

Decision Notice



Decision 139/2013 Mr William Cordiner and the Scottish Fire and Rescue Service

Whether request vexatious

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Rosemary Agnew
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

On 19 September 2012, Mr Cordiner asked Tayside Fire and Rescue Board for a range of information relating to previous correspondence that he had submitted. The request was refused on the basis that it was considered to be vexatious. Following an investigation, the Commissioner accepted that this approach was correct in the circumstances.

The Commissioner also found that Mr Cordiner's request and requirement for review had not been dealt with within the respective timescales in sections 10(1) and 21(1) of FOISA. She did not require any action to be taken.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 10(1)(a) (Time for compliance); 14(1) (Vexatious or repeated requests); 21(1) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. The Scottish Fire and Rescue Service (the Service) is the statutory successor to Tayside Fire and Rescue Board (the Board). Until 1 April 2013, the Board was, in its own right, a Scottish public authority for the purposes of FOISA.
2. This decision is concerned with the actions of the Board, which was the joint board serving as the fire authority for the local authority areas of Perth and Kinross, Dundee and Angus. Before 1 April 2013, the day to day running of the fire service in Tayside was carried out by Tayside Fire and Rescue (TFR) on the Board's behalf.
3. On 19 September 2012, Mr Cordiner emailed the Service requesting:
 - all information that had been directly or indirectly generated as a result of eight specified communications that he had submitted to the Board;



- any subsequent communications made by the Board to TFR and/or Perth and Kinross Council;
 - copies of all information directly or indirectly generated as a result of an investigation into a complaint previously submitted by him;
 - minutes of Board meetings and copies of emails or letters sent, received or forwarded internally or externally between Board members, office bearers, Board representatives or any other parties who have sent or received communications regarding himself and/or his communications to the Board.
4. The Service did not respond to Mr Cordiner's request. On 24 October 2012, he emailed the Service asking it to review its failure to respond.
 5. Following an application to the Commissioner, the Service notified Mr Cordiner of the outcome of its review on 5 March 2013. The Service informed Mr Cordiner that it considered his request to be vexatious. Accordingly, the Service concluded that it was not required to comply with the request in terms of section 14(1) of FOISA.
 6. On 7 March 2013, Mr Cordiner wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Service's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
 7. The application was validated by establishing that Mr Cordiner had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

8. The investigating officer subsequently contacted the Service, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. The Service was asked to justify its reliance on any provisions of FOISA it considered applicable to the request and the information requested.
9. The Service responded on 19 May 2013, providing submissions on why it considered the request to be vexatious in terms of section 14(1) of FOISA.



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Cordiner and the Service. She is satisfied that no matter of relevance has been overlooked.

Section 14(1) – vexatious requests

11. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information made under section 1(1) if the request is vexatious.
12. FOISA does not define the word “vexatious”. The Commissioner has published guidance on section 14 of FOISA¹ where she sets out her view on factors which she considers relevant to a finding that a request is vexatious. These are:
- 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

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.

13. The term “vexatious” must be applied to the request, not the requester. It is not the identity of the applicant that determines whether a request is vexatious, but the nature and effect of the request made in the light of the surrounding circumstances.
14. The Service submitted that the number of repeated, similar requests made by Mr Cordiner had caused a significant burden on financial and human resources within the former Board, TFR and Perth and Kinross Council. The Service stated that Mr Cordiner's requests had required personnel services from each of those organisations ranging from Information Governance managers, legal advisers, Board members, senior staff within TFR, Human Resources personnel and numerous administrative personnel.
15. The Service stated that some of its most senior operational officers had been taken from their core duties to sit on review panels relating to Mr Cordiner's requests. It had taken a considerable amount of time to explain and provide background information to these staff due to the volume and complexity of Mr Cordiner's requests. In the Service's view, Mr Cordiner had repeated previous requests within new requests, which made them very difficult to decipher.

¹ <http://www.itspublicknowledge.info/uploadedfiles/BriefingSection14VexatiousorRepeatedRequests.pdf>



16. The Service stated that it had tried to use staff on review panels who had not been involved in dealing with Mr Cordiner's previous requests. Due to the number of requests and review requests submitted by Mr Cordiner and the limited personnel available at an appropriate level, this had proved difficult.
17. The Service submitted that it had now provided Mr Cordiner with all of the information he had asked for in his many requests and could not provide anything further.
18. The Service also submitted that the request currently under consideration did not have a serious purpose or value and merely sought to further prolonged correspondence. The Service reiterated that there was no additional information that could be provided to Mr Cordiner.
19. The Service argued that, taken in conjunction with Mr Cordiner's previous requests, this request had the effect of harassing the staff required to deal with it. The Service stated that its employees had spent a great deal of time trying to decipher Mr Cordiner's requests to ensure that they were dealt with in accordance with FOISA. This had proved very stressful for some of its staff.
20. In his application to the Commissioner, Mr Cordiner disagreed that his request was vexatious. Mr Cordiner accepted that some of the information he had requested had duplicated previous requests. However, he pointed out that the Service had failed to respond timeously to some of his previous requests. He also drew attention to apparent inconsistencies in previous responses which did not make clear whether the responses were from the Board or TFR or both.
21. In Mr Cordiner's view, his request could not be lacking in serious purpose as he understood that requests for information should be treated as applicant and purpose blind. Mr Cordiner stated also that the Service had accused him of harassing the staff required to deal with his requests. In his view, this accusation was unjustified.

The Commissioner's view

22. The Commissioner has made it clear in previous decisions that when considering whether a request would impose a significant burden on an authority, account may be taken of the effect of earlier requests made by the applicant. In this case, the Commissioner notes that Mr Cordiner has corresponded at length with the Service on related issues, and that many of his communications are extremely lengthy and cover a variety of topics. In the Commissioner's view, it could be difficult to ascertain exactly what information Mr Cordiner was seeking on each occasion; whether he was seeking a review of previous requests; or whether he was commenting on organisational practice.
23. The Commissioner accepts that the time spent dealing with Mr Cordiner's requests has caused particular difficulties for the Service. The Commissioner has concluded therefore that, taking account of the history of Mr Cordiner's correspondence and requests, the request currently under consideration can be seen as imposing a significant burden on the Service.



24. The Commissioner also considers, on balance, that the request has no serious purpose or value. After investigation, the Commissioner accepts that the Service has provided Mr Cordiner with all of the relevant information that it holds, or has informed him that certain information is not held by it. In the Commissioner's view, the request formed part of a pattern of correspondence that sought to extend dialogue in relation to his complaints with the Service on matters which have been addressed fully and to which nothing more can be added.
25. In the circumstances, it appears unlikely that resolution of Mr Cordiner's concerns would be brought any closer by the provision of a response to the request under consideration. In the Commissioner's view, providing a response would have the effect of prolonging yet further correspondence on matters which have appear to have been exhaustively addressed.
26. "Harassing" is not defined in FOISA or the Commissioner's guidance. The First Tier Tribunal (Information Rights) ruling *EA/2011/0224 Roger Conway and the Information Commissioner*² was of the view that "harassing" should be given its ordinary meaning, that is, to disturb persistently, bother continually, pester or persecute. The Commissioner is also of this view.
27. In the Commissioner's view, even if an applicant did not intend to cause inconvenience or expense, if the request has the effect of harassing the authority and/or its staff, it may be deemed vexatious when considered from the perspective of a reasonable person.
28. The Commissioner has considered the volume, timing and nature of Mr Cordiner's previous requests and correspondence. She has also taken into account that many of these communications were copied to numerous staff and Board members. She accepts that these were part of a pattern of correspondence which (whatever the intention) had the effect of harassing the Service. She has concluded that any reasonable person would consider this to be the effect of Mr Cordiner's requests.
29. Having considered the circumstances of this case carefully, the Commissioner accepts that Mr Cordiner's request for information was properly viewed in the context of his ongoing correspondence with the Service. In the Commissioner's view, it would impose a significant burden on the Service, lacked serious purpose or value and had the effect of harassing the Service. As such, the Commissioner agrees that the Service was entitled to consider Mr Cordiner's request as vexatious in terms of section 14(1) of FOISA (and to refuse to comply with it on that basis).

Compliance with timescales

30. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
31. Since the Service did not provide a response to Mr Cordiner's request within 20 working days, the Commissioner finds that it failed to comply with section 10(1) of FOISA.

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/i690/20120301%20Decision%20EA20110224.pdf>

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32. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review, subject to certain exceptions which are not relevant in this case.
33. Since the Service did not provide a response to Mr Cordiner's requirement for review within 20 working days, the Commissioner finds that it failed to comply with section 21(1) of FOISA.
34. The Service acknowledged that it had encountered difficulties in deciphering Mr Cordiner's previous requests and dealing with the many complex requests and pieces of correspondence that he had submitted. The Service stated that it now has a robust review process in place to alleviate these difficulties in future.
35. The Commissioner accepts that the Service has had particular difficulties in dealing with this request (and previous requests) from Mr Cordiner. Given that the Service has now responded to Mr Cordiner's requirement for review, the Commissioner does not require it to take any further action in this case, in response to Mr Cordiner's application.

DECISION

The Commissioner finds that the Scottish Fire and Rescue Service (the Service) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Cordiner.

The Commissioner finds that Mr Cordiner's information request was vexatious and that, in terms of section 14(1) of FOISA, the Service was not obliged to comply with the request.

However, by failing to respond to Mr Cordiner's request for information and requirement for review within the respective timescales laid down by sections 10(1) and 21(1) of FOISA, the Service failed to comply with Part 1 of FOISA. Given that the Service has now responded to Mr Cordiner's requirement for review, the Commissioner does not require it to take any action in respect of these failures, in response to Mr Cordiner's application.



Appeal

Should either Mr Cordiner or the Scottish Fire and Rescue Service wish to appeal against this decision, there is an 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
15 July 2013



Appendix

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.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

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.

...