

Decision Notice



Decision 013/2013 Clyde Marine Services Limited and Strathclyde Partnership
for Transport

Whether request vexatious

Reference No: 201202078
Decision Date: 12 February 2013

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Summary

Clyde Marine Services Ltd (Clyde Marine) requested from Strathclyde Partnership for Transport (SPT) information relating to a person it understood was employed as member of the crew of the Gourock - Kilcreggan Ferry Service, and whom it understood was provided to Clydelink Limited without charge. SPT refused to comply with this request on the basis that it considered it to be vexatious. Following an investigation, the Commissioner accepted that this approach was correct in the circumstances.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 21(8)(b) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 3 August 2012, Clyde Marine wrote to SPT with a request for information, containing 26 separate points. The request related to a person it understood was employed as member of the crew of the Gourock - Kilcreggan Ferry Service, and whom it understood was provided to Clydelink Limited without charge.
2. SPT responded on 17 August 2012, stating (with reasons) that it considered Clyde Marine's request to be vexatious. Accordingly, SPT concluded that it was not required to comply with the request in terms of section 14(1) of FOISA.
3. On 31 August 2012, Clyde Marine wrote to SPT requesting a review of its decision. Clyde Marine did not accept that its request was vexatious, setting out reasons why it disagreed with SPT's decision.
4. SPT notified Clyde Marine of the outcome of its review on 27 September 2012. SPT stated that as it considered its request to be vexatious, it was not required to undertake a review in terms of section 21(8)(b) of FOISA.



5. On 12 October 2012, Clyde Marine's solicitors wrote to the Commissioner on its behalf, stating that it was dissatisfied with the outcome of SPT's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Clyde Marine 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

7. On 26 October 2012, SPT was notified in writing that an application had been received on behalf of Clyde Marine, and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asked to respond to specific questions. In particular, SPT was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
8. The relevant submissions received from (or on behalf of) both SPT and Clyde Marine will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Clyde Marine and SPT and is satisfied that no matter of relevance has been overlooked.
10. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information made under section 1(1) if the request is vexatious.
11. FOISA does not define the word "vexatious". However, the Commissioner's general approach is that the 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:
 - a. It has the effect of harassing the public authority; and/or
 - b. It does not have a serious purpose or value; and/or
 - c. It is designed to cause disruption or annoyance to the public authority; and/or
 - d. It would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.



12. The term “vexatious” must be applied to the request and not to the requester. However, the Commissioner acknowledges that the applicant’s identity, the history of their dealings with a public authority and the surrounding circumstances, may be relevant in considering the nature and effect of the request and whether it is vexatious. It may be reasonable, for example, for an authority to conclude that a particular request represents a continuation of a pattern of behaviour it has deemed vexatious in another context. This may be the case particularly where all relevant information has already been disclosed to the applicant or where (the matter having been addressed fully already through the appropriate procedures of the authority) it is unlikely that additional information would inform or alter the applicant’s situation.
13. Even if this were the case, a request should not be refused automatically, but a decision made based on its own facts and circumstances.
14. Notwithstanding the Commissioner’s general approach as set out above, she recognises that each case must be considered on its merits and in all the circumstances of the case. She 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 significance that it would be appropriate to consider the request as vexatious in the absence of such a burden. She also recognises that other factors may result in a request being vexatious.
15. Clyde Marine argued that none of the arguments presented by SPT were sufficient to justify the request being considered vexatious and specifically argued that the request did not impose a significant burden.

SPT’s submissions

16. SPT confirmed that it wished to rely on its reasoning as set out in its initial response to Clyde Marine and provided the Commissioner with copies of requests and other correspondence it had received from Clyde Marine relating to this ferry service.
17. In the context of the general approach in paragraphs 12 and 13 above although requests under FOISA should generally be considered “applicant blind”, it is clear from SPT’s submissions that it has taken account of the applicant’s identity, the context of these requests and the circumstances and history of dealings with the requester, in reaching its conclusion.
18. As background to this request, SPT advised that it subsidised the operation of the Gourock – Kilcreggan passenger ferry service from 1997 and that Clyde Marine operated the service for at least 10 years, until April 2012. In November 2011, SPT carried out a tendering exercise for the contract to operate the ferry service from 2012 to 2017. Three tenders were submitted, including one from Clyde Marine, and the contract was awarded to Clydelink Ltd. SPT informed the Commissioner that, following the tendering exercise, its Chief Procurement Officer wrote to Clyde Marine answering queries it had raised about the procurement process (a copy of this letter was provided).



19. SPT also informed the Commissioner that in the seven month period between February and September 2012, it received 11 letters from Clyde Marine containing 113 requests for information under FOISA, all relating to the contract award or operation of the ferry service. SPT supplied copies of all these requests and its responses, with correspondence relating to related requirements for review (where these had been made).
20. SPT argued that it was clear to them from the history of the correspondence that the information requests were being used to attempt to pressure SPT into reconsidering the contract award. It believed Clyde Marine's concerns relating to the award of the contract had not, and would not, be resolved by the provision of information in response to these requests. SPT stated that quantity and pattern of the correspondence and information requests from Clyde Marine all related basically to the same subject matter, and amounted to harassment of SPT. It considered the requests to be designed primarily to cause annoyance and disruption to SPT, with a view to forcing SPT to retender the ferry contract. Stating that the contract was one of hundreds it awarded every year, SPT concluded that dealing with the matter required a disproportionate amount of time and the diversion of an unreasonable proportion of its resources.
21. When considering this argument, the Commissioner has considered the approach of the First Tier Tribunal (Information Rights), in (for example) decision *EA/2011/0079*¹ *Alan Dransfield and the Information Commissioner*. (The Tribunal deals with appeals made under the Freedom of Information Act 2000.) In that case, the Tribunal drew 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 (see, in particular, paragraphs 34-36 of the decision cited above). The Tribunal considered it legitimate to take into account prolonged correspondence on a single subject (particularly one addressed already through other means, with response by the authority leading to further requests and allegations), but has not taken the same view in relation to correspondence on a variety of issues: taking account of the latter, in the Tribunal's view, risks "crossing the line" from treating the request as vexatious to treating the requester as vexatious. The Commissioner agrees with this approach.
22. Given the context of the request under consideration in this decision, the Commissioner is of the view that the nature and subject matter of Clyde Marine's request is such that it can be seen as a continuation of the correspondence between the parties over a number of months on the same subject matter. Even though the information requested related to someone believed to be an employee, it is apparent from the 26 points of the request that it was information relating specifically to the Gourock - Kilcreggan Ferry Service, and SPT's resources. When assessing this request, therefore, the Commissioner considers it reasonable to have regard to the wider context of Clyde Marine's history and pattern of communications with SPT.

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



Significant burden

23. In considering the 26 points of this request in the context of the pattern of requests received, SPT argued that they imposed a significant burden, explaining that:
- It was a relatively small organisation and did not employ a dedicated FOI officer.
 - The time spent on co-ordinating and responding to the 26 points of this request, by a number of officers in operational departments, had been inordinate.
 - The responses previously provided, simply generated further correspondence from Clyde Marine, which in turn had a negative impact on staff who spent a disproportionate amount of time repeatedly revisiting the contract award and operation of the ferry service (rather than undertaking their normal workload).
24. Having examined the information supplied to the Commissioner by SPT, the Commissioner accepts, given the volume and nature of the requests, that dealing with this correspondence would demand a disproportionate amount of time and the diversion of an unreasonable proportion of SPT's resources away from other responsibilities. In this particular case the Commissioner accepts that responding to Clyde Marine's requests would impose a significant burden.

It has the effect of harassing the public authority

25. SPT informed Clyde Marine that it considered its correspondence to be part of a concerted campaign by a small group of individuals who were unhappy with the award and subsequent operation of the ferry contract by Clydelink Ltd. SPT highlighted that it had received numerous complaints and information requests all relating to the ferry service and that dealing with this level of complaints and requests had the effect, as perhaps intended, of diverting resources from operational matters to revisiting the ferry contract.
26. "Harassing" is not defined in FOISA or the Commissioner's guidance. The First Tier Tribunal (Information Rights) ruling *EA/2011/0224 Roger Conway and the Information Commissioner*² was of the view that "harassing" should be given its ordinary meaning, that is, to disturb persistently, bother continually, pester or persecute. The Commissioner is also of this view.
27. The Commissioner has considered the documentation supplied alongside SPT's submissions to support its contention that this request is vexatious. The Commissioner notes in the context of the tendering exercise that Clyde Marine was advised of its entitlement to ask for an additional debrief on the tendering process but it did not do so, and that requests from Clyde Marine started six days after it was notified that its tender was unsuccessful. The documentation also confirms that all of the requests in the seven-month period from that point related to the award of the contract and/ or Clydelink's provision of the ferry service in question.

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/i690/20120301%20Decision%20EA20110224.pdf>



28. Although the Commissioner received insufficient evidence to conclude that the correspondence from Clyde Marine forms a concerted campaign, she is satisfied that it was reasonable in the circumstances to conclude that the information request under consideration here was being used by Clyde Marine to continue extended dialogue in relation to the award of the ferry contract. It appears unlikely in the circumstances that resolution of concerns it may have would be brought any closer by the provision of a response to this request. The Commissioner concludes that responding would have the effect of prolonging correspondence on matters which appear to have already been considered fully.
29. The Commissioner, having looked at the volume, timing and nature of the requests, accepts that these were part of a pattern of correspondence which (whatever the intention) had the effect of harassing SPT. She finds that any reasonable person would consider this to be the effect of Clyde Marine's requests.
30. The Commissioner therefore finds that SPT was not obliged to comply with Clyde Marine's information request, given that, in line with section 14(1) of FOISA, the request was vexatious. She also finds that SPT was not obliged to comply with Clyde Marine's requirement for review as section 21(8)(a) of FOISA (see Appendix) applied in the circumstances.

DECISION

The Commissioner finds that Strathclyde Partnership for Transport complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing the information request made by Clyde Marine Ltd.

Appeal

Should either Clyde Marine Services Ltd or Strathclyde Partnership for Transport 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.

Rosemary Agnew
Scottish Information Commissioner
12 February 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...

21 Review by Scottish public authority

...

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

...

- (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.