



Scottish Information
Commissioner
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Decision Notice 252/2024

Whether a request was vexatious

Authority: CalMac Ferries Ltd

Case Ref: 202401048

Summary

The Applicant asked the Authority for all information relating to an earlier request. The Authority refused to provide the information on the grounds that the request was vexatious.

The Commissioner investigated and found that the request was not vexatious. He required the Authority to carry out a review and respond otherwise than in terms of section 14(1) of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(1) (Vexatious); 21(4) and (8) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 25 May 2024, the Applicant made a request for information to the Authority. He stated:

“I note the story in the Stornoway Gazette regarding the request they submitted for the dates and locations of visits to ports by non-executive directors. I would like to request all internal correspondence and meeting/discussion notes relating to this request. This should include correspondence and meetings/discussions with non-executive directors. I’m looking to see how it was decided that the information isn’t held and what you did to locate any information.”
2. The Authority responded on 19 June 2024. It notified the Applicant that it was refusing to comply with the request as it considered it to be vexatious, in line with section 14(1) of

FOISA. The Authority argued that the Applicant was seeking to audit its work in relation to how it handled the original information request, and that it constituted harassment.

3. On 11 July 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not believe that his request met any of the criteria which would make it vexatious and there was nothing in his previous requests to suggest any harassment.
4. The Authority notified the Applicant of the outcome of its review on 5 August 2024. It found that the exemption had been correctly applied to the request on the grounds that:
 - It had the effect of harassing the Authority
 - A reasonable person would consider it manifestly unreasonable or disproportionate

The Authority provided further details of its reasoning which took into account previous information requests made by the Applicant.

5. On 5 August 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he strongly disagreed that the request was vexatious and he argued that the Authority had not provided any evidence to support its view that he was attempting to harass the Authority.

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 23 August 2024, the Authority was notified in writing that the Applicant had made a valid application, and the case was 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 about the reasons it considered the request to be vexatious.

Commissioner's analysis and findings

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

Section 14(1) – Vexatious requests

10. Section 14(1) of FOISA states that section 1(1) (which confers the general entitlement to information held by public authorities) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

11. FOISA does not define the word "vexatious". The Commissioner's general interpretation, as set out in his [guidance on section 14\(1\)](#)¹, is that the following factors are relevant when considering whether a request is vexatious:
 - i) it would impose a significant burden on the public authority
 - 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 manifestly unreasonable or disproportionate.
12. However, this list is not exhaustive. Depending on the circumstances, other factors may be relevant, provided that the authority can support them with evidence. The Commissioner recognises that each case must be considered on its own merits, taking all the circumstances into account.
13. While the Commissioner's view is that "vexatious" must be applied to the request and not the requester, he acknowledges that the applicant's identity, and the history of their dealings with the authority, may be relevant in considering the nature and effect of a request and its surrounding circumstances. It may be reasonable, for example, for an authority to conclude that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.
14. The guidance also says that requesters must not be denied the opportunity to make a genuine information request. Requests may be inconvenient and meeting them may at times stretch an authority's resources, but these factors are not, on their own, sufficient grounds for an authority to deem a request vexatious.

The Authority's submissions

15. The Authority argued that this request, considered alongside four previous requests made by the Applicant over 26 months, was vexatious because of the nature of the information being requested (as opposed to the volume of requests). It detailed 10 requests which the Applicant, a former employee, had made between October 2021 and May 2024 (a period of almost 32 months).
16. The Authority deemed five of the requests to be vexatious and noted that the requests [redacted].
17. The Authority argued that the five requests were seeking information that could only be used to audit and assess the quality and performance of its Information Management Team. The Authority did not believe disclosure of the information was in the wider public interest.
18. The Authority referred to factors ii), iii), iv) and v) of the Commissioner's guidance on section 14(1), reproduced at paragraph 11 above, and explained why it considered the request satisfied each factor.

¹ <https://www.foi.scot/briefings-and-guidance>

Lack of serious purpose or value

19. The Authority submitted that the five requests it considers to be vexatious (this current request, and four other requests that were made by the Applicant in 2021, 2022 and 2024) lacked serious purpose or value and did not satisfy any public interest, only the Applicant's own personal interest.
20. The Authority stated that the Applicant often mentioned that he was interested in certain topics or was requesting information out of "pure nosiness". It concluded that this was evidence of how there was "little consideration to the seriousness or value of the requests beyond his own personal interest in the [Authority]", which in its view included how the internal FOI process had been managed [redacted].

Designed to cause disruption or annoyance to the public authority

21. The Authority said it could be considered that the requests were designed to cause disruption or annoyance given:
 - the consistency of the requests, with the Applicant making a request every couple of months in the last two and a half years, and
 - his "continued questioning", both during the request process and after information was provided.
22. The Authority argued that this was adding to staff workload, and it provided examples of correspondence received from the Applicant while processing his FOI requests. This included correspondence in which a senior member of staff asked the Applicant whether he was open to a call to discuss his requests.
23. The Authority, while accepting that the process should be applicant-blind, said it was difficult on this occasion to separate this request, and others it considered vexatious, from the requester. It stated that his unique position as an ex-employee gave him knowledge of the organisation that other requesters were unlikely to have. It argued that the Applicant's request for review made clear his requests were made primarily for personal interest and this, combined with the theme of the requests focusing on the FOI process, was evidence that they were cumulatively designed to cause disruption rather than genuinely seek information.

Has the effect of harassing the public authority

24. In its initial response of 19 June 2024, the Authority advised the Applicant that it believed his request was made to assess the performance or competence of staff, which it viewed as an internal matter. It argued that the Applicant wanted to audit its work and that this amounted to harassment (while recognising that this may not have been the Applicant's intention). The Authority referred to the Applicant's previous role as its employee, as a factor that supported its view.
25. The Authority also argued that, whether or not the Applicant intended to harass the Authority, that was the effect of his requests, primarily through the impact on staff, who reported feeling judged and harassed. The Authority submitted that comments from the Applicant about how it had handled his and other third-party FOI requests, had left its officials feeling under scrutiny. It submitted that talking about the effect of "harassing the authority" depersonalised the effect of the Applicant's behaviour on individuals.

26. The Authority raised an instance where the Applicant had commented on how long it took requests to be responded to and stated that this related to individual staff performances. They stated that the Applicant's comment that "there should be no reason why it would take that long to respond" and that most of the requests "required no work other than copying" was inaccurate, unfair and inappropriate.
27. In addition, the Authority questioned whether it was in the spirit of the legislation for the Applicant to ask for responses to requests made by others and information about their handling.
28. During the investigation the investigating officer asked whether there was anything in the Applicant's tone or style of correspondence which had contributed to the Authority's view that the request was vexatious. The Authority stated that it was not uncommon for the Applicant to:
- question the request process;
 - the information that he received, or
 - to ask additional questions.

It said the Applicant's dismissive style and tone was harassing and provided further examples of his attempts to assess staff competency. The Authority provided the commissioner with copies of email correspondence with the Applicant, along with comments relating to the effect on staff.

Be considered manifestly unreasonable or disproportionate in the opinion of a reasonable person

29. The Authority commented that a reasonable person would consider some of the requests for information to be manifestly unreasonable or disproportionate. It acknowledged that the volume of the requests was not deemed vexatious, but it argued that specific requests seeking information about how FOI requests were handled seemed unreasonable and not in the public interest. The Authority also reiterated its previous comments regarding the timing of the Applicant's requests, as detailed in paragraphs 15 and 16 above.
30. The Authority stated that the most recent request, considered with other similar requests, showed that the Applicant was preoccupied with how the FOI process had been managed [redacted]. It submitted that while the Applicant may feel the requests were legitimate, the cumulative effect amounted to harassment [redacted].

Impact on staff

31. In its review outcome, the Authority informed the Applicant that his requests had had a detrimental effect on its employees' health and in its submissions to the Commissioner the Authority expanded on this. While the Commissioner will not reproduce all of those submissions in full here, he has carefully considered them. The issues raised by staff included those raised elsewhere by the Authority regarding the number of requests, the time over which they had been received, the "pointed follow-up questions" and the Applicant's reasons for his requests.

The Applicant's comments

32. The Applicant disagreed with the Authority's view that the request was vexatious, [redacted]. He argued that the Authority had not provided him with any evidence to uphold this view, and he suspected that the Authority did not want to respond to his request and so had claimed he was harassing it. He added that he felt the Authority was trying to hide its freedom of information service from any sort of view.
33. The Applicant said that none of the examples provided by the Authority justified its claim that his request had the effect of harassing it. He stated that two of the previous information requests he submitted were simply for other requests received, rather than information about how they were responded to.
34. Two more, he said, were made in response to specific situations where:
 - A response the Applicant had previously received was different to information he later saw in the media, prompting him to check the apparent discrepancy
 - He was unhappy with the time taken to respond to his requests, in particular those which (in the Applicant's opinion) merely involved copying information. He asked for details of other requests so he could compare them. The Applicant said this was not to assess staff but to see if his requests were being handled differently to others'.
35. Commenting on the specific request which is the subject of this appeal, the Applicant said he had read about an information request from a third party for the number of times non-executive directors had visited ports. He believed the reported response was odd, and was interested in how the request was dealt with by senior staff.
36. He argued that he had valid reasons for making all of the requests the Authority now considered to be vexatious, as he submitted he had explained when seeking a review. Moreover, the Applicant did not consider 10 requests in three years, relating to different subjects, and which he considered easy to deal with, to be harassing or excessive.
37. The Applicant submitted it was not true that he was trying to assess the performance or competence of a particular team and said it was the overall FOI function he was interested in, particularly how his requests had been dealt with. He commented that he found it odd that the Authority claimed his request was vexatious because it believed he was trying to audit it. He believed the way a public authority undertook legislative duties was something which should be known.
38. The Applicant referred to [Decision 209/2010](https://www.foi.scot/decision-2092010)² in which the Commissioner found that 38 requests over 21 months did not impose an unreasonable burden on the Authority. He noted that paragraph 29 of that decision addressed issues that were very similar to his own situation.

"In the context of this particular case, he (SIC) sees no reason why a request relating to the day-to-day processes followed by staff and the judgements they apply should be considered by their nature to be particularly harassing: on the contrary, he would suggest that transparency on such matters is a key underlying purpose of a freedom of information regime".

² <https://www.foi.scot/decision-2092010>

The Applicant submitted that the Commissioner's comments in that case, were relevant to this one.

39. The Applicant argued that the Authority, when it referred to his status as an ex-employee, was admitting that it treated his requests differently from other requesters. He submitted that he had received information in response to a Subject Access Request (made to the Authority) which demonstrated that the fact that he made FOI requests was being discussed by unknown members of staff. The Applicant provided the Commissioner with copies of this information.
40. The Applicant submitted that the Authority was wrong to say the request was vexatious and he argued that it had not provided evidence which a reasonable person would consider valid.

The Commissioner's view on section 14(1)

41. The Commissioner has carefully considered the submissions made by the Authority, intended to demonstrate that dealing with the Applicant's request was having a detrimental impact on its staff, and that he was using FOISA as a means of auditing the Authority's management of its FOI process, which had the effect of harassing the Authority.
42. In this case, the Commissioner is limited to considering whether the Authority has provided sufficient evidence and submissions to support its claim that the application of section 14(1) was appropriate in the circumstances.
43. Even if a requester does not intend to harass an authority, if a request has the effect of harassing a public authority and/or its staff, it may be deemed vexatious when considered from the perspective of a reasonable person. The Commissioner's guidance on whether a request lacks serious purpose or value notes that public authorities should not reach this conclusion lightly. Even if a public authority thinks that a request lacks serious purpose or value, the applicant might, from a subjective and reasonable point of view, have a genuine desire and/or need to obtain the information.
44. Furthermore, the applicant is not obliged to share his/her motives for seeking the information with the public authority. The inclusion of this criterion simply recognises that some requests may be so obviously lacking in serious purpose or value that they can only be seen as vexatious.
45. The Authority stated that the five requests it had assessed as vexatious lacked serious purpose or value and did not satisfy any public interest, only the Applicant's own personal interest. The Authority had responded to the previous four requests and had not treated them as vexatious until it assessed them alongside the request which is the subject of this appeal.
46. The Commissioner has considered the subject matter and tone of the five requests which the Authority deemed to be vexatious.
 - FOI3517 related to a news story on repair costs of the CalMac fleet which was based on an FOI release. The Applicant believed the story to be confused and potentially misleading and asked for the information provided in response to that request. He also requested a list of information requests received since 1 August 2021.
 - FOI 3661 was a request for all information requests submitted by a named group and a named individual.

- FOI 3695 was a request for all correspondence associated with a previous request the Applicant had made, which was not deemed to be vexatious. That request was for project costs with particular reference to a ticket project. Following the release of information in response to that request, the Applicant saw a story in the media which quoted a different figure to the one he was provided with. He stated that he was concerned about the difference in the figures and consequently asked for information associated with the later request.
 - FOI 3862 was for all information requests received within a specified period and the time taken to respond.
 - FOI 3917 was the request which prompted this appeal, as set out above.
47. The Commissioner has carefully considered the nature of the requests and he does not agree that there is no public interest in the information. Three of the requests involve the Applicant attempting to clarify what he sees as confusing or contradictory information in the public domain. Moreover, the subject of these requests, while they may be of individual interest to the Applicant, also deal with what the Commissioner views as topics of wider public interest, i.e. those which are of concern to the public locally and indeed more widely. Given current service challenges, there is a very clear public interest in the Authority's operations and management: those challenges may be placing the Authority under significant pressure, but that does not diminish the public interest or provide any other reason for setting the Authority's FoI responsibilities aside.
48. Furthermore, in the Commissioner's view, it is natural that the Applicant as a former employee of this particular authority, would have an interest in the work it does and how it carries out aspects of that work. He considers that requests which do not, on the face of it, have a wide-ranging public interest behind them, should not be deemed as vexatious solely for that reason, particularly where neither the Authority nor the Commissioner considers anything in the tone or language of the requests to be vexatious.

The request is designed to cause disruption or annoyance

49. The Authority stated that the requests were designed to cause disruption or annoyance, as evidenced by the Applicant making a request every couple of months over the last two-and-a-half years. It also referenced his "continued questioning" during the request process and after information was provided and said this added to staff workload.
50. The frequency of the five requests the Authority considers vexatious were submitted at a rate of one almost every six months. The Authority has not argued that the other five requests made by the Applicant in the same time period were vexatious. The Commissioner does not consider the frequency of the Applicant's requests to be vexatious.
51. The Commissioner has reviewed email correspondence provided by the Authority to demonstrate the Applicant's interactions with the Authority, in relation to his "continued questioning".
- One of the communications from the Applicant requested an acknowledgement that his information request had been received
 - Another thanked the Authority for an explanation it had provided and confirmed that he still required a response to his query

- A third sought clarification from the Authority on its application of a particular exemption, where the Applicant was unsure of the reason for that application
 - A fourth email contained a clarification from the Applicant which the Authority had requested
 - A fifth email from the Applicant asked the Authority for clarification on aspects of a response which he considered unclear
 - Two further emails were prompted by part of an information request which had not been answered or addressed, the first of which had gone unanswered
52. The Commissioner does not agree with the Authority's description of the Applicant's correspondence in relation to the emails which have been provided. He considers the examples provided, as set out above, are reasonable and justified and therefore cannot be characterised as vexatious.
53. The Authority's view is that the Applicant's former position, as an ex-employee, gives him unique knowledge which other requesters would not have. The Commissioner considers that while that may be true, it is not evidenced in this case (and, in any case, there is no reason why such unique knowledge should be held against any individual in the Applicant's position). When the Applicant voices an opinion on the complexity or otherwise of responding to a request, for example, and how long it should take, that is a conclusion which someone without any particular knowledge could also reach based on their own particular experiences and the information provided to them (whether their conclusion is right or wrong – and these are points any applicant is perfectly entitled to make).

The Commissioner does not, in all the circumstances, accept that the request was designed to cause disruption or annoyance.

The request has the effect of harassing the authority

54. In relation to its staff, the Authority has a duty to ensure that they work in a safe environment and that they are not subjected to unjustified levels of stress. The Authority has a duty of care to its staff and must consider their wellbeing. However, the Authority also has legal obligations under FOISA and it cannot deny the Applicant his right to access information without just cause.
55. The Authority has stated that it believes the Applicant has made the requests in order to assess the performance or competence of staff, which it said was an internal matter. It also said that it believed the Applicant wanted to audit its work and that in its view, this amounted to harassment.
56. The Commissioner accepts that assessment of staff performance is undoubtedly a matter which is, and should be, dealt with by this (or any) Authority. However, he does not believe that precludes the Authority's performance in any aspect of its operations being examined by those outwith it: there is no reason why information requests should not be used for such a purpose (and specifically, contrary to what some authorities appear to believe, there is no reason why a Scottish public authority's handling of information requests should not be subject to such scrutiny – see further below). Moreover, he does not believe that asking for information in this case is directed at auditing any particular department or individual. Producing responses to information requests will involve multiple Authority staff across different departments with FOI staff just one part of a wider operation. He also notes that

overall performance may also be influenced by more general factors, such as the organisational approach to, or view of, information requests.

57. He has carefully considered the Authority's submissions on the impact of the Applicant's requests on staff. While he notes the contents of these submissions, he considers the actions of the Applicant to be reasonable. The Commissioner considers (with reference to his comment above) that the Applicant has not singled out individual members of staff for criticism and, where there is any implied criticism, this is aimed at the Authority overall. The Commissioner does not consider that anything in the language or tone of the Applicant's correspondence contains criticism of particular individuals.
58. The Commissioner accepts that the Authority may strongly disagree with the Applicant on occasions where it believes he is criticising it. However, the Commissioner also considers that the Applicant saying, or implying, something with which the Authority disagrees does not, and should not, have the effect of harassing it.

Moreover, he does not accept that being the subject of an "audit" has the effect of harassing the Authority. The Commissioner considers that any public authority must be prepared to have its performance scrutinised by the public to some degree. That is an inevitable corollary of having Freedom of Information legislation. He considers that the public are entitled to seek information as to how a particular FOI request was processed, particularly if that request is in the public domain and was the subject of a newspaper article. The Applicant's status as an ex-employee should not exclude him from being able to make such requests

The request is manifestly unreasonable or disproportionate in the opinion of a reasonable person

59. Taking into account all of the above, the Commissioner does not agree that the request would be considered manifestly unreasonable or disproportionate in the opinion of a reasonable person. He considers that there is considerable public interest in transparency about how an authority carries out duties which it is legally obliged to perform.
60. The Commissioner has issued a number of decisions (e.g. [decision 206/2024](https://www.foi.scot/decision-2062024)³, [decision 072/2024](https://www.foi.scot/decision-0722024)⁴ and [decision 098/2020](https://www.foi.scot/decision-0982020)⁵) where requesters have sought information relating to the handling of a previous FOI request, and he has not found them to be vexatious. The Commissioner notes that this type of information request is commonly referred to as a "meta request" and the [ICO's guidance](https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/requests-about-previous-information-requests-meta-requests/)⁶ on meta requests, advises that a meta request should be dealt with in the same way as any other information request.
61. In addition, the Commissioner notes there are no regulations which set out a period during which a former employee of an authority is prohibited from making an information request (nor, indeed, are there any specific restrictions on a current employee doing so).
62. In all the circumstances, the Commissioner is not satisfied that the Authority was entitled to refuse to comply with the Applicant's request for information, on the ground that it was vexatious. The request made by the Applicant has merit beyond that acknowledged by the Authority, and the Authority has not evidenced why this request should be considered as part of a pattern of harassment (or met any of the other criteria cited). As indicated above, the

³ <https://www.foi.scot/decision-2062024>

⁴ <https://www.foi.scot/decision-0722024>

⁵ <https://www.foi.scot/decision-0982020>

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/requests-about-previous-information-requests-meta-requests/>

Commissioner acknowledges that the Authority is under severe operational pressure at present. The current situation is, no doubt, extremely challenging for it, but that does not mean it is permitted any additional latitude in dealing with information requests – and, in particular, it does not permit any lowering of the threshold when it comes to identifying requests as vexatious.

63. The Commissioner therefore finds that the Authority was not entitled to refuse to comply with the request on the basis that section 14(1) of FOISA applied. He requires the Authority to carry out a review in respect of the Applicant's request, and to respond to him otherwise than in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. He finds that the Authority was not entitled to refuse to comply with the Applicant's request on the basis it was vexatious. In doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Authority to carry out a review, in terms of section 21(4)(b) of FOISA, and respond otherwise than in terms of section 14(1), by **23 December 2024**.

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

8 November 2024