



Decision Notice 065/2024

Information relating to Raigmore Hospital staff accommodation

Authority: Highland Health Board
Case Ref: 202200646

Summary

The Applicant made a multi-part request for information relating to staff accommodation at Raigmore Hospital. The Authority refused to comply with the request as it considered it vexatious and, to the extent that the information requested was environmental information, manifestly unreasonable. The Commissioner investigated and agreed that the request was vexatious and manifestly unreasonable, but found that the Authority had initially failed to recognise some of the information as environmental information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 14(1) (Vexatious or repeated requests); 39(2) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraphs (a), (b), (c) and (f) of definition of “the Act”, “applicant” and “the Commissioner”) (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available); 17(1), (2)(a) and (b) (Enforcement and appeal provisions)

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 4 May 2022, the Applicant made a multi-part request for information to the Authority relating to staff accommodation at Raigmore Hospital. The full wording of the request can be seen at Appendix 2.
2. The Authority responded on 9 May 2022. The Authority notified the Applicant that it was refusing to comply with the request as it considered it to be vexatious in terms of section 14(1) of FOISA.
3. On 10 May 2022, the Applicant wrote to the Authority requesting a review of its decision because it had not disclosed the information they had asked for.
4. The Authority notified the Applicant of the outcome of its review on 6 June 2022. The Authority upheld its original decision without modification.
5. On 6 June 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority's review because they did not consider that their request was vexatious.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 30 June 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently 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 Authority was invited to comment on this application and to answer specific questions. These related to why the Authority considered the requests vexatious, and sought evidence of the nature and volume of the Applicant's previous requests and correspondence.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Handling of the request – FOISA or the EIRs

10. In [Decision 218/2007¹](https://www.itspublicknowledge.info/decision-2182007), the Commissioner confirmed (at paragraph 51) that, where environmental information is concerned, there are two separate statutory frameworks for access to that information and, in terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.
11. In this case, the Authority handled the request solely under FOISA. During the investigation, the Authority was asked to comment on whether it believed parts 4 and 6 of the request ought to have properly been considered under the EIRs, given the nature of the information requested.

¹ <https://www.itspublicknowledge.info/decision-2182007>

12. The Authority accepted that parts 4 and 6 of the Applicant's request sought environmental information. The Authority stated that it considered those parts of the Applicant's request manifestly unreasonable in terms of regulation 10(4)(b) of the EIRs.
13. The Commissioner is satisfied that information falling within the scope of parts 4 and 6 of the request is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs.
14. In what follows, the Commissioner will therefore consider the Authority's response to parts 4 and 6 of the request in terms of the EIRs.
15. As the Authority failed to recognise and respond to parts 4 and 6 of the request as a request for environmental information, the Commissioner must find that it failed, in this respect, to respond in accordance with regulation 5(1) of the EIRs.

Were the requests vexatious or manifestly unreasonable?

16. 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). Accordingly, section 14(1) is not subject to the public interest test in section 2(1)(b) of FOISA.
17. Similarly, under the exception in regulation 10(4)(b) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. If the authority finds that the request is manifestly unreasonable, it is still required to make the information available unless, in all the circumstances, the public interest in making it available is outweighed by that in maintaining the exception. In considering whether the exception applies, it must interpret it in a restrictive way and apply a presumption in favour of disclosure.
18. Neither FOISA nor the EIRs define "vexatious" or "manifestly unreasonable". However, the Commissioner's general approach is that the following factors are relevant when considering whether a request is vexatious or manifestly unreasonable:
 - (i) it would impose a significant burden on the public body
 - (ii) it does not have a serious purpose or value
 - (iii) it is designed to cause disruption or annoyance to the public authority
 - (iv) it has the effect of harassing the public authority; or
 - (v) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
19. 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 the circumstances into account.
20. While the Commissioner's view is that the terms "vexatious" and "manifestly unreasonable" must be applied to the request and not the requester, he acknowledges that an applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of a request and its surrounding circumstances. It may be

reasonable, for example, for the authority to conclude that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.

The Applicant's submissions

21. The Applicant accepted that they had made similar requests to the Authority previously, but noted those requests had always been responded to. The Applicant stated that they could not, therefore, understand why this specific request had been refused.
22. The Applicant considered that their requests related to matters of financial transparency and that previous requests had confirmed that the Authority had used money from staff residential accommodation to finance Raigmore Hospital (which they disagreed with).
23. The Applicant disputed that asking for information relating to the decision-making process around the collection and spending of monies from residential accommodation would harass the Authority.
24. The Applicant explained that they also wished to confirm that the Authority had complied with its legal duties in respect of the residential accommodation and considered that the Authority was bound by law to make available for inspection certain documentation relating to the running of that accommodation.
25. The Applicant disagreed that their request would impose a significant burden on the Authority, would have the effect of harassing it or would cause disruption or annoyance to it.

The Authority's submissions

26. The Authority described the Applicant's requests as part of a continuing and long-standing series of requests related, in the main, to Raigmore Hospital staff accommodation which, as a whole, has placed a significant burden on it. Since 2010, the Authority noted that the Applicant had submitted 72 information requests, with 31 specifically on the topic of staff accommodation at Raigmore Hospital.
27. The Authority explained, that while it made every effort to treat all information requests as "applicant blind", it had taken the Applicant's identity and the number of requests they had made into account when refusing this request.
28. The Authority provided detail on the Applicant's relationship to the Authority and to Raigmore Hospital and on the circumstances it considered may have negatively impacted upon the Applicant's relationship with the Authority.
29. The Authority highlighted that the Commissioner had found in Decision [REDACTED] that a number of the Applicant's requests (which again related to staff accommodation at Raigmore Hospital) were vexatious. Despite this, the Authority explained that it had continued to provide responses to the Applicant's various requests.
30. However, the Authority explained that in responding to the Applicant's previous request on the subject of staff accommodation, it had warned them that any future request on the subject would be considered vexatious. Shortly after this, on 4 May 2022, the Applicant submitted the request that is the subject of this decision.
31. The Authority referred the Commissioner to the Applicant's request of 28 February 2022 and submitted that the language of that request substantiated its view that their sole aim was to pursue an argument.

32. The Authority also considered that the Applicant had used confrontational, abusive and inappropriate language in their requests and correspondence. The Authority explained that the tone of the Applicant's correspondence was having a detrimental and harassing effect on specific staff with examples available on [What Do They Know](#)², the website through which the Applicant had made their requests.
33. The Authority noted that it had repeatedly offered to discuss the Applicant's requests with them so as to reduce their volume, but the Applicant had not taken those offers up.
34. During the investigation, the Authority was asked to quantify the time and cost incurred in responding to a representative sample of nine requests (five of which related to staff accommodation at Raigmore Hospital) submitted by the Applicant over the previous 12 months. The Authority stated that the Applicant had asked it to review its responses to four of these requests (three of which related to staff accommodation matters) and they had made two appeals to the Commissioner (both relating to staff accommodation matters).
35. More generally, the Authority explained that:
 - the Applicant's requests impacted disproportionately on a small group of core staff within its Accommodation, Estates and Finance teams
 - it did not possess a centralised system holding information regarding its staff accommodation, nor did it hold information on specific premises
 - the core staff were therefore required to extract and collate information manually from a number of systems in response to every new request from the Applicant, which diverted those core staff from other duties (including checking in and out short-term residential patients, the management of residential properties and related hotel services).

The Commissioner's view

36. Having conducted his own searches, the Commissioner identified 67 information requests submitted to the Authority by the Applicant over the period August 2010 to May 2022 (the date of this request). The Commissioner is satisfied that (at least) 47 of the requests related in full or in part to staff accommodation at Raigmore Hospital and, in the main, are multi-part requests.
37. The Commissioner does not accept that all of the requests submitted to the Authority by the Applicant are relevant in considering whether this request was vexatious and manifestly unreasonable. However, he does consider it relevant to consider the 47 requests that related in full or in part to staff accommodation at Raigmore Hospital.
38. The Authority's rationale for refusing the Applicant's request as vexatious and manifestly unreasonable can be grouped, broadly, under the following headings:
 - it would impose a significant burden on it
 - it does not have a serious purpose or value
 - it has the effect of harassing it.

² <https://www.whatdotheyknow.com/>

39. While it is entirely feasible that the nature and history of the Applicant's information requests to the Authority have imposed a significant burden on the Authority, it is not for the Commissioner to infer or presume the burden that was in fact imposed where the Authority has failed to provide sufficient submissions to evidence that burden itself.
40. Fundamentally, responding to requests for information under FOISA and the EIRs is a statutory obligation. That a request may be inconvenient, or may even stretch the resources of an authority, to respond to is not sufficient to make a request vexatious, particularly where there is a reasonable foundation for the request.
41. This takes the Commissioner to the next point: whether the request lacks serious purpose or value.
42. In all of the circumstances, including having had regard to the outcome of a related tribunal in which the Applicant and the Authority were involved and to the fact that the underlying information requested often either changes (or at least might be expected to) between requests, the Commissioner is satisfied that the Applicant's request does have a serious purpose or value.
43. Again, the Commissioner considers that the Authority has provided insufficient submissions to allow him to conclude otherwise.
44. However, the Commissioner is satisfied that the Authority has demonstrated that the request, when viewed within the full context against which it was made, has the effect of harassing the Authority and its staff.
45. In the Commissioner's view, the question is whether, viewed from the perspective of a reasonable person, the request has the effect of harassing the authority and/or its staff, not whether the requester intended it to harass.
46. As rehearsed earlier, the Applicant made a significant number of information requests to the Authority between 2010 and 4 May 2022 (the date of the request). The Commissioner notes that 26 of those requests related to staff accommodation were then subject to requirement for review by the Applicant (a pattern identified by the Authority).
47. The Commissioner recognises that the Authority apologised for its handling of a number of the Applicant's information requests up to 2014 and that he issued a number of decisions in favour of the Applicant between 2012 and 2014.
48. The Commissioner also notes that the Applicant withdrew three further appeals to him between 2019 and 2021 after the Authority subsequently disclosed further information to them.
49. The Commissioner therefore considers that the Authority's handling of some of the Applicant's previous requests contributed to their volume of correspondence. However, he also recognises that the manner in which the Applicant communicated with the Authority presented challenges (e.g. referring to previous responses, offering clarifications and introducing new requests; at times in the same exchange).
50. The Commissioner also notes that, despite his finding in Decision [REDACTED] that a request from the Applicant relating to staff accommodation at Raigmore Hospital was vexatious, the Authority continued to provide substantive responses to their requests and that it otherwise attempted to engage with and provide information to them through other means.

51. The Commissioner's [guidance on vexatious requests](#)³ states (at paragraphs 22 and 36):
- “Even if a requester did not intend to cause inconvenience or expense, if the request has the effect of harassing the public authority and/or its staff, it may be deemed vexatious when considered from the perspective of a reasonable person. The language and tone of a request may be relevant in assessing this.”
 - “The use of abusive or inappropriate language will not, in itself, make a request for information, vexatious. However, language a reasonable person would consider abusive or inappropriate in the circumstances may be a factor in deciding whether a request [is vexatious].”
52. In the Commissioner's view, the language and tone of some of the Applicant's requests, can fairly be described as harassing and, at times, inappropriate. For example:
- accusing the Authority of not wanting “foreigners” in Scotland
 - repeatedly suggesting collusion and conspiracy by the Authority regarding its dealings with them in relation to various matters
 - repeatedly referring to contacting the Commissioner regarding the Authority's responses, and to them readying follow-up requests to the Authority.
53. In the circumstances, the Commissioner considers that the language, tone and overall volume of the Applicant's requests would, when considered from the perspective of a reasonable person, have the effect of harassing the Authority and its staff.
54. In this case, having considered all relevant submissions, and noting fully the backdrop against which the Applicant made the information request in this case, the Commissioner accepts, on balance, that the Applicant's request should be considered vexatious and manifestly unreasonable, with the result that the Authority was correct in responding under section 14(1) of FOISA and regulation 10(4)(b) of the EIRs.

EIRs: the public interest test

55. As noted above, the exception in regulation 10(4)(b) is subject to the public interest test in regulation 10(1)(b) of the EIRs. This means that, although the Commissioner is satisfied that parts 4 and 6 of the Applicant's request are manifestly unreasonable, he must still require the Authority to respond to those elements of the request if the public interest in making the information available outweighs that in maintaining the exception.

The Authority's submissions

56. The Authority explained that it accepted there may have been a prevailing public interest in disclosure of the information had this related to all residential accommodation operated by it across the hospital or the Highland region. However, the Authority argued that as this request related to one highly-localised residential block only the public interest argument in favour of disclosure (given the manifestly unreasonable nature of the request) was therefore significantly diminished.
57. The Authority further submitted that it had advised the Applicant that the information relating to parts 4 and 6 of their request was available to inspect via its Accommodation Office during

³ [BriefingSection14VexatiousorRepeatedRequests.pdf \(itspublicknowledge.info\)](#)

office hours and that it had otherwise repeatedly offered to meet with the Applicant to discuss information relating to those parts of their request.

58. In the circumstances, the Authority concluded that the public interest clearly favoured maintaining the exception.

The Applicant's submissions

59. The Applicant argued that they, and residents, were entitled to know if residential premises provided by the Authority were compliant with current legislation and to be provided with information as to how the Authority was reinvesting income from residents.

The Commissioner's view

60. In reaching his conclusion on the public interest, the Commissioner has considered the submissions made by both the Applicant and the Authority.
61. In the Commissioner's view, there is an inherent public interest in the disclosure of information to ensure that an authority is transparent and accountable, and to allow its decisions and actions to be scrutinised.
62. Against this, the Commissioner has considered the strong public interest in ensuring that an authority can carry out its functions without unreasonable or disproportionate disruption. There is also a public interest in ensuring that the EIRs are used responsibly.
63. As stated above, the Commissioner has already accepted that providing the information requested in this case would have the effect of harassing the Authority and its staff.
64. After careful consideration, the Commissioner finds that the public interest in responding to the information request made by the Applicant is outweighed by the public interest in maintaining the exception in regulation 10(4)(b) of the EIRs.
65. Consequently, the Commissioner finds that the Authority was entitled to refuse to make the requested information available under regulation 10(4)(b) of the EIRs.

Decision

The Commissioner finds that the Authority partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Commissioner finds that by responding to the Applicant's request (except parts 4 and 6) in terms of section 14(1), the Authority complied with Part 1 of FOISA.

However, the Authority failed to comply with regulation 5(1) of the EIRs by failing to identify that parts 4 and 6 of the request requested environmental information (as defined in regulation 2(1)) and handle those parts of the request accordingly under the EIRs.

Given that, during the investigation, the Authority accepted that it should have responded to parts 4 and 6 in terms of the EIRs and that it subsequently applied regulation 10(4)(b) to those parts the request (which the Commissioner accepted it was entitled to do), the Commissioner does not require the Authority to take any action in respect of this failure in response to the Applicant's application.

Appeal

Should either the Applicant or the Authority 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.

David Hamilton
Scottish Information Commissioner

26th April 2024

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - ...
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
 - ...
- ...

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.
- ...
- ...

39 Health, safety and the environment

- ...
- (2) Information is exempt information if a Scottish public authority-
 - (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
 - (b) would be so obliged but for any exemption contained in the regulations.
- ...

...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

- (1) In these Regulations –

“the Act” means the Freedom of Information (Scotland) Act 2002;

“applicant” means any person who requests that environmental information be made available;

“the Commissioner” means the Scottish Information Commissioner constituted by section 42 of the Act;

...

"the Directive" means Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC;

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

-

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- ...
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

...

- (2) The duty under paragraph (1)-

...

- (b) is subject to regulations 6 to 12.

...

...

10 Exceptions from duty to make environmental information available

- (1) A Scottish public authority may refuse a request to make environmental information available if-
 - (a) there is an exception to disclosure under paragraphs (4) or (5); and
 - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
 - (a) interpret those paragraphs in a restrictive way; and
 - (b) apply a presumption in favour of disclosure

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that

...

- (b) the request for information is manifestly unreasonable;

...

17 Enforcement and appeal provisions

- (1) The provisions of Part 4 of the Act (Enforcement) including schedule 3 (powers of entry and inspection), shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in paragraph (2).

- (2) In the application of any provision of the Act by paragraph (1) any reference to -

- (a) the Act is deemed to be a reference to these Regulations;

- (b) the requirements of Part 1 of the Act is deemed to be a reference to the requirements of these Regulations;

...

- (f) a notice under section 21(5) or (9) (review by a Scottish public authority) of the Act is deemed to be a reference to a notice under regulation 16(4); and

...

...

Appendix 2 – 4 May 2022 request

According to the legislation enacted by your Scottish Parliament, you are supposed to be using the Private Housing (Tenancies) (Scotland) Act 2016 at your residential accommodation.

Could you please provide the following information?

For FY 2022:

1. Copies of the Rent Increase Notice(s) and rent increase letter(s) issued to residents.
2. A detailed breakdown of all the charges and rental charges applied to every premises.
3. Unredacted copies of all the recorded information (For example, minutes of meetings, letters, emails, notes, sticky notes, faxes, telegrams, photocopies, recordings/transcripts of telephone calls, text messages, etc.) between the individuals (including the discussions held with the relevant persons) that set the charges and rental charges and the benchmark used to decide how much to increase (For example, "... rates are set by NHS Highland and will be increased annually by at least the rate of inflation."). (The rate of inflation is currently at 7%.)
4. Copies of all the paperwork required to run the Glen premises from 28 April 2021 onwards, as set by statute and by your local partner Highland Council, including the following documents:
 - Fire Safety Scotland Act
 - Annual Fire Risk Assessment
 - 5 Yearly Electrical Inspection
 - Annual PAT testing
 - CNORRIS Indemnity Insurance
 - Annual Heating Inspection • Annual Door/Windows Inspection
 - 3 Monthly Legionnaire Inspections
 - Emergency Lighting Checks
 - Fire Equipment Testing
 - Quarterly Electrical Installation Safety Checks

For FY 2021:

5. A detailed breakdown of the incomes collected from the Glen premises.
6. A detailed list of all the works carried out by external contractors in the Glen premises, including the 'Maximo Report Works by External Contractors' from 12.05.2021 onwards.
7. Unredacted copies of all the recorded information (For example, minutes of meetings, letters, emails, notes, sticky notes, faxes, telegrams, photocopies, recordings/transcripts of telephone calls, text messages, etc.) between the individuals (including the discussions held with the relevant persons) that decided how to use the money collected from the residents' pockets.

If no recorded information is available for Questions 3 and 7, please provide:

8. Full name, job position and pay band of those individuals (including the relevant persons).