lands Tribunal. In 2000, prior to the Lands Tribunal hearing, both parties settled on an agreed figure, and the property was sold to the Council.
13. The Council subsequently sold the land to the Scottish Ministers in 2005/06 (for a figure higher than that paid to Mr N). Mr N has been seeking compensation in relation to the difference between the amount he received for the property, and the amount the Council subsequently obtained for it.
14. Mr N lodged two further cases in the Lands Tribunal, seeking further compensation. On both occasions, the Lands Tribunal determined that the original figure had been in full and final settlement of Mr N's claim.

The Council's submissions

15. In its review outcome, the Council informed Mr N that it considered his information request to be vexatious as it believed he was using FOISA to pursue a fruitless claim for additional compensation from the Council when none was due. It believed the request to be part of a series of requests which:

- (i) had no serious purpose,
 - (ii) was designed to cause disruption or annoyance, and
 - (iii) had the effect of harassing the Council.
16. The Council did not believe provision of the information requested would bring resolution of the matter any closer.
 17. In its submissions to the Commissioner, the Council stated that Mr N had, on a number of occasions, sought to engage it in respect of his claim for additional compensation. This had resulted in the Council's Executive Director (Finance & Corporate Resources) informing Mr N (in November 2014) that the Council considered the correspondence on this matter vexatious, and so would not be entering into further correspondence.
 18. The Council stated that Mr N had made a number of information requests "over the years". It explained that it held records of requests going back to 2010 only, but evidence of earlier requests was to be found within a file of information that had accompanied Mr N's request. The Council provided the Commissioner with this file in support of its position.
 19. The Council recognised that Mr N felt aggrieved by the compensation he had received (i.e. the agreed settlement figure) and was seeking further compensation, but maintained there was no basis on which a further payment could be justified. The sum payable had been agreed and settled in full in 2000.
 20. The Council submitted that Mr N had exhausted all avenues to pursue his claim for additional compensation, albeit not to his satisfaction. In the Council's view, he was using his rights under FOISA to pursue his grievance against the Council, rather than to seek information. The Council submitted this was evidenced from the file accompanying Mr N's request, which represented only a limited amount of the correspondence received from him.
 21. Although the Council accepted it would be able to provide a response to Mr N, otherwise than in terms of section 14(1) of FOISA, it did not consider this appropriate in the circumstances. It maintained its reliance on section 14(1), adding (to the reasons in its review outcome) that it considered the request would impose a significant burden, bearing in mind the history of correspondence on this matter.
 22. The Council provided evidence of its own correspondence history with Mr N, which extended back to 2006, but acknowledged the likelihood that some correspondence was no longer held, having been destroyed in line with its records retention policy.
 23. The Council submitted that Mr N's request had caused it a significant burden. It explained, with supporting evidence, that Mr N had sought to re-open this matter on numerous occasions. In turn, it had sought to answer his previous requests and enquiries as far as could reasonably be expected. This had resulted in a large amount of work and expense which, in the Council's view, was no longer sustainable: there was no "live" matter about which Mr N could take further action. The Council explained that this had often involved three of its five resources (or departments), Community and Enterprise, Finance and Corporate, and Housing and Technical. The request under consideration would involve at least two departments, albeit to a lesser degree.
 24. The Council argued that Mr N's request had no serious purpose, being the continuation of his pursuit of compensation claims rather than the pursuit of information. In support of this view, it referred to Mr N's previous attempts to pursue additional compensation claims via the Lands Tribunal, and also complaints pursued through the Scottish Public Services

Ombudsman (SPSO), all of which had been unsuccessful. The Council maintained that it considered that the matter of additional compensation had been addressed fully. All appropriate remedies had been exhausted and there was no serious value in disclosure of the information requested.

25. The Council also submitted that Mr N's request was designed to cause disruption or annoyance. It explained that Mr N had made numerous and repeated requests to the Council in respect of the same subject matter, in addition to raising matters with the Lands Tribunal, the SPSO and the Scottish Information Commissioner, all with very limited or no success. It further confirmed that its Chief Officers had, on several occasions, informed Mr N of its view that he had been compensated in full and the matter was closed.
26. The Council argued that Mr N's request had the effect of harassing it. It argued that, having exhausted all other remedies, Mr N was using FOISA to extend dialogue on this matter and continue his case against the Council. The Council believed his intention in doing this was to harass it into reversing its position that compensation had been settled in full in 2000, a position which had been judicially upheld on previous occasions. It did not believe matters would be brought any closer to a conclusion by responding to his request.
27. The Council also argued that the timing of this request was significant, having been received soon after the Council informed Mr N that it was no longer corresponding with him regarding the acquisition of his land. The Council believed this persistent approach showed Mr N was intending to "wear the Council down" and re-open the matter, despite there being no justification for doing so and no possible resolution.
28. The Council recognised, however, that Mr N's requests had never been abusive or offensive, either in tone or content.
29. To conclude, the Council argued that this request should be viewed as part of a long series of related correspondence, which should be considered vexatious for the reasons stated above.

Mr N's submissions

30. Mr N refuted the Council's claim that his request was vexatious. He maintained that the same information request would not be deemed vexatious, if made by a different individual. He argued that it would be relatively easy for the Council to provide him with the information he was seeking.
31. Mr N confirmed he already held the information, albeit from other sources, but required the Council to confirm whether or not it had received any or all of the payments. This would allow him to ascertain whether he was due any further payment and, if so, how much, and thus allow him to take forward his case for additional compensation.

The Commissioner's view

32. The Commissioner has published guidance on the application of section 14(1) of FOISA. This states:

There is no definition of "vexatious" in FOISA. The Scottish Parliament acknowledged that the term "vexatious" was well-established in law and opted to give the Commissioner latitude

to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.

33. In the Commissioner's view, there is no single formula or definitive set of criteria that allow a formulaic approach to determining whether a request is vexatious, and each request must be considered on the merits of the case, supported by evidence and clear evaluation and reasoning. The Commissioner considers the following factors to be relevant to a finding that a request (which may be the latest in a series of requests or other related correspondence) is vexatious¹:

- it would impose a significant burden on the public authority,
- it does not have a serious purpose or value,
- it is designed to cause disruption or annoyance to the public authority,
- it has the effect of harassing the public authority,
- it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

The Commissioner recognises that this is not an exhaustive list; depending on the circumstances (and provided the impact on the authority can be supported by evidence), other factors may be relevant.

34. 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.

35. The Commissioner recognises that Mr N's request of 5 January 2015 might not appear, on the face of it, to be vexatious. She is aware, however, that the vexatious nature of a request might only emerge after considering the request within its context, for example, a history of previous or ongoing correspondence with the applicant.

36. The Commissioner has considered carefully the submissions and supporting documentary evidence from the Council. She has likewise carefully considered the submissions and supporting documentary evidence provided by Mr N. The positions argued by each of them are set out above.

37. Having considered the evidence, the Commissioner is satisfied that the Council has demonstrated that Mr N's requests collectively amounted to a significant burden when viewed in the context of, and as a continuation of, previous correspondence between Mr N and the Council on the question of compensation for the acquisition of the property. The Commissioner is also satisfied that the subject matter of this latest request is a continuation of the same underlying issue.

38. The Commissioner recognises that Mr N considered he had a serious purpose in requesting the information, namely to pursue his claim for additional compensation against the Council. But she accepts that it was reasonable for the Council to conclude that the request did not have such a purpose, given that the matter of additional compensation had been addressed

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

on previous occasions and was closed: disclosure of the information could not contribute to any further resolution on this matter.

39. By extension, the Commissioner accepts that it was reasonable for the Council to conclude that Mr N's request caused it disruption and annoyance. Mr N's requests were in no way abusive or offensive in content or tone, but the Commissioner accepts that it should have been apparent to him, as it would be to anyone, that they related to matters that had been raised exhaustively with all appropriate bodies and consequently closed.
40. The Commissioner is also satisfied that Mr N's use of FOI was having the effect of harassing the Council into re-opening dialogue in relation to his quest for additional compensation. Whether or not that was his intention is immaterial in the Commissioner's view as the effect was the same: harassment of the Council's officers in relation to a matter already addressed and closed. This was in the context of the Council's evident attempts to answer Mr N's previous requests and enquiries as far as could reasonably be expected, and to explain its position through responding to correspondence over a number of years. All this in the backdrop that Mr N was already in possession of the information, albeit from other sources.
41. In all the circumstances, the Commissioner accepts Mr N's request was part of a course of correspondence which imposed a significant cumulative burden on, and had the effect of harassing, the Council. She believes any reasonable person would take this view, given the volume, frequency, and subject matter of the correspondence. In the circumstances, she accepts the Council's conclusions that the request was vexatious.
42. The Commissioner has therefore found that the Council was not obliged to comply with Mr N's request of 5 January 2015, on the grounds that it was vexatious and section 14(1) of FOISA applied.

Decision

The Commissioner finds that South Lanarkshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr N.

Appeal

Should either Mr N or South 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.

Rosemary Agnew
Scottish Information Commissioner

22 June 2015

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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