

Decision Notice

Decision 188/2014 Mr McLean and Scottish Parliamentary Corporate Body

Whether a request was vexatious

Reference No: 201400582

Decision Date: 01 September 2014



Scottish Information
Commissioner

Summary

On 21 December 2013, Mr McLean asked the Scottish Parliamentary Corporate Body (the SPCB) for information to support a particular statement contained within a research paper. The SPCB refused to comply with the request on the basis that it considered it to be vexatious. Following an investigation, the Commissioner agreed with the approach taken by the SPCB.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 21 December 2013, Mr McLean wrote to the SPCB requesting evidence to support the phrase:
'The SPCB does not have a role with regard to oversight of the work of the SPSO [the Scottish Public Services Ombudsman], that role lies with the relevant Scottish Parliament committee'
This phrase was an excerpt from an introductory paragraph taken from a research paper prepared for the Local Government and Regeneration Committee (LG&RC) meeting held on 13 January 2013.
2. The SPCB responded on 20 January 2014. The SPCB notified Mr McLean that it considered his request to be vexatious in terms of section 14(1) of FOISA.
3. On 24 January 2014, Mr McLean wrote to the SPCB requesting a review of its decision.
4. The SPCB acknowledged Mr McLean's request for review, but explained to him that it was not required to undertake a review (in line with section 21(8)(b) of FOISA) as it considered his original request vexatious.
5. On 14 March 2014, Mr McLean wrote to the Commissioner, stating that he was dissatisfied with the outcome of his request and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr McLean made a request for information to a Scottish public authority and 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

7. The investigating officer contacted the SPCB on 8 April 2014, 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. In particular, the SPCB was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

8. 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 McLean and the SPCB. She is satisfied that no matter of relevance has been overlooked.

Section 14(1) – Vexatious or repeated requests

9. 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
10. FOISA does not define the word “vexatious”. In her guidance¹, the Commissioner considers the following factors to be relevant in reaching the conclusion that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:
- 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 manifestly unreasonable or disproportionate.
11. The Commissioner recognises that (depending on circumstances) other factors may be relevant.
12. While the Commissioner's view is that the term “vexatious” must be applied to the request and not the requester, she acknowledges that the applicant's identity and the history of their dealings with the public authority may be relevant in considering the nature and effect of the request and surrounding circumstances.
13. Mr McLean disagreed that his request was vexatious. He commented that his request was not a complex request. He considered that the SPCB had misinterpreted section 14(1) and ignored all guidance for establishing that a request was vexatious.
14. Mr McLean's request stems from a sentence contained within a research paper prepared by the Scottish Parliament Information Centre (SPICe) for a specific item to be discussed by the LG&RC. Mr McLean sought information to justify this sentence.
15. The SPCB stated that Mr McLean had engaged in extensive correspondence with it, requesting detailed information in relation to, and regarding services provided by, the SPSO, including questions about the selection and oversight of the Ombudsman and the relationship between the SPSO and the SPCB.
16. The SPCB supplied the Commissioner with evidence of the extensive correspondence between Mr McLean and the SPCB on this particular subject; Mr McLean made 19 information requests about the relationship between the SPSO and the SPCB since January 2012. In addition, there was a large amount of general correspondence between Mr McLean and the SPCB on the relationship between the two bodies, from 2010 onwards.
17. The Commissioner acknowledges that the vexatious nature of a request may only emerge after considering the request in context. Such context may include previous or ongoing

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

correspondence between the authority and the applicant. In this case, the SPCB considered Mr McLean's wider pattern of communications with it to be relevant.

18. In considering this point, the Commissioner has taken account of the First Tier Tribunal (Information Rights) ruling *EA/2011/0079 Alan Dransfield and the Information Commissioner*². In paragraph 36 of this ruling, the Tribunal draws a distinction between prolonged correspondence on a single issue, and ongoing correspondence on a variety of different issues, and the relevance of these two types of correspondence when considering whether an information request is vexatious. This ruling is not binding on the Commissioner, but she agrees with its approach.
19. The Commissioner viewed the supporting documentation supplied by the SPCB which illustrates the nature, subject matter and volume of correspondence relating to the SPSO received from Mr McLean. In the circumstances, given the nature of the communications and the request under consideration, the Commissioner is satisfied that it was reasonable for the SPCB to take this context into account in considering whether the current request was vexatious.
20. The SPCB stated that, initially, the requests it received from Mr McLean sought information regarding the role and appointment of the SPSO and it was content to respond to these requests and provide background and contextual information to aid his understanding. However, it believed the stage had been reached where it had provided Mr McLean with all of the advice and information it was possible to give him in relation to the SPSO.
21. The SPCB stated that this request was the culmination of a series of purposeless requests, which led it to the conclusion that it could no longer justify continuing to correspond with Mr McLean on the subject of the SPSO. It considered the effect of the volume and nature of the correspondence to be vexatious.
22. Taking into account the cumulative effect of Mr McLean's correspondence, the Commissioner accepts that dealing with this correspondence (viewed as a whole) would demand a disproportionate amount of time and the diversion of an unreasonable proportion of the SPCB's resources away from its core responsibilities.
23. The SPCB argued that this particular request rested on a wilful misconstruction of the sentence in the report and it was effectively being asked to express an opinion on his interpretation of this sentence.
24. The Commissioner recognises that it is reasonable for a public authority to consider whether the content of the request is such that the demands placed on its time and resources in dealing with it are wholly disproportionate to any purpose served.
25. It is apparent to the Commissioner, in light of the advice, assistance and information that has been provided to Mr McLean by the SPCB on this issue, that Mr McLean was using this request primarily to extend dialogue about his long-standing concerns regarding the SPSO and the relationship between the SPCB and the SPSO. The Commissioner does not believe resolution of these concerns would be brought any closer by responding to this request. She is satisfied that this request, viewed in light of the history of correspondence between the SPCB and Mr McLean on the subject of the SPSO, serves no other purposes than to harass the SPCB.

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/1573/20110920%20Decision%20EA20110079.pdf>

26. The Commissioner is satisfied that all of the correspondence relates to the SPSO and attempts to revisit issues from different angles. She accepts that this particular request rests on an unreasonable interpretation of what would otherwise be considered as an innocuous introductory paragraph. In light of this and other factors, as referred to above, the Commissioner considers it reasonable to conclude that this request lacked serious purpose or value.
27. Having concluded that Mr McLean's request lacked serious purpose or value and had the effect of harassing the SPCB, when viewed in light of the information and assistance already provided to Mr McLean, the Commissioner finds that the SPCB was not obliged to comply with Mr McLean's information request on the basis that the request was vexatious.

Decision

The Commissioner finds that the Scottish Parliamentary Corporate Body complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr McLean.

Appeal

Should either Mr McLean or the SPCB 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
01 September 2014

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.

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.

...

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