

# Decision Notice



Decision 227/2011 Mr John Graham and the Scottish Housing Regulator

Whether a request is vexatious

Reference No: 201101094

Decision Date: 11 November 2011

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**Kevin Dunion**

Scottish Information Commissioner

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## Summary

Mr John Graham requested from the Scottish Housing Regulator (SHR) information pertaining to a complaint he had made to SHR. SHR refused to comply with Mr Graham's request, considering it to be vexatious in terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Mr Graham requested a review of this response, but SHR informed him that it was not obliged to comply with this request, under section 21(8) of FOISA, on the basis that his initial request was vexatious. Mr Graham subsequently applied to the Scottish Information Commissioner for a decision.

Following an investigation, the Commissioner found that SHR had dealt with Mr Graham's request in accordance with Part 1 of FOISA, and was justified in treating Mr Graham's request as vexatious, in terms of section 14(1) of FOISA.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests) and 21(1), (8) and (9) (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

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1. On 29 November 2010, Mr Graham wrote to SHR, requesting information in relation to a complaint he had made to SHR (when it was known as Communities Scotland). He asked, since his complaint was first recorded in 2001:
  - a. How many Chief Executives have been involved in his complaint
  - b. How many Senior Staff Members have been involved in his complaint
  - c. How many front line /administrative staff members have been involved in his complaint
  - d. How many staff meetings have been held to discuss his complaint
  - e. How many meetings with external bodies have take place regarding his complaint



- f. How many letters in total have been issued to him and external bodies regarding his complaint
  - g. What is the estimated total cost to administer the complaint from inception to the date of his request
2. SHR responded on 31 December 2010, advising Mr Graham that it was refusing to comply with his request as it considered it to be vexatious in terms of section 14(1) of FOISA. SHR stated that it had dealt with a significant volume of correspondence from Mr Graham concerning his complaint and that the request was the latest in a prolonged line of correspondence. It indicated that it could do no more to meet his expectations in the matter. SHR commented that, although it may not have been Mr Graham's intention to do so, it considered that his request had the effect of harassing it. SHR concluded that it would be unreasonable and would use a disproportionate amount of time and resources to deal with his request for information.
3. Mr Graham wrote to SHR on 18 February 2011, requesting a review of its decision and stating that he was of the view that his request was entirely proportionate and reasonable.
4. On 3 March 2011, SHR wrote to inform Mr Graham that it had decided not to comply with his requirement for review, explaining that, under section 21(8)(b) of FOISA, a Scottish public authority is not obliged to comply with a requirement for review if the request to which it relates is considered to be vexatious. SHR noted that the original request had been refused on the grounds that it was vexatious, and indicated that it still considered this to be the case.
5. Mr Graham wrote to the Commissioner on 13 June 2011, stating that he was dissatisfied with the response he had received from SHR 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 Graham 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

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7. SHR is an executive agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 17 August 2011 that an application had been received from Mr Graham and were asked to provide any comments SHR wished to make on the application (as required by section 49(3)(a) of FOISA). In particular the Ministers were asked to provide information about the background to SHR's decision and the reasoning it had employed in deeming Mr Graham's request to be vexatious.
8. Subsequent references to communications with SHR should be read as relating to communications with the Ministers acting on SHR's behalf.



9. SHR responded on 8 September 2011, providing detailed submissions on the history of its dealings with Mr Graham, and explaining its reasoning in concluding that the request was vexatious.
10. Mr Graham was also asked by the investigating officer for his comments on the arguments put forward by SHR and he provided his response on 27 September 2011.
11. All relevant submissions received from SHR and Mr Graham will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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12. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Graham and SHR and is satisfied that no matter of relevance has been overlooked.

### Section 14(1) of FOISA

13. In terms of section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.
14. FOISA does not define the word "vexatious". However, the Commissioner's *general* approach is that a request (which may be a single request, the latest in a series of requests, or one among a large number of individual requests) may be vexatious where it would impose a significant burden on the public authority and one or more of the following conditions can be met:
  - it has the effect of harassing the public authority; and/or
  - it does not have a serious purpose or value; and/or
  - it is designed to cause disruption or annoyance to the public authority; and/or
  - it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
15. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requestor, he also acknowledges that the 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. It may be reasonable, for example, for the authority to conclude that a particular request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.



16. Notwithstanding the Commissioner's general approach is as set out in paragraph 14 above, he recognises that each case must be considered on its merits, and in all the circumstances of the case. He does not exclude the possibility that, in any given case, a request may not involve a significant burden, but one or more of the other listed factors may be of such overwhelming significance that it would be appropriate to consider the request vexatious in the absence of a significant burden. He also recognises that other factors may result in a request being vexatious.

#### *Submissions from SHR*

17. SHR provided the Commissioner with a schedule detailing regular communications with Mr Graham dating back to January 2002. It was at this point that Mr Graham first asked SHR to investigate a specific complaint, resulting in SHR informing him that it was unable to intervene as the complaint related to a matter which was not within its remit. Mr Graham subsequently raised separate concerns, some of which SHR did address, leading to Mr Graham making claims and allegations about SHR. Correspondence then continued between SHR and Mr Graham over the following nine years. SHR indicated that it had reached the conclusion that it had done all it could to meet its commitments to Mr Graham, despite the fact that he remained unhappy with its findings.
18. SHR stated that it had responded to over 130 letters, emails and telephone calls from Mr Graham between 2002 and 2011. SHR submitted that it had dealt with four previous freedom of information requests and one data protection request from Mr Graham and that he had also made three formal complaints, with each complaint having been fully investigated and with none of them being upheld. It noted that Mr Graham has consistently refused to accept the information provided to him about SHR's position and responsibilities, and he continued to correspond with SHR about the same issues he has raised since 2002.
19. Furthermore, SHR explained that Mr Graham had asked SHR to reimburse him for out of pocket expenses which he had incurred over the course of his correspondence with SHR regarding his complaints. SHR had advised Mr Graham that it had no liability for the type of payment sought by him. By making this information request Mr Graham was, in the view of SHR, seeking to use this request to prolong dialogue about that closed matter, which, if the request was responded to, would cause further disruption to SHR's work.
20. SHR considered that it had provided more help and assistance and spent more time dealing with Mr Graham than could reasonably be expected, and that dealing with the level and types of queries, complaints and the challenging nature of the correspondence received from Mr Graham had been a significant burden as it has impacted considerably on the staff time and resources available to deal with other regulatory priorities, and its core functions.



21. SHR stated that it had reached the conclusion that it could do no more to meet Mr Graham's expectations in relation to his complaints and had classed him as a persistent correspondent for some time. In practice, this meant that any further letters from Mr Graham about the same matters he has raised since 2002 would only be acknowledged, but not responded to, by SHR. SHR emphasised however that it fully recognised that any requests for information under FOISA needed to be considered and responded to entirely separately and in accordance with FOISA.
22. SHR accepted that, if looked at in isolation, Mr Graham's request could appear to be reasonable, but argued that it had continually responded to matters relating to the same issues, and that in SHR's view, Mr Graham was trying to reopen and prolong dialogue about the same issues, through the use of the FOI request route.
23. It was SHR's view that this demonstrated a continued pattern of behaviour which SHR was familiar with and which it viewed as reopening issues that had already been exhausted through the appropriate channels. SHR stated that responding to the request would not only be reopening issues in relation to which the SHR could do no more, but it would also generate further correspondence from Mr Graham which would have a further harassing effect on SHR.
24. SHR recognised that it may not have been Mr Graham's intention to harass it, but it did consider it possible that Mr Graham may be continuing to seek information in an attempt to harass SHR and its staff until it would compromise or give in on its position regarding his complaints, which it had already clearly set out. SHR stated that the extensive level of correspondence with Mr Graham had been immensely draining on its resources, wholly distracting from its core business and therefore had an incredibly harassing effect on SHR.
25. In noting previous decisions of the Commissioner with regard to vexatious correspondents, SHR considered that the extensive background and correspondence between Mr Graham and SHR could not be separated and must be taken into account when dealing with the request. SHR considered it entirely justifiable to take into consideration the extended period of time and quantity of correspondence, on the same theme, in placing this request into context. SHR believed that the request was vexatious as it formed part of a continual pattern of behaviour resulting in a significant burden to SHR when associated correspondence was considered collectively.
26. Moreover, SHR concluded that Mr Graham's prolonged correspondence did not seem to serve any purpose other than to prolong a situation which SHR had on numerous occasions attempted to conclude.





*Submissions from Mr Graham*

27. Mr Graham's submissions made clear that he considers that his complaints have not been properly addressed by SHR. He commented that there was nothing vexatious about seeking truth and justice, and noted that despite a colossal quantity of correspondence over the 10 years since the complaint was instigated, he did not consider there to have been any tangible resolution, and he considered that unacceptable. He also noted that he intended to take his complaint (which he considered a very serious one) forward, and he noted that the requested information was very important in this regard. He stated that he did not accept that matters relating to his complaint had been concluded.
28. With respect to his information request, Mr Graham asked that the Commissioner consider his request as separate from the issues regarding his complaint over the years. He stated that he was not convinced that the request would impose a significant burden on SHR, that he considered that the request was not repetitive, and that he had made only a small number of information requests to SHR. Mr Graham submitted that his request was entirely proportionate and reasonable.
29. He went on to argue that if SHR had dealt with the issues he had raised quickly and emphatically, no significant burden on staff time and resources would have been experienced. He considered that his request was straightforward, and estimated that the information could be extracted and calculated within approximately eight hours of staff time.
30. Mr Graham also denied that his request was an attempt to harass SHR, and commented that any harassment and draining of resources experienced by SHR came about because the matters he raised had not been properly addressed at any time, and the matters had been passed between staff members. He considered that the confusion and harassment effect was all 'in house' and self induced.

*Can the request be seen as a continuation of previous correspondence?*

31. The Commissioner recognises that Mr Graham's request does not appear to be vexatious, when viewed in isolation. However, he is aware that, in some cases, the vexatious nature of a request will only emerge after considering the request within its context, for example, in relation to previous or ongoing correspondence with the applicant. In this case, SHR has maintained that Mr Graham's request is vexatious when viewed in the context of the history of communications between it and Mr Graham.



32. In his deliberations the Commissioner has considered the First Tier Tribunal (Information Rights) ruling *EA/2011/0079*<sup>1</sup>, *Alan Dransfield and the Information Commissioner*. 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. The Tribunal considered that prolonged correspondence on a single subject is a 'valid' consideration, while considering correspondence on a variety of issues risks crossing the line from treating the request as vexatious, to treating the requester as vexatious. (Although the Tribunal case was decided in relation to the Freedom of Information Act 2000 and not FOISA, the Commissioner considers that the comments of the Tribunal are equally valid in relation to this current application.)
33. Given the content of the request under consideration in this decision, and the comments received from Mr Graham and SHR, the Commissioner is of the view that the nature and purpose of Mr Graham's request is such that it can only be seen as a continuation of the correspondence between him and SHR over the past nine years.
34. Although the focus of the matters of concern to Mr Graham has shifted and changed over the course of those communications, the Commissioner considers that all of those communications ultimately stem from and form a continuation of the original complaint put to SHR in 2002 by Mr Graham, and relate to his continued dissatisfaction with the handling of that complaint over the period since. It is clear from Mr Graham's comments on this case, that the purpose of his request was to assist him in pursuing his complaints, which he believes have never been properly addressed.
35. It is the Commissioner's view that the request under consideration is inextricably linked to that original complaint, which is the underlying grievance at the root of Mr Graham's correspondence with SHR. Accordingly, he considers it is appropriate to consider Mr Graham's request as a continuation of the longstanding correspondence between him and SHR and take account of the history and context of that correspondence in deciding whether Mr Graham's request should be viewed as vexatious.

*Would the request impose a significant burden on SHR?*

36. The Commissioner considers that Mr Graham's request, considered in isolation, would impose some burden on SHR. Addressing it would require consideration of records concerning the handling of Mr Graham's request over a 10 year period to identify the number of different staff (of various types) who had been involved in that complaint, the number of internal and external meetings held, and the number of letters issued. The final point would require the collation of cost information (if held) relating to the administration of the complaint over the same period.
37. The Commissioner is unable to agree with Mr Graham that responding to this request, and particularly the final part, would be straightforward, given the history of his complaint and time period involved.

<sup>1</sup> <http://www.informationtribunal.gov.uk/DBFiles/Decision/i573/20110920%20Decision%20EA20110079.pdf>



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38. The Commissioner accepts that Mr Graham's request, particularly when viewed as a continuation of the previous correspondence between him and SHR over the past nine years, is one which would impose a significant burden on SHR.

*Are any other "vexatious" factors in evidence?*

39. The Commissioner has considered whether any of the other factors listed in paragraph 14 above could be identified in this case i.e. whether it could be shown that Mr Graham's request lacked serious purpose or value, was designed to cause disruption or annoyance to the authority, had the effect of harassing the authority and/or would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
40. The Commissioner accepts that it was reasonable in the circumstances for SHR to conclude that the information request process under FOISA was being used by Mr Graham primarily to continue extended dialogue in relation to his complaints with SHR, on which it considers the matters have been addressed fully and nothing more can be added.
41. The Commissioner appreciates that Mr Graham does not consider those matters to have been either resolved or closed. However, he notes that Mr Graham has exhausted the complaints process with SHR, and with the Scottish Public Services Ombudsman, in relation to the matter. SHR has advised Mr Graham that there is nothing further it can do to satisfy him in addressing his issues.
42. It appears unlikely in the circumstances that resolution of Mr Graham's concerns would be brought any closer by the provision of a response to the request under consideration, and the Commissioner accepts that it doing so would have the effect of prolonging yet further correspondence on matters which have been exhaustively addressed.
43. In the circumstances, the Commissioner accepts that Mr Graham's request had no serious purpose or value, and had the effect of harassing and causing annoyance to SHR.

*Conclusion*

44. Having considered the circumstances of this case carefully, the Commissioner accepts that Mr Graham's request for information was properly viewed in the context of his ongoing correspondence with SHR and that SHR was entitled to consider Mr Graham's request as vexatious in terms of section 14(1) of FOISA (and to refuse to comply with it on that basis).

## **DECISION**

The Commissioner finds that the Scottish Housing Regulator complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to comply with Mr Graham's request for information on the basis that the request was, in terms of section 14(1), vexatious.

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## Appeal

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Should either Mr Graham or SHR 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 notice.

**Margaret Keyse**  
**Head of Enforcement**  
**11 November 2011**



## Appendix

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### 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

- (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.

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-

- (a) the requirement is vexatious; or
- (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.



- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.

...