

# Decision Notice

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**Decision 122/2016: Mr N and South Lanarkshire Council**

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**Neighbour's dog and dividing fence**

Reference No: 201600112

Decision Date: 31 May 2016



Scottish Information  
Commissioner

## Summary

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On 14 and 17 November 2015, Mr N submitted three requests to South Lanarkshire Council (the Council) for information about his neighbour's dog and the Council's policy on dividing fences.

The Council refused to comply with the requests because it considered they were vexatious.

The Commissioner did not accept all of the Council's reasons for concluding that the requests were vexatious. But she did accept that the requests had the effect of harassing the Council and so it was entitled to refuse to comply with Mr N's requests on the grounds that they were vexatious.

The Commissioner also found that the Council was in breach of FOISA by failing to respond to Mr N's request for review within the 20 day time limit.

## Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. Mr N has been corresponding with the Council over his concerns about a neighbour's dog. On 14 and 17 November 2015, he asked the Council for information relating to the dog, his neighbour's tenancy agreement and the Council's policy on erecting dividing fences between council houses and neighbouring properties.
2. The Council responded on 11 December 2015. It considered Mr N's requests to be vexatious, in terms of section 14(1) of FOISA, and concluded that it was not required to comply with the requests.
3. On 21 May 2015, Mr N emailed the Council requesting a review of its decision. He did not accept that his requests were vexatious. He stated that he required the information to pursue his application for legal aid to petition for a judicial review of the Council's actions.
4. The Council notified Mr N of the outcome of its review on 15 January 2016. The Council upheld its previous response without amendment.
5. On 15 January 2016, Mr N emailed the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr N did not accept the Council's conclusions in relation to his requests.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr N made requests for information to a Scottish public authority and asked the authority to review its responses to those requests before applying to her for a decision. The case was then allocated to an investigating officer.

7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 1 March 2016, the investigating officer notified the Council in writing that Mr N had made a valid application. The Council was invited to comment on this application and to answer specific questions, including justifying its reliance on section 14(1) of FOISA. The Council responded on 15 March 2016.

## Commissioner's analysis and findings

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

### Section 14(1) – vexatious request

9. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.
10. The Commissioner has published guidance on the application of section 14(1)<sup>1</sup> of FOISA. This states:

*There is no definition of “vexatious” in FOISA. The Scottish Parliament acknowledged that the term “vexatious” was well-established in law and opted to give the Commissioner latitude to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.*

11. In the Commissioner's view, there is no single formula or definitive set of criteria that allows a formulaic approach to determining whether a request is vexatious, and each request must be considered on the merits of the case, supported by evidence and clear evaluation and reasoning. In its submissions, the Council referred to the factors that the Commissioner considers to be relevant to a finding that a request (which may be the latest in a series of requests or other related correspondence) is vexatious. These are documented within the Commissioner's briefing on section 14 of FOISA, so she will not repeat them here.
12. While the Commissioner's view is that the term “vexatious” must be applied to the request and not the requester, she also acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering whether a request is vexatious.

### Mr N's submissions

13. Mr N considered that the Council would not agree to respond to his request because it was trying to delay his application for legal aid and if his questions are not answered, there is little hope of legal aid being granted and therefore no judicial review will take place. He also considered the Council's decisions were placing his life in danger and that the Council could answer the questions in minutes but does not care how much money is wasted.
14. Mr N provided copies of his correspondence with the Council and other related documents about the breed of dog in question, to support his position that his requests were not vexatious.
15. Mr N did not explain how or why having, or not having, the requested information would affect a legal aid application.

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

## **The Council's submissions and the Commissioner's conclusions**

16. The Council made reference to, and relied upon, its submissions in a previous case involving the same applicant: *Decision 181/2015: Mr N and South Lanarkshire Council*<sup>2</sup> (Decision 181/2015).
17. The Council believed that Mr N is using requests for information to pursue his claim that a neighbour's dog is aggressive and presents a threat to him and other persons. Mr N has been in correspondence with the Council since 18 February 2014, in relation to this matter. The Council submitted that it has investigated his complaints and allegations on a number of occasions and has consistently found no evidence to support his claims. The Council has consistently advised Mr N that there is no basis for it to take any action, but he has continued to submit numerous emails and requests for information on this topic. The Council therefore considered that the latest requests were part of a series of requests designed to cause disruption or annoyance and to harass the Council, and that they were vexatious, in terms of section 14(1) of FOISA.
18. The Council gave three reasons why it had reached this conclusion, which the Commissioner has considered in turn below.

### *The request would impose a significant burden on the Council*

19. The Council has explained to Mr N that his requests are dealt with by Officers in the Council's Housing Service. While there are a number of Housing Officers and Housing Assistants, each Housing Officer is assigned a particular geographical area and, providing that Officer is not on leave or sick, it is that person who would deal with complaints and enquiries from Mr N. The area for which the relevant Housing Officer and Housing Assistant are responsible contains approximately 1,800 properties, taking into account private housing within the estate. The Council considered that Mr N's continuing correspondence was imposing an unreasonable burden on those Officers in carrying out their duties and responsibilities in relation to other service users.
20. As part of its submission to the Commissioner in the case which led to *Decision 181/2015*, the Council provided a folder of correspondence with Mr N. The Council stated that, since then, Mr N has persisted in making complaints regarding the dog and fence in question. It provided a copy of this recent correspondence and asked the Commissioner to take it into account.
21. The Commissioner is not satisfied that the Council has demonstrated that Mr N's request would impose a significant burden on the Council. The Council made reference to the fact that the Housing Officer for the area where Mr N lives has to support 1,800 properties and argued that Mr N's extensive correspondence since February 2014 has imposed a significant burden on the Council. However, the Council has failed to provide any indication of the actual work involved in responding to Mr N's requests, or the resources required.
22. The Commissioner notes that, in correspondence with the Commissioner's office, the Council provided the answers to Mr N's questions of 14 and 17 November 2015, and did so with apparent ease. She accepts that it is relevant to consider the requests in the context created by ongoing correspondence, when assessing the burden imposed on the Council. However, she does not find that the Council has provided enough evidence for her to accept that the requests created a significant burden.

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<sup>2</sup> <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2015/201501488.aspx>

*The request is designed to cause disruption or annoyance*

23. The Council informed Mr N that it considered that his requests were designed to cause disruption and annoyance to the Council. The Council noted that he had made numerous and repeated requests for information in respect of the same issues. He had also made requests for review of the Council's decisions both to the Council's Review Panel and to the Commissioner with no success, and unsuccessful applications to the Scottish Public Services Ombudsman (the SPSO). The Council stated that it has visited his neighbour on at least three occasions to ascertain if the dog is dangerous and aggressive as claimed by him. On each visit the dog was found to be friendly and non-aggressive. The Council informed Mr N on a number of occasions that there was no action which it could take in relation to this matter.
24. The Council considered that the recent requests were part of a campaign by Mr N intended to cause disruption or annoyance to the Council. The Council submitted that it had made numerous attempts to resolve these issues, which had led to complaints to both the SPSO and to the Commissioner in respect of previous requests for information. The Council referred the Commissioner to the range of recipients of correspondence from Mr N, both within the Council and external parties such as MSPs. It considered that this "highlights the nature of Mr N's purpose in sending the correspondence of which the requests for information form part" but did not provide any additional explanation to support its view.
25. The Commissioner does not accept that the evidence provided by the Council is grounds for accepting that Mr N was conducting a campaign with the purpose of causing disruption or annoyance to the Council. In its submissions on this point, the Council has not shown why Mr N's actions went beyond those open to any citizen with a complaint requiring resolution. Complaining to the Council, the SPSO, the Commissioner or an MSP is not grounds, in itself, for assuming that someone intends to cause disruption or annoyance.
26. The Commissioner concludes that Mr N is pursuing a matter that is of genuine concern to him. She does not accept that his persistence means he is intending to cause disruption and annoyance, and notes that the Council has made no attempt to explain why it considers this to be the case.

*The request has the effect of harassing the Council.*

27. The Council stated that the issues raised in Mr N's requests have already been covered. Mr N had exhausted all means to persuade the Council to take action against his neighbour or disclose personal data relating to his neighbour. The Council submitted that that Mr N was now using the FOI process to continue his unsubstantiated and unproven complaints against his neighbours and their dog. It considered that the purpose behind this was to harass the Council into taking some action in relation to these complaints and to extend the dialogue about this longstanding matter.
28. The Council believed it was highly unlikely that resolution would be brought any closer by responding to his requests or correspondence. There have been attempts to resolve the issues, but not to Mr N's satisfaction. From the tone of Mr N's correspondence, the Council believed that, intentionally or otherwise, he was harassing the Council and its employees into complying with his wishes.
29. The Council provided examples of the emotive language adopted by Mr N and the accusations he makes about the lack of care from the Council in the face of a threat to his

personal safety. It considered that Mr N's statements were a form of hyperbole (exaggeration) intended to harass the Council into complying with his wishes.

30. For these reasons, the Council believed that Mr N's requests for information were vexatious and therefore it was not required to comply with them in terms of section 14(1) of FOISA.
31. The Commissioner recognises that Mr N's requests of 14 and 17 November 2015 might not appear, on the face of it, to be vexatious. She is aware, however, that the vexatious nature of a request might only emerge after considering the request within its context, for example, a history of previous or ongoing correspondence with the applicant.
32. The Commissioner has considered the large volume of correspondence between Mr N and the Council in *Decision 181/2015* and she has also read the correspondence that has been exchanged since then.
33. On the evidence of this correspondence, the Commissioner accepts the Council's view that Mr N has exhausted all means to persuade the Council to take action against his neighbour's dog or disclose personal data relating to his neighbour. She notes that the Council has engaged with Mr N, but has been unable to resolve his complaints.
34. The Commissioner has taken note of the tone of Mr N's correspondence with the Council. Many public authorities receive similar correspondence, and in an isolated incident, it would not usually be harassing. However, she notes that Mr N's correspondence is relentless and there seems to be no reduction in its volume or any attempt to amend the tone.
35. The Commissioner appreciates that Mr N is fearful of the dog, but whether or not his intention was to harass the Council the Commissioner must consider the *effect* of his correspondence, not the reasons for it.
36. The Commissioner accepts that, in this case, the cumulative effect of the correspondence meant that the requests submitted on 14 and 17 November 2015 had the effect of harassing Council officers who had already advised Mr N that no further action could be taken in relation to his concerns. Given the history of the correspondence between the Council and Mr N, she is satisfied that the information requests were an attempt to get the Council to re-open dialogue about the neighbour's dog. In the circumstances, she accepts that the effect of his repeated correspondence on this subject has been harassing to the Council.
37. The Commissioner therefore finds that Mr N's requests of 14 and 17 November 2015 were vexatious, in terms of section 14(1) of FOISA, and the Council was not obliged to comply with these requests.

### **Section 21 - Review by Scottish public authority**

38. In his application to the Commissioner, Mr N complained that the Council's review response was late.
39. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.
40. In its submissions, the Council accepted that the review outcome was not provided within the time allowed by section 21(1) of FOISA.

41. Given that the Council did not respond to Mr N's requirement for review of 12 December 2015 until 15 January 2016, the Commissioner finds that the Council failed to respond to Mr N's requirement for review in accordance with section 21(1) of FOISA.

## Decision

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The Commissioner finds that South Lanarkshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr N.

The Commissioner finds that the Council was correct to conclude that Mr N's requests were vexatious in line with section 14(1) of FOISA. However, by failing to respond to Mr N's requirement for review within 20 working days, the Council failed to comply with section 21(1).

The Commissioner does not require the Council to take any action in respect of this failure in response to Mr N's application.

## Appeal

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Should either Mr N or South Lanarkshire Council 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**

**31 May 2016**

### 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**

(1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

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