



Scottish Information
Commissioner

Decision 044/2008 Mr A Bonnar and Glasgow City Council

Information relating to care of applicant's mother

Applicant: Mr A Bonnar
Authority: Glasgow City Council
Case No: 200701418
Decision Date: 27 March 2008

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 044/2008 Mr A Bonnar and Glasgow City Council

Information relating to care of applicant's mother – request refused under section 14 (Vexatious or repeated requests) – decision upheld by Commissioner

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): section 1(1) and (6) (General entitlement); section 14(1) (Vexatious or repeated requests).

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

Facts

Mr Bonnar requested information from Glasgow City Council (the Council) relating to aspects of his mother's care by the Council's Social Work Services. The Council declined to deal with Mr Bonnar's request, citing section 14 of FOISA on the basis that the request was vexatious and/or repeated. Following a review which upheld the Council's original decision, Mr Bonnar remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Bonnar's request for information in accordance with Part 1 of FOISA, being entitled to refuse to deal with the request on the basis that it was vexatious.

Background

1. On 13 July 2007, Mr Bonnar wrote to the Council requesting various items of information relating to the care of his mother.



2. On 20 July 2007, the Council wrote to Mr Bonnar in response to his request for information. The Council informed him it was not required to respond to his request for information, as the request was identical or substantively similar to previous requests submitted to the Council in which he sought information or justifications of the Council's actions in relation to events examined and disposed of at a Complaints Review Sub-Committee hearing, in the specific context of his mother's case.
3. The Council advised Mr Bonnar in addition that it considered his current request to be vexatious in terms of section 14 of FOISA, and therefore would not be responded to on that count also. His attention was drawn to a number of previous letters from the Council which had explained this.
4. Mr Bonnar wrote to the Council again on 1 September 2007, requesting a review of its decision. On 2 October 2007, the Council notified him of the outcome of its review, reiterating the points made in its letter of 20 July and upholding that earlier decision.
5. On 25 October 2007, Mr Bonnar wrote to my Office, stating that he was dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Bonnar had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

The investigation

7. The investigating officer contacted the Council on 4 December 2007, advising that a valid application had been received from Mr Bonnar and asking the Council to provide comments on it, in particular justification for its use of section 14 of FOISA, all in accordance with section 49(3)(a) of FOISA. In a letter of 11 December 2007, the investigating officer clarified with Mr Bonnar that my powers in connection with this matter were confined to considering the handling of his request for information under FOISA, as opposed to other questions arising out of any underlying complaint against the Council.
8. On 20 December 2007, the Council provided details of its reasons for withholding the information, following this with supporting documentation on 14 January 2008.



9. The Council advised that Mr Bonnar had submitted a number of previous requests for information relating to his mother's social work file, in addition to making a formal complaint under social work review procedures and pursuing matters with the Ombudsman. He had received responses to his queries and neither the Social Work Services Review Committee (SWSRC) nor the Ombudsman had upheld his complaints. Nevertheless, it was asserted that he continued to correspond with the Council, in often incoherent terms, alleging malpractice and illegal actions by social work staff in relation to the events surrounding his mother's admission into care. In particular, the Council advised that he had written in November 2006 to the Lord Provost of Glasgow seeking an independent review of his complaint, apparently disregarding the fact that an independent review had already been carried out by the SWSRC in August 2005.
10. The Council stated that Mr Bonnar had written on numerous occasions requesting documents already disclosed to him prior to or as part of the social work review process, namely minutes of review meetings and extracts from case files relating to his mother's admission to care. It confirmed that these documents had been released to Mr Bonnar, although he had not been strictly entitled to them under either FOISA or the Data Protection Act 1998 the DPA (as they consisted of personal data relating to an individual other than himself and in relation to whom he had no powers of attorney or guardianship). The Council had considered that the information should be released to Mr Bonnar, on the basis of its statutory obligation to operate a full and open complaints process and to uphold Mr Bonnar's legal right to make representations through that process. It believed that it had been entirely open and transparent in responding to Mr Bonnar within the complaints process, granting him access to information relevant to his grievance.
11. The Council advised that Mr Bonnar had in addition sought to access further information about his mother which had already been denied, namely her full social work file, detailing some of the steps he had taken to achieve this. It understood that he was seeking this because he refused to believe that the information already given to him represented the full facts of the matter, even though he had no evidential basis to sustain this belief. Access to these records had been denied on the grounds that such disclosure would breach the mother's privacy and the Council's duty of confidentiality to her.



12. In deciding to treat Mr Bonnar's request as vexatious, the Council recognised that an individual's motivation could not be taken into account. The Council argued, however, that it was relying on the fact that this particular request formed part of a well documented and significant history, in relation to these specific matters, of Mr Bonnar continuing to request information to which he had already been given access, trying to access information he had been refused and trying to revive processes he had already exhausted. The Council argued that it could not ignore the fact that this request was part of a persistent pattern where Mr Bonnar was seeking information in relation to this same issue without any regard to previous responses made or information released.
13. The Council was of the view that Mr Bonnar's request of 13th July 2007 constituted a list of questions relating to two care review meetings concerning his mother's receipt into care. It argued that the questions posed had either been answered already as part of the complaints process, the complaints review process, and related information requests, or were completely spurious questions based upon Mr Bonnar's unique and flawed understanding of that care review process. It believed many of the questions could not be answered in the terms stated because the premise underlying each question was so removed from reality. Instead, it was argued that these questions could only be answered by challenging the premises and restating the Council's position. This, it was argued, would be yet another re-run of the arguments brought before the SWSRC, rather than a Freedom of Information process.
14. The Council considered that it had dealt with Mr Bonnar's requests courteously and helpfully, but that it was now at the stage where considerable resources were being employed in relation to his repeat requests and this could no longer continue. It provided a number of supporting documents, including copies of correspondence with Mr Bonnar and of various other documents related to his case, describing the number of requests as considerable and their nature as being substantially similar rather than identical.
15. Mr Bonnar has alluded to illegality on the part of the Council's officers.

The Commissioner's Analysis and Findings

16. In coming to a decision on this matter, I have taken into consideration all relevant arguments presented to me by both the Council and Mr Bonnar and I am satisfied that no matter of relevance has been overlooked.



Section 14(1)

17. 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.
18. It is important to note that the term "vexatious" must be applied to the request and not to the requester. My general approach is that a request (which may be the latest in a series of 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 does not have a serious purpose or value;
 - b) it is designed to cause disruption or annoyance to the public authority;
 - c) has the effect of harassing the public authority;
 - d) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
19. The Section 60 Code makes it clear that authorities should be prepared to provide justification for deciding that a request is vexatious, on the basis of clear-cut reasoning, and that the power to refuse to respond to a request on the grounds contained in section 14(1) should be used sparingly and should not be abused simply to avoid dealing with a request for information. It is not sufficient that the applicant or the request causes irritation or nuisance.
20. In its response to Mr Bonnar's request of 13 July 2007, the Council advised him that the information he had requested could not be provided to him as his request was considered by the Council to be vexatious under section 14 of FOISA. In doing so, it noted that the matters covered by the request had been considered in full and disposed of by the appropriate complaints procedures. The Council expanded on this argument in its submissions to me, as narrated above, and also provided me with comprehensive information on its handling of these matters prior to the information request which is the subject of this decision.
21. I have considered the arguments presented to me by the Council, along with all relevant supporting information, and accept in all the circumstances that Mr Bonnar's request of 13 July 2007 could reasonably be considered vexatious.



22. While I do not think it entirely clear from the information provided to me that Mr Bonnar's request could necessarily be regarded in its entirety as substantially similar to previous requests made by him, I accept that there is a good deal of force in the Council's assertion that the request depends in a number of respects on an understanding of the procedures followed that is at some remove from the Council's own understanding of these matters. To that extent, I agree that it is questionable whether the request is indeed for recorded information held by the Council. The Council's position on these matters has been expressed clearly and consistently in a number of items of correspondence issued prior to the request, but it would appear that Mr Bonnar has been wholly unreceptive to these arguments.
23. To the extent that the Council could reasonably be expected to hold recorded information falling within the scope of Mr Bonnar's requests, I accept that it has made genuine and conscientious efforts to provide this, in some respects at least going beyond the relevant obligations under FOISA. In all the circumstances, I find it difficult to see what further purpose would be served by a response to the request of 13 July 2007. While I have noted Mr Bonnar's comments, it is clear that his allegations are rooted in his own very particular understanding of the position and I do not consider that they could be answered in any meaningful way by a response to the 13 July request.
24. I also note that the general tenor of Mr Bonnar's correspondence (including the information request of 13 July 2007) has been confrontational and in some respects inflammatory, with no inclination to accept the Council's arguments in support of alternative interpretations of events and circumstances. While it will not necessarily follow from the use of strong or intemperate language that a request is vexatious, in the circumstances (and taking account of the whole history of this matter) I consider that the request should have been regarded by any reasonable person as manifestly unreasonable, and that in fact it had the effect of harassing the Council. Taking the whole circumstances into account, I am also satisfied that the burden imposed by the request was disproportionate to anything that might reasonably have been expected to have been achieved by responding to it, and therefore consider that burden to have been significant.
25. Having concluded that Mr Bonnar's information request was vexatious, I find that the Council was correct to rely upon section 14(1) of FOISA in this instance.



Decision

I find that Glasgow City Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in treating Mr Bonnar's request for information as vexatious in terms of sections 14(1) of FOISA.

Appeal

Should either Glasgow City Council or Mr Bonnar wish to appeal against this decision, there is a right of 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.

Kevin Dunion
Scottish Information Commissioner
27 March 2008



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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