

Decision Notice



Decision 119/2014 Scotland for Animals and the Scottish Ministers

Cross-Party Group on Animal Welfare

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Summary

On 8 July 2013, Scotland for Animals (SfA) asked the Scottish Ministers (the Ministers) for correspondence relating to the Cross Party Group on Animal Welfare (the CPGAW). The Ministers responded that the request was vexatious. Following an investigation, the Commissioner accepted that the request was vexatious.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 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.

Background

1. On 8 July 2013, the convener of SfA wrote to the Ministers, on behalf of SfA, requesting: “All correspondence (including internal) to and from the Agriculture, Food and Rural Communities Directorate, its departments, staff and/or representatives with relation to the Cross Party Animal Welfare Group since 1 January 2013.”
2. On 2 August 2013, the Ministers notified SfA, in terms of section 14(1) of FOISA, that they considered its request to be vexatious (and therefore they were not obliged to comply with the request).
3. On 7 August 2013, SfA wrote to the Ministers requesting a review of their decision. SfA explained why it did not consider its request to be vexatious.
4. The Ministers notified SfA of the outcome of their review on 29 August 2013. They explained that under section 21(8)(b) of FOISA, a Scottish public authority is not obliged to comply with a review request if it has refused the original request as a vexatious request under section 14(1) of FOISA. The Ministers thought their initial decision correct, and therefore did not consider themselves obliged to comply with the requirement for review.
5. On 21 October 2013, SfA wrote to the Commissioner, stating that it was dissatisfied with the outcome of the Ministers’ 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 SfA made a request for information to a Scottish public authority and 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. The investigating officer subsequently contacted the Ministers, 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. These focused on the Ministers application of section 14(1) of FOISA.
8. SfA also provided the Commissioner with comments and supporting documents.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both SfA and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Section 14(1) - vexatious requests

10. In terms of 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". The Commissioner's general interpretation, as set out in her guidance¹ on section 14(1), is that the following factors are relevant when considering whether a request is vexatious. It:
 - would impose a significant burden on the public body
 - does not have a serious purpose or value
 - is designed to cause disruption or annoyance to the public authority
 - has the effect of harassing the public authority
 - would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
12. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner

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



recognises that each case must be considered on its 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, she acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of a request and its surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.

Background

14. The background to this application concerns the interpretation of EU legislation (Regulation 1099/2009 on the protection of animals at the time of killing) and its compatibility with the compulsory use of CCTV in abattoirs. SfA disputed what was said at a meeting of the CPGAW held on 5 February 2013, in relation to the existence of legal advice on this issue, and what was recorded on that point in the minutes of the meeting.

The Ministers' view

15. The Ministers submitted that SfA's request was vexatious, arguing that:
 - it did not have serious purpose or value
 - it had the effect of harassing them
 - it was designed to cause them disruption or annoyance

Consideration in the context of previous correspondence etc.

16. The Commissioner acknowledges that the vexatious nature of a request may only emerge after considering the request in context. Such context may include previous or ongoing correspondence between the authority and the applicant. In this case, the Ministers considered SfA's wider pattern of communications with them to be relevant.
17. In considering this point, the Commissioner has taken account of the First Tier Tribunal (Information Rights) ruling *EA/2011/0079 Alan Dransfield and the Information Commissioner*². In paragraph 36 of this ruling, the Tribunal draws 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.
18. The Tribunal considered it "entirely proper and valid" to take account of the first kind of correspondence in assessing whether a request was vexatious. It distinguished the second kind, commenting that taking this into account risked "crossing the line" from treating the request as vexatious to treating the requester as vexatious.

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/i573/20110920%20Decision%20EA20110079.pdf>



19. Viewed in isolation from the ongoing correspondence between SfA and the Scottish Government, the Ministers did not believe the request could be identified as vexatious. However, when considered in context, they believed they could provide evidence showing that the correspondence had been voluminous and persistent. It would also demonstrate that regardless of attempts to be helpful and engage with SfA, any response was met with further continued accusations. They did not believe answering SfA's request would have done anything to resolve the situation.
20. The Ministers provided the Commissioner with a timeline of correspondence with SfA, supported by copy correspondence. To a large extent, this relates to the interpretation and application of Regulation 1099/2009, confirmation of the Scottish Government's position (and particularly the existence of legal advice obtained) on the use of CCTV and related aspects of animal slaughter, and consideration of these issues at meetings of the CPGAW. The Ministers also referred to a considerable quantity of published comments on these matters, posted on SfA's website and Facebook page, which they considered inaccurate, misleading and, on occasion, offensive.
21. In the circumstances, given the nature of the communications and the request under consideration here, the Commissioner is satisfied that it was reasonable for the Ministers to take this context into account in considering whether the current request was vexatious.

Lacking serious purpose or value

22. The Ministers did not believe disclosure of the requested information would provide any useful evidence regarding SfA's dispute over the wording of the CPGAW minutes. They submitted that the issue of compulsory CCTV had been the subject of a continuing dispute between SfA's representative and a Scottish Government official at meetings of the CPGAW. They noted that SfA's representative
 - attended the meeting in question, and other meetings of the CPGAW, and therefore was able to comment on the draft minutes and was aware of the Scottish Government's position on the relevant wording
 - was aware of what he wanted the minutes to say
 - had proposed changes (to this and other draft minutes on the same issue) and made related public comments.
23. The Ministers also referred to the wider context of the request, submitting that multiple attempts to address SfA's concerns had been unsuccessful. They referred to correspondence in which the Scottish Government's position on compulsory CCTV had been made clear to SfA, on a number of occasions. They submitted that the current request continued in the same vein, suggesting that it was unlikely that SfA would be satisfied by any response they could provide. Therefore, they believed there could "be no purpose to this request other than to frustrate and harass the officials dealing with this subject".
24. SfA explained its purpose in its request for a review of 7 August 2013. SfA explained it was seeking information "essential to an official complaint to Parliamentary authorities by SfA, and a request by an individual trustee of SfA in a personal capacity that their MSP investigate the



issue.” SfA submitted that the request was to identify information relevant to this issue [its complaint] and was not connected with other previous correspondence. It provided correspondence to substantiate that it had pursued relevant complaints.

25. SfA’s application to the Commissioner also explained why it considered the accuracy of the minutes, to reflect what it understood to have been said on the existence of legal advice, to be a matter of public interest.
26. Essentially, it appears to the Commissioner that the request was about the accuracy of the minutes of a specific meeting on a specific day, in relation to the matters highlighted. This was clearly a matter of considerable importance to SfA. In reaching this conclusion, the Commissioner does not consider it necessary to determine whether the information was required for the pursuit of any related complaint.
27. The Commissioner would separate consideration of the purpose or value of the request from any consideration of the manner in which the underlying issues were pursued by SfA. Considering the matter objectively, it would appear to her that there was still purpose and value to be served in pursuing the question of accuracy, at the time the Ministers dealt with SfA’s information request and requirement for review. In reaching this conclusion, she notes that the approved minutes were not published on the Scottish Parliament’s website until 26 November 2013. From the submissions she has received, she does not understand them to have been finalised at the time the Ministers carried out their review.
28. In order to conclude that a request was vexatious, the Commissioner would have to find that request so obviously lacking in serious purpose or value that it could only be seen as vexatious. The Commissioner does not accept that, on the evidence and explanations provided by both parties, this request lacked serious purpose of value as claimed by the Ministers

Effect of harassing the authority

29. A request which has value and serious purpose can still be vexatious, if it has the effect of harassing, or distressing, the public authority and/or its staff.
30. "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* 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 view³.
31. In the Commissioner's view, the question is whether the request has the *effect* of harassing the authority and/or its staff, viewed from the perspective of a reasonable person, whether or not the requester intended that effect.
32. The Ministers viewed the request and request for review as a continuation of a pattern of behaviour which had the effect of harassing officials, by pursuing allegations that members of

³ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i690/20120301%20Decision%20EA20110224.pdf>



staff had lied or fabricated information, or colluded with others to block legislation. They referred (with examples, and the timeline referred to above) to

- public statements to that effect, on SfA's website and elsewhere
- a number of complaints on the themes outlined in paragraph 20 above
- correspondence on these issues, with what they considered to be numerous attempts to explain their position on compulsory CCTV and the existence of relevant legal advice.

33. The Ministers described the public statements as offensive and distressing for officials and provided supporting information on the negative effect of SfA's actions on specific staff. They noted that the statements had generated further correspondence from readers, which officials then had to consider and respond to. The Ministers also highlighted what they perceived as SfA's failure to accept their position on compulsory CCTV and related issues of animal welfare. They submitted it was unlikely that any response would be satisfactory to SfA and that this request appeared to be one to which a satisfactory response could not be given.
34. SfA highlighted the significance of this area of legislation to its work, describing ongoing changes to the legislation as the most significant changes to animal welfare legislation in Scotland since devolution. It considered requests made in this context to be vital to its work as a charity.
35. The Commissioner notes that all of SfA's correspondence with the Ministers was on matters of considerable importance to its work as a charity. She acknowledges that the particular request under consideration in this case was concise and expressed civilly, as was the request for a review (albeit expressed more strongly and at greater length).
36. Given the Commissioner accepts that it is appropriate to consider this request in the context of previous correspondence, it is also appropriate that she considers the issue of harassment in this wider context.
37. The Commissioner appreciates that the matters underlying this case are important to SfA, as reflected by her acceptance that the request had serious purpose and value. But however important they are to SfA as a campaigning organisation, it is reasonable for public authorities and their officials to expect such matters will be pursued in a manner that does not have the effect of harassing them.
38. The issue at the heart of this request as set out, is a disagreement over the accuracy of the CPGAW minutes on the question of the existence or otherwise of relevant legal advice. Although this is a discrete issue, it could also be viewed as part of the wider issues SfA had been pursuing with the Ministers, persistently, for some time as it concerns the recorded position of the Ministers on a matter central to SfA's activity.
39. The Commissioner notes that by the time the Ministers responded to SfA's information request and requirement for review, they had already communicated with SfA clearly about the Ministers' interpretation of the legislation. Whether or not there was disagreement about the



minutes, the Ministers' position was clear (supported by other members of the CPGAW) and so open to challenge by SfA.

40. On balance the Commissioner accepts the Ministers' argument that they had made their position clear and that responding to this request would not achieve more than perpetuate an on-going campaign. The information requested was also not essential to enable minutes to be challenged. The Commissioner also notes that this was not an isolated incident. There had been previous occasions on which SfA had challenged elements of the Group's minutes on related matters, again apparently at variance with the prevailing view.
41. The Commissioner further notes that SfA had used provocative language (for example in a complaint form and public statement) such as "fraudulent" or "colluding". It is not unreasonable to expect staff working at relatively senior levels within government to be able to deal with such language, and taken in isolation the language itself may not be a source of harassment. However, the tone and frequency of such expression in this case suggest that SfA had become increasingly focused on particular individuals rather than the policy issues they were dealing with. In the Commissioner's view, the tone of SfA's expression on the matters described in this decision goes beyond the level of reasonable expectation.
42. Taking into account all the circumstances of this case, the Commissioner is satisfied that it was reasonable to conclude that SfA's information request had the effect of harassing the Ministers. The Commissioner accepts that the Ministers were correct to determine that the request was vexatious. Therefore, in terms of section 14(1) of FOISA, the Ministers were not obliged to comply with the request.
43. Having reached this conclusion, the Commissioner does not consider it necessary to consider, whether the request was intended to cause the Ministers disruption or annoyance.

DECISION

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



Appeal

Should either Scotland for Animals or the Scottish Ministers 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.

Rosemary Agnew
Scottish Information Commissioner
05 June 2014



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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