

Decision Notice



Decision 043/2012 Mr M and the Chief Constable of Grampian
Police

Whether request vexatious

Reference No: 201200026
Decision Date: 7 March 2012

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Margaret Keyse

Acting Scottish Information
Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr M requested from the Chief Constable of Grampian Police (Grampian Police) information relative to specified individuals and events. Grampian Police responded by stating that they considered Mr M's request to be vexatious in terms of section 14(1) of FOISA. Following a review, which upheld the position that the request was vexatious, Mr M remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that Grampian Police had dealt with Mr M's request for information in accordance with Part 1 of FOISA, being satisfied that they had been justified in considering the request vexatious and therefore refusing to comply with it.

Relevant statutory provisions and other sources

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

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On October 2011, Mr M wrote to Grampian Police using a pseudonym. His email requested information in relation to how Grampian Police had dealt with certain specified events and individuals.
2. On 24 October 2011, Grampian Police wrote to Mr M and informed him that since he had used a pseudonym his request for information was not a valid request in terms of section 8 of FOISA. By return, Mr M supplied his name.



3. Grampian Police responded to Mr M's request on 21 November 2011. Mr M was informed that his request was considered to be vexatious, with the result that (by virtue of section 14(1) of FOISA) Grampian Police were not obliged to comply with the request.
4. On 24 November 2011, Mr M wrote to Grampian Police, requesting a review of their refusal to comply with the request. This followed an email the previous day, challenging Grampian Police's role in relation to certain matters covered by the request.
5. Grampian Police emailed Mr M on 9 December 2011, informing him that no review would be carried out on the basis that they considered the request to be vexatious in terms of section 14(1) of FOISA.
6. On 26 December 2011, Mr M wrote to the Commissioner's office, stating that he was dissatisfied with the way in which Grampian Police had dealt with his request for information and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr M 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

8. On 23 January 2012, the investigating officer notified Grampian Police in writing that an application had been received from Mr M, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, Grampian Police were asked to explain why they considered Mr M's request to be vexatious in terms of section 14(1) of FOISA.
9. Grampian Police responded, providing an explanation for their position.
10. The investigating officer also contacted Mr M during the investigation, seeking his submissions on the matters to be considered in the case. All relevant submissions received from Mr M and Grampian Police will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the submissions made by both Mr M and Grampian Police and is satisfied that no matter of relevance has been overlooked.



Section 14(1) – vexatious requests

12. 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.
13. Assuming Grampian Police were correct in their application of section 14(1), they would have been under no obligation to comply with Mr M's request (although they would have remained under an obligation to, for example, notify him that they were not doing so and why).

Whether a request is vexatious

14. FOISA does not define the word "vexatious." 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) will 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.

Grampian Police's submissions

15. In responding to Mr M, Grampian Police stated that they considered his request to be manifestly unreasonable and to have the effect of harassing the Force. They also submitted that answering the request would be a significant burden on Grampian Police.
16. Grampian Police submitted to the Commissioner that they did not believe they had taken the decision to find the request vexatious lightly. They added that they believed the request lacked serious purpose or value and was instead intended to cause annoyance.
17. In considering significant burden, Grampian Police outlined the history of their involvement in the events described in the requests, explaining that this spanned a period from 2000 until the time of the request (when a connected case was still the subject of criminal proceedings). Noting the breadth of the information requested, Grampian Police provided a full explanation to the effect that the records involved in this case were substantial. They explained that while they held details of who had been involved in the matters described and the roles performed (which would be required to answer the request), that information had not been collated.



18. Grampian Police explained (with reasons) that the work of identifying and interpreting the relevant records in order to compile a response to Mr M would necessarily fall to be carried out by a particular officer and his team. They further explained that the team led by this designated officer carried out duties relative to serious organised crime within the Grampian Police area and that their diversion away from this core activity, in order to process Mr M's request, was considered disproportionate. In reaching this conclusion, Grampian Police had considered the volume of work involved in extracting the information and balanced it against the apparent purpose and intention of Mr M's request.
19. While acknowledging a valid public interest in transparency, Grampian Police argued that the request should be considered in the wider context of investigations, proceedings and requests relating to the matters covered by the request, including the tone of elements of Mr M's correspondence. They suggested that such language, which had been put into the public domain, was intended more to annoy and embarrass Grampian Police than to retrieve information. They also noted a broader tendency in correspondence and published material about these matters to make allegations rather than seek information.
20. Grampian Police referred to two substantial investigations into certain allegations to which the request related, noting also that they considered there to be more appropriate independent bodies to which concerns of this kind might be directed (reinforcing their conclusion that the purpose of the request was not the extraction of information).

Comments from Mr M

21. Mr M did not believe Grampian Police had been correct in determining his request to be vexatious. He expressed various concerns about Grampian Police's handling of the events in question.

The Commissioners' conclusions

22. The Commissioner must confine herself in this decision to considering whether Grampian Police were correct in determining that Mr M's request was vexatious in terms of section 14(1) of FOISA. This means that there are a number of issues which she cannot consider or comment upon. In particular, it does not fall within the Commissioner's remit to consider or comment upon the substance of any allegations or comments Mr M has made on the matters to which the request relates.
23. The Commissioner has considered the content and tone of Mr M's email of 20 October 2011, which contains his request for information. In this email, Mr M makes a number of assumptions, assertions and accusations as to how Grampian Police dealt with particular individuals and circumstances. The language and tone might reasonably be considered confrontational, and at some points offensive. In the Commissioner's view, the majority of the email does not actually request recorded information: this can only be said to be the case where Mr M asks for "the specifics" of a certain matter, what Grampian Police had done in relation to certain allegations, who had been involved, their roles and who had been responsible for certain specific actions.

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24. While the language or tone of a request does not, by itself, necessarily make a request either invalid or vexatious, both the content and wider context can be taken into consideration when considering whether the request is vexatious. Having considered all relevant submissions, the Commissioner accepts that it was appropriate in this case for Grampian Police to consider the request in conjunction with what had been published elsewhere and the broader context of allegations made in relation to the matters covered by the request.
25. The Commissioner has considered Grampian Police's submissions on the burden it considered Mr M's request would impose on Grampian Police and in particular on a specific team of detectives. The previous Commissioner in his briefing on section 14¹ indicated that a request will impose a significant burden on a public authority where dealing with it would require a disproportionate amount of time, and the diversion of an unreasonable proportion of its financial and human resources, away from its core operations.
26. Taking all of the relevant submissions into consideration, the Commissioner is satisfied that dealing with Mr M's request, when viewed in context, would have presented a significant burden to Grampian Police. While noting that not all of the factors identified by Grampian Police will always be relevant in considering a significant burden, in the circumstances of this particular case the Commissioner is prepared to accept that dealing with the request would have demanded a disproportionate amount of Grampian Police's time. In the circumstances, she also accepts that this would have diverted an unreasonable proportion of Grampian Police's human resources away from its core operations.
27. The Commissioner has also gone on to consider Grampian Police's other submissions in respect of the request and its effect. In the circumstances, she accepts that it would be reasonable to conclude that the request, whether or not intended to cause annoyance (and whether or not it actually had the effect of harassing Grampian Police), was directed towards purposes other than the extraction of information. Here, and elsewhere in relation to the matters covered, it appears that firm conclusions have already been reached on the matters in question and that the true focus of the correspondence is the making of assertions and accusations rather than the obtaining of information.
28. Having considered the relevant arguments, therefore, the Commissioner is prepared to accept that a reasonable person would consider Mr M's request, taken as a whole in the particular circumstances of this case, to be manifestly unreasonable and disproportionate.
29. In all the circumstances of this case, therefore, the Commissioner has concluded that Grampian Police were correct in finding that Mr M's request was vexatious and that therefore, in terms of section 14(1) of FOISA, they were not obliged to comply with the request.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.asp>



DECISION

The Commissioner finds that the Chief Constable of Grampian Police complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the information request made by Mr M.

Appeal

Should either Mr M or the Chief Constable of Grampian Police 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
Acting Scottish Information Commissioner
7 March 2012



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.

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