

Decision Notice



Decision 133/2012 Mr A and the Chief Constable of Dumfries and Galloway Constabulary

Whether requests vexatious

Reference No: 201200835
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Rosemary Agnew
Scottish Information Commissioner

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



Summary

Mr A made a series requests to the Chief Constable of Dumfries and Galloway Constabulary (Dumfries and Galloway Constabulary) for information related to certain police reports. Dumfries and Galloway Constabulary refused to comply with these requests on the basis that it considered them to be vexatious. Following an investigation, the Commissioner accepted that this approach was correct in the circumstances.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 21(8)(b) Review by Scottish public authority

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. Within five faxed letters dated (variously) 23 March 2012, 2 April 2012 and 5 April 2012, Mr A made a number of information requests to Dumfries and Galloway Constabulary. These requests all, broadly, related to various police reports.
2. Dumfries and Galloway Constabulary responded to all of these requests on 19 April 2012, stating that it considered them to be vexatious. Accordingly, it considered that it was not required to comply with the requests in terms of section 14(1) of FOISA.
3. On 21 April 2012, Mr A wrote to Dumfries and Galloway Constabulary requesting a review of its decision. He disagreed with Dumfries and Galloway Constabulary's reasons for considering the requests to be vexatious.
4. On 25 April 2012, Dumfries and Galloway Constabulary notified Mr A, under section 21(8)(b) of FOISA, that it was under no obligation to comply with his request for review, confirming its original decision that section 14(1) applied. Consequently, it informed Mr A that no review would be undertaken.



5. On 30 April 2012, Mr A wrote to the Commissioner, stating that he was dissatisfied that Dumfries and Galloway Constabulary had applied section 14(1) of FOISA to his requests, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr A had made requests 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 those requests. The case was then allocated to an investigating officer.

Investigation

7. The investigating officer subsequently contacted Dumfries and Galloway Constabulary, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, Dumfries and Galloway Constabulary was asked to justify its reliance on section 14(1) of FOISA.
8. The relevant submissions received from both Dumfries and Galloway Constabulary and Mr A will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr A and Dumfries and Galloway Constabulary and 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) (which confers a general entitlement to information held by such authorities) if the request is vexatious.
11. Consequently, if Dumfries and Galloway Constabulary was correct in its application of section 14(1), it would be under no obligation to comply with Mr A's requests (although it would remain under an obligation to, for example, notify Mr A that it was not complying with his requests and why).

Whether a request is vexatious

12. 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.

Identity of applicant

13. While acknowledging that requests under FOISA should be considered “applicant blind” and that the identity of the requester should not be taken into account in determining whether a request was vexatious, Dumfries and Galloway Constabulary advised that in this case it had (they believed correctly) taken account of the applicant’s identity and the context of his requests in reaching its decisions.
14. While the Commissioner’s view is that the term “vexatious” must be applied to the request and not the requester, she also acknowledges (see the briefing on section 14¹) 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. It may be reasonable, for example, for the authority to conclude that a particular request represents a continuation of a pattern of behaviour it has deemed vexatious in another context and therefore refuse the request as vexatious. This may be the case particularly where all relevant information has already been disclosed to the applicant *or* where (the matter having been fully addressed already through the appropriate procedures of the authority) it is unlikely that additional information would inform or alter the applicant’s situation, but it does not follow that such an applicant’s requests should automatically be refused: each decision has to be based on its own facts and circumstances.
15. Dumfries and Galloway Constabulary highlighted the background to Mr A’s requests and submitted that they should be considered in the context of his wider pattern of communications with them. Dumfries and Galloway Constabulary explained that Mr A had been in regular correspondence with them over a period of more than 30 years. This correspondence focused on issues relating to an illegal situation Mr A alleged to have occurred in the 1970s. He had sought to make various complaints against the officers who dealt with, and had subsequently reviewed, elements of the case.
16. The requests at issue in this case all relate to the same subject matter, as described in the previous paragraph.

¹ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2513&SID=2591>



17. When considering this point, the Commissioner has considered the approach of the First Tier Tribunal (Information Rights), in (for example) ruling *EA/2011/0079*² *Alan Dransfield and the Information Commissioner*. The Tribunal has drawn 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 (see, in particular, paragraphs 34-36 of the decision cited above). The Tribunal has considered it legitimate to taken into account prolonged correspondence on a single subject (particularly one addressed already through other means), but has not taken the same view in relation to correspondence on a variety of issues: taking account of the latter (in the Tribunal's view) risks "crossing the line" from treating the request as vexatious to treating the requester as vexatious.
18. Although the Tribunal case was decided under the Freedom of Information Act 2000 and not FOISA, the Commissioner considers the comments of the Tribunal to be equally valid in relation to this current application.
19. Given the content of the requests under consideration in this decision, the Commissioner is of the view that the nature and subject matter of Mr A's requests is such that they can only be seen as a continuation of the correspondence between him and Dumfries and Galloway Constabulary over a prolonged number of years. When assessing these requests, therefore, the Commissioner considers it reasonable to have regard to the wider context of Mr A's history and pattern of communications with Dumfries and Galloway Constabulary.

Significant burden

20. The Commissioner's briefing on section 14 of FOISA indicates 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.
21. Dumfries and Galloway Constabulary explained that Mr A had made numerous previous requests for information under FOISA and the Data Protection Act 1998, all of which have been complied with. Voluminous records were held in respect of Mr A, his complaints and the series of investigations carried out in relation to his claims.
22. The requests at issue relate to numerous police reports, some dating from the 1980s. Dumfries and Galloway Constabulary commented that there appeared to be an endless and unstructured flow of such requests from Mr A.
23. Dumfries and Galloway Constabulary also explained that the only staff with access to (and knowledge of) the content of the relevant records were two officers within its Complaints and Professional Standards Unit, who would have to undertake significant research to comply with Mr A's requests. They submitted that dealing with Mr A's requests would cause serious detriment to the day to day work of the staff involved.

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



24. Taking into consideration the cumulative effect of Mr A's correspondence, the Commissioner accepts that dealing with this correspondence (viewed as a whole) would demand a disproportionate amount of time and the diversion of an unreasonable proportion of Dumfries and Galloway Constabulary's resources away from its core responsibilities. In this particular case, therefore, the Commissioner accepts that responding to Mr A's requests would impose a significant burden.

It has the effect of harassing the public authority

25. Dumfries and Galloway Constabulary also submitted that Mr A's requests had the effect of harassing the force.
26. "Harassing" is not defined in FOISA or in the Commissioner's guidance. The First Tier Tribunal (Information Rights) ruling *EA/2011/0224, Roger Conway and the Information Commissioner*³ 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 view.
27. In this case, there were a number of requests referring to a variety of documents, going back as far as 1984, but all relating to the same subject matter (see paragraph 15 above). Dumfries and Galloway Constabulary explained that Mr A had been advised repeatedly that (due to retention periods applied to records) the relevant enquiry files were no longer held by the force. It commented that Mr A had shown a disregard for any advice provided, and also that whilst he might (as it understood) be dissatisfied with the outcome of historical enquiries, the information sought would not change the outcomes of investigations concluded some years ago.
28. Dumfries and Galloway Constabulary also submitted that, in addition to the actual requests for information, Mr A continued to submit correspondence raising issues underlying the relevant investigations and reports. These related to matters which had taken place a long time ago and on which all avenues had been exhausted. They submitted that his overall pattern of behaviour was relevant to the argument that his correspondence, including the current requests for information, had the effect of harassing Dumfries and Galloway Constabulary.
29. The Commissioner accepts that it was reasonable in the circumstances to conclude that the information requests under consideration here were being used by Mr A primarily to continue extended dialogue in relation to his concerns with Dumfries and Galloway Constabulary. It appears highly unlikely in the circumstances that resolution of these concerns would be brought any closer by the provision of a response to the requests, and in all the circumstances the Commissioner accepts that responding would simply have the effect of prolonging yet further correspondence on matters which appear to have been addressed fully.

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



30. Having looked at the terms of the requests, the allegations contained within them, the subject matter and the context, the Commissioner accepts that Mr A's requests were part of a course of correspondence which (whatever his intention) had the effect of harassing Dumfries and Galloway Constabulary. She finds that any reasonable person would consider this to be the effect of Mr A's requests.
31. The Commissioner finds that Dumfries and Galloway Constabulary was not obliged to comply with Mr A's information requests, on the basis that the requests were vexatious and therefore section 14(1) of FOISA applied.

DECISION

The Commissioner finds that the Chief Constable of Dumfries and Galloway Constabulary complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the information requests made by Mr A.

Appeal

Should either Mr A or the Chief Constable of Dumfries and Galloway Constabulary 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.

Rosemary Agnew
Scottish Information Commissioner
10 August 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.

...

21 Review by Scottish public authority

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if –

...

- (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.

...