



Scottish Information
Commissioner

**Decision 128/2007 Mc C and James Watt College of Further & Higher
Education**

*Requests for information on lunch expenses and other matters –
whether vexatious*

Applicant: Mr C

**Authority: James Watt College of Further &
Higher Education**

Case No: 200700154

Decision Date: 7 August 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 128/2007 Mr C and James Watt College of Further & Higher Education

4895 requests for information received – section 14(1) vexatious requests applied

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 12(1) (Excessive cost of compliance) and 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 C made 4895 requests to James Watt College of Further & Higher Education (the College) for information relating to lunch expenses and other matters. The College responded by indicating that it was refusing to deal with Mr C's requests on the basis that it considered his requests to be vexatious under section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Mr C was not satisfied with this response and asked the College to review its decision. The College carried out a review and, as a result, notified Mr C that its original decision had been upheld. Mr C remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the College had generally dealt with Mr C's requests for information in accordance with Part 1 of FOISA.



Background

1. On 20 December 2006, Mr C wrote to the College making 4895 requests for information. The requests were listed in one email.
2. Requests 1 to 4737 sought the following information on each day from 1 January 1994 to 20 December 2006:
 - All documentation relating to the number of occasions and name of locations that lunch expenses were paid or lunch was provided free to an employee of James Watt College of Further & Higher Education on [date inserted]
3. Requests 4738 to 4893 sought the following information on the first day of each month from 1 January 2004 to 1 December 2006:
 - A list of all college premises on [date inserted]
4. Request 4894 requested:
 - All documentation regarding “The National Water Sports Centre: Cumbrae” becoming premises of James Watt College of Further & Higher Education
5. Request 4895 requested:
 - All documentation regarding the date when “The National Water Sports Centre: Cumbrae” became premises of James Watt College of Further & Higher Education
6. On 12 January 2007, the College wrote to Mr C in response to his request for information. The College advised that it was refusing Mr C’s requests as it considered his requests to be vexatious under section 14(1) of FOISA.
7. On 16 January 2007, Mr C wrote to the College requesting a review of its decision. Mr C made a number of submissions as to why he was dissatisfied with the College’s response. In particular, Mr C advised that the structure of the email and the volume of requests were submitted after taking careful and considered advice from the Commissioner’s office. Mr C indicated that he had collated all requests into one email for the college’s convenience and to save time in identifying the information within the systems.



8. On 24 January 2007, the College wrote to notify Mr C of the outcome of its review. The College upheld its original decision that the requests were vexatious. The College stated that all records for this request were held manually and that the resources and staff required to collate and process these requests would place a significant burden on the administration and operations of the College.
9. On 29 January 2007, Mr C wrote to my Office, stating that he was dissatisfied with the outcome of the College's review and applying to me for a decision in terms of section 47(1) of FOISA.
10. The application was validated by establishing that Mr C 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 allocated to an investigating officer
11. On 26 March 2007, the College was notified in writing that an application had been received from Mr C and was asked to provide comments on the application, to respond to specific questions and to provide my Office with specified items of information required for the purposes of the investigation. The College responded with the information requested.

The investigation

12. In its letter of 2 April 2007 the College offered to meet with Mr C and his representative to discuss the nature of these requests and the processes and administration procedures within the College. This offer was forwarded to Mr C who confirmed in response that he still wished to receive the information requested. I understand that to date there has been no resolution of this matter. I have therefore proceeded to a decision on whether Mr C's requests for information are vexatious in accordance with section 14(1) of FOISA.
13. Both parties have a made a number of submissions in respect of this application. I will address these, where relevant, in my analysis and findings below.



The Commissioner's Analysis and Findings

14. Both the College and Mr C have made reference to similar issues in their submissions to my office. I consider it helpful to address each factor in turn and to comment where appropriate.

Staff and resource issues

15. The College advised that all FOI requests were dealt with by an FOI Officer and an administration assistant. The College indicated that Mr C's requests were seeking information held on paper records and that it only had two members of staff on payroll administration who could have dealt with these requests. The College submitted that the time taken by these staff would be totally unreasonable to produce a coherent and purposeful report and would have impeded the College in processing payroll for two to three months. The College provided information about its current financial difficulties.
16. Mr C has also commented on the staff and resources required to deal with his requests for information. Mr C considers that his requests should not be refused because of the inadequacy of the College's own administration systems. Mr C considers that the College has sufficient staff to deal with his requests for information and that staff should be reallocated temporarily where this is required.
17. Mr C also commented on the College's current financial difficulties and the need for transparency in the college finances. These are not matters I can consider when assessing whether a request is vexatious.
18. Mr C made a number of proposals as to how the information could be supplied to him to address the staff and resource issues. In particular, he indicated that he would not enforce the time limits set down under FOISA and would be content to receive the information from time to time as it was collated. These proposals have been forwarded to the College but are not matters that I can address in assessing whether Mr C's requests are vexatious.

Advice from my office



19. Both the College and the applicant indicated that they had sought advice from my office on these requests for information. In responding to enquiries pre-application my staff can provide general guidance on the application FOISA. However, they are unable to advise whether a specific request can or will be considered vexatious by me. Only when I have all information and submissions before me am I in position to reach this decision. Each case will be considered on its own merits.

Other cases involving voluminous requests

20. Both Mr C and the College referred to other cases which had involved voluminous requests for information. The College referred to the *Decision 063/2005 - MacRoberts and Caledonian MacBrayne*. Mr C also referred to an unnamed case in which a comparable volume of requests had not been considered to be vexatious. While previous decisions by me will and should provide guidance to future applicants and to public authorities each case will be determined on its own merits. In this case, I am unclear as to the case Mr C was referring to.

Aggregation of requests

21. I understand that Mr C has made these requests for information because of information he himself has been asked to supply to the College. I gather from his submissions that Mr C previously made this as one request but that this was refused on the basis that to supply this information would exceed the prescribed limit. (Under section 12(1) of FOISA, a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the amount set down in the Freedom of Information (Scotland) (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees regulations).) The maximum amount is currently £600. As a result of this decision, Mr C separated his request into multiple requests for information.
22. Mr C considers that the College has aggregated his requests into one request and then stated that this would be a burden on the administration and operations of the college. Mr C has submitted that not a single one of his 4895 requests could be considered vexatious on its own merits. Mr C submits that by refusing to supply the information as one request and now as multiple requests he is unable to access the information he requires to comply with the College's own request.
23. For its part the College believes that the requests were aimed at causing maximum disruption and annoyance to the College and commented that it took its FOI Officer 3 to 4 days to read the original requests which were subsequently updated by Mr C.



24. Both parties have seen *Decision 062/2005 - MacRoberts and the Scottish Executive* and *Decision 063/2005 - MacRoberts and Caledonian MacBrayne*. While each case will be considered on its own merits the reasoning in those decisions is very pertinent to this case and I consider it helpful to repeat some of my thinking on this issue.
25. Section 14(1) of FOISA states that section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious. There is no definition of “vexatious” contained in FOISA. However, paragraphs 23 and 24 of the Scottish Ministers’ Code of Practice on the Discharge of Functions by Public Authorities Under the Freedom of Information (Scotland) Act 2002 (Section 60 Code) provide some guidance to public authorities on what the term means.
26. The Section 60 Code makes it clear that irritation or nuisance caused by the applicant or by receipt of the request should play no part in an authority’s consideration of whether an application is vexatious. However, the Section 60 Code goes on to state that factors which an authority might take into account could include:
- Whether the request has already been rejected on appeal to the Commissioner and the applicant knows this.
 - Whether there has been unreasonable refusal or failure to identify sufficiently clearly the information required.
 - Whether there has been unreasonable refusal or failure to accept documented evidence that the information is not held.
 - Whether the request can be shown to be clearly intended to disrupt the authority’s work rather than for the purpose of obtaining information.
27. The Section 60 Code also makes it clear that authorities should be prepared to provide justification for deciding that a request is vexatious and that the power to refuse to respond to a request on the grounds contained in section 14(1) of FOISA should be used sparingly and should not be abused simply to avoid dealing with a request for information.
28. In *Decision 062/2005* and *Decision 063/2005* I provided some additional guidance on matters I will take into account in considering whether a request is vexatious. In offering this guidance, I considered the need to avoid damage to the credibility or reputation of FOISA. As a result, while the provisions in section 14(1) should never be used lightly by Scottish public authorities, I indicated that I am likely to be sympathetic to public authorities which refuse a request if responding to that request would impose a significant burden on the public authority and would, in the opinion of a reasonable person, be considered to be manifestly unreasonable or manifestly disproportionate.



29. Neither FOISA nor the Fees Regulations limit the number of requests which can be made in one day. (Although there is provision in FOISA whereby costs for dealing with separate information requests can be aggregated, thereby limiting the number of requests which could be submitted at any one time, this provision has not been introduced by Parliament.) However, this cannot and does not mean that applicants should be able to make an unlimited number of information requests to a public authority at any one time.
30. As I said in those decisions, in considering what is manifestly unreasonable or manifestly disproportionate, it will sometimes be necessary to consider the effect of dealing with the request on a public authority. I have always made it clear that public authorities wishing to rely on the provision contained in section 14(1) must be able to show that the request – and not the person making the request – is vexatious. Even if an applicant does not intend a request to be vexatious, it is possible that dealing with that request will impose a significant burden on a public authority and will be considered to be manifestly unreasonable or manifestly disproportionate. The nature and effect of the request may therefore be taken into account.
31. I have noted from the decisions of the UK Information Commissioner that he considers that public authorities have suffered a significant burden if dealing with the request would cause disproportionate time, inconvenience or expense. Cases in which the amount of correspondence received by the public authority has been highlighted as a relevant factor in determining a significant burden include FS50086298 (BBC), where 90 requests were sent and FS50125496 (DWP), in which over 50 letters on the same matter had been received. In case FS50090632, the complainant sent so much correspondence that Transport for London had to devise an internal strategy to manage it.
32. In this case, I am not considering a single request, but a large volume of requests. Mr C submitted 4895 separate requests for information to one public authority on the same day. While it is clear that each of these requests on its own would not be considered vexatious, I am satisfied that requests from the same applicant can be considered collectively in deciding whether each of those requests is vexatious. I must therefore now consider whether the 4895 requests submitted by Mr C would impose a significant burden on the College and are manifestly unreasonable.
33. It will be noted from paragraphs 2 to 5 above that Mr C's can be categorised into several different subject areas. I therefore consider it appropriate to address each category in turn.



34. Mr C made 4737 requests for information relating to lunch expenses or free lunches. The College has submitted that only two members of staff from pay roll would be in a position to deal with this request for information. Given the nature of the material that would need to be searched to obtain the information sought by Mr C and the presumption that this source material would not be readily accessible to any member of staff who sought it I accept that the number of staff members who would be able to assist in responding to Mr C's requests would be limited.
35. I understand that Mr C's original one request for the same information was refused on the grounds of cost. In the circumstances, Mr C will have been fully aware of the significant amount of time and resources that would be involved in dealing with these requests for information. I accept that dealing with 4737 requests for information arriving on the same day would involve a diversion of resources which would be a disproportionate inconvenience and expense. I consider that dealing with these requests will impose a significant burden on a public authority and is manifestly disproportionate. I am satisfied therefore that request numbers 1 to 4737 are vexatious under section 14(1) of FOISA.
36. Mr C made a further 155 requests for a list of college premises. While this is substantially fewer number of requests than those falling into the first category it is still a large number of requests for one authority to receive on the same day. I have also noted that Mr C has sought this information on a monthly basis over a thirteen year period. I accept that dealing with these requests for information arriving on the same day would involve a diversion of resources which would be a disproportionate inconvenience and expense. I consider that dealing with these requests will impose a significant burden on a public authority and is manifestly disproportionate. I am satisfied therefore that request numbers 4738 to 4893 are also vexatious under section 14(1) of FOISA.
37. Finally, Mr C made two requests for information regarding "The National Water Sports Centre: Cumbrae". Having considered these requests for information I do not consider that these will impose a significant burden on the authority and would not be a disproportionate inconvenience or expense. While these requests were made on the same day as the other requests, I do not consider that they form part of the pattern of the other requests from Mr C.
38. I therefore find that request numbers 4894 and 4895 are not vexatious in terms of section 14(1) of FOISA. The College should now issue a notice to Mr C in terms of section 16 or section 17 of FOISA.
39. I recognise that Mr C will now have to seek an alternative way of obtaining the information he seeks, but this fact alone does not dissuade me from the view that the 4893 of his requests for information are vexatious.



Decision

I find that the College acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request numbers 1 to 4893 made by Mr C.

I find that the College failed to act in accordance with Part 1 of FOISA in responding to request numbers 4894 and 4895 in that the requests are not vexatious in terms of section 14(1) of FOISA. In failing to respond to these requests, I find that the Council failed to comply with section 1(1) of FOISA.

In order to comply with FOISA, the College must either supply the information requested in request numbers. 4894 and 4895 to Mr C or provide him with a notice in terms of sections 9(1), 16 or 17(1) of FOISA within 45 days of receipt of this decision notice.

Appeal

Should either Mr C or the College 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 of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
7 August 2007



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.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

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.