



Scottish Information
Commissioner
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Decision Notice 300/2024

Whether request was repeated

Authority: City of Edinburgh Council
Case Ref: 202401361

Summary

The Applicant asked the Authority for information about self-employed personal assistants being paid from direct payments. The Authority refused to comply with the request, arguing that it was substantially similar to a previous request made by the Applicant and therefore a repeated request. The Commissioner investigated and agreed that the Authority was entitled to refuse to comply with the request on the basis that it was a repeated request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(2) (Vexatious or repeated requests); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 30 August 2024, the Applicant made the following request for information to the Authority:
“How many permissions did you give and decisions did you make to allow self-employed personal assistants to be paid from direct payments currently?”
2. The Authority responded on 20 September 2024, informing the Applicant that, under section 14(2) of FOISA, it would not provide a response as it considered the request to be substantially similar to her previous request of 18 July 2024.

3. On the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because her request was “not similar at all” to her previous request.
4. The Authority notified the Applicant of the outcome of its review on 10 October 2024, which fully upheld its original decision without modification.
5. On the same day, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. She stated she was dissatisfied with the outcome of the Authority’s review because she did not accept that her request was repeated.

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 1 November 2024, the Commissioner gave the Authority notice in writing of the application. 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. On 21 November 2024, the Authority was invited to comment on this application and to answer specific questions. The Authority provided its comments.

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(2) – Repeated request

10. Under section 14(2) of FOISA, where an authority has complied with an information request, it is not obliged to comply with a subsequent request from the same person which is identical or substantially similar, unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
11. For section 14(2) of FOISA to apply, therefore, the following need to be considered:
 - (i) whether the Applicant’s previous request was identical or substantially similar to the request under consideration here;
 - (ii) whether the Authority complied with the previous request; and, if so
 - (iii) whether there was a reasonable period of time between the submission of the previous request and the submission of the subsequent request.

Is the request identical or substantially similar to the previous request?

12. The Authority provided a copy of the previous information request submitted by the Applicant on 18 July 2024. Among other things, this request asked for:

“...the number of decisions the [Authority] made to allow self-employed personal assistants to be paid from direct payments currently. These decisions are made by the [Authority]. Please advise if this decision is not made by them.”

13. As noted above, in her request of 30 August 2024, the Applicant asked for:
“How many permissions did you give and decisions did you make to allow self-employed personal assistants to be paid from direct payments currently?”
14. The Commissioner has carefully considered the specific terms of both requests. Having done so, he considers they are substantially similar. As such, he is satisfied that both requests are seeking essentially the same information.
15. The Commissioner is therefore satisfied that the Applicant’s request of 30 August 2024 is substantially similar to her previous request of 18 July 2024.

Was the previous request complied with?

16. The Commissioner has had sight of the Applicant’s previous request and the Authority’s response. Having considered the content of the Authority’s response, he is satisfied that the Authority complied with the previous request.

Has a reasonable period of time passed?

17. There is no definition of “a reasonable period of time” in FOISA: what is reasonable will depend on the circumstances of the case. However, consideration can be given to questions such as:
 - (i) Has the information changed?
 - (ii) Have the circumstances changed?
18. In response to the previous request, the Authority advised the Applicant that it did not hold the information requested. It confirmed that the information had not changed and that there had not been any change in circumstances. It also noted there had only been 31 working days between the date of the previous request and this request.
19. As the Commissioner has already determined, the information requested in this, and the previous, request is substantially similar. He accepts that neither the information sought nor the circumstances, other than the passage of time, have altered in this case.
20. The Commissioner considers that the simple passage of time between requests may eventually be sufficient to allow the conclusion that a reasonable period of time has passed between two identical or substantially similar requests, irrespective of whether there has been any other change in the circumstances surrounding the requests.
21. However, the Commissioner agrees with the Authority that a reasonable period of time has not passed in this case. The request in this case was submitted relatively shortly after the previous request and, given the Authority’s response to the previous request was that the information was not held, the Commissioner does not consider it would have been reasonable to expect that the same information would be held by the time of the subsequent request.
22. In all the circumstances, the Commissioner finds that the Authority was not obliged to comply with the Applicant’s request for information, and that it was entitled to rely on section 14(2) of FOISA.

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

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.

Euan McCulloch
Head of Enforcement

18 December 2024