

Decision Notice



Decision 136/2011 Mr G and the Scottish Legal Complaints Commission

Identities of decision-makers

Reference No: 201100543

Decision Date: 8 July 2011

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Scottish Information Commissioner

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Summary

Mr G requested from the Scottish Legal Complaints Commission (the SLCC) information regarding the identity of any solicitor or advocate involved in a specified decision. The SLCC did not respond and Mr G wrote to the SLCC seeking a review. Following a review, Mr G remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SLCC had dealt with Mr G's request for information in accordance with Part 1 of FOISA. He was satisfied that the request was vexatious in terms of section 14(1) of FOISA.

Relevant statutory provisions and other sources

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 28 October 2010, Mr G wrote to the SLCC requesting the identity of any solicitor or advocate involved in a decision relating to a particular complaint.
2. Mr G did not receive a response to his request and on 15 December 2010 he wrote to the SLCC requesting a review.
3. On 17 December 2010 Mr G wrote to the Commissioner, stating that he was dissatisfied with the Council's failure to respond to his request for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The SLCC notified Mr G of the outcome of its review on 21 March 2011, advising him why it considered his request to be vexatious in terms of section 14(1) of FOISA: on this basis, it considered that it was not obliged to comply with the request.
5. On 24 March 2011 Mr G wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SLCC's 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 Mr G had made a request 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 that request.

Investigation

7. On 4 May 2011 the investigating officer contacted the SLCC, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking for its responses to specific questions. In particular, the SLCC was asked to justify its application of section 14(1) of FOISA.
8. The SLCC responded on 24 May 2011. The submissions received from both the SLCC and Mr G, insofar as relevant, 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 the submissions made to him by both Mr G and the SLCC and is satisfied that no matter of relevance has been overlooked.

Section 14(1) – Vexatious requests

10. Section 14(1) of FOISA states that section 1(1) (which confers a general entitlement to access information held by a Scottish public authority) does not oblige a public authority to comply with a request for information if the request is vexatious.
11. FOISA does not define the word "vexatious." However, 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) may 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.



12. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requestor, he also 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 the request and surrounding circumstances. 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, which may (in turn) justify dealing with the request as vexatious.

Significant burden?

13. In the Commissioner's briefing on section 14 of FOISA¹, he has indicated 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.
14. As the Commissioner stated in *Decision 208/2010 Mr D and the Accountant in Bankruptcy*² :
"The test to be applied is whether the request is vexatious, not the person making it. In many cases, the vexatious nature of a request will only emerge after considering the request within its context and background. As part of that context, the applicant's past dealings with the public authority may be relevant. Even if the request appears reasonable in isolation, it may be vexatious if it demonstrates a continual pattern of behaviour or represents a significant burden when considered collectively".
15. The SLCC acknowledged that the fact Mr G wished to complain about the conduct of its Board Members or any lawyers involved in the relevant decision was not a reason in itself to consider the request vexatious, but contended that Mr G's request must be considered within the context of his wider dealings with the SLCC.
16. The SLCC further explained that this was not the first request for this type of information and referred to a previous Decision where the Commissioner had accepted the application of section 14(1).
17. Having considered the SLCC's submissions, the Commissioner is satisfied in the circumstances that it was correct to view Mr G's request within the wider pattern of correspondence it had received from Mr G. He is also satisfied that Mr G's request here must be viewed within a pattern of behaviour by Mr G, exemplified in that correspondence. He accepts that the request continued this pattern of behaviour, which (considered collectively) did impose a significant burden on the SLCC.

Manifestly unreasonable?

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

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/201001381.asp>



18. The SLCC submitted that Mr G was aware of the proper channels for challenging the decisions of the SPSO. It noted that he had sought names of decision-makers in the past for the purposes of complaining to the Standards Commission (which was not, in the circumstances, the appropriate remedy). It submitted that the request under consideration here was, in principle, the same. He was understood to be seeking the information with a view to making a conduct complaint (to the relevant professional body) against the individual in question, with a view to continuing in his pursuit of the same underlying complaint. It contended that this would be unlikely to succeed and, even if upheld, would not change the outcome of the original complaint to the SLCC. If there was merit in his challenge to that decision, it argued, the proper route for challenge (by appeal to the Court of Session) would be open to him.
19. It appears clear from Mr G's correspondence with the SLCC and his application to the Commissioner that the SLCC is correct in its understanding of the purpose of Mr G's request. In his application to the Commissioner, however, Mr G contended that the SLCC was unreasonable in taking the stance outlined above, as in doing so it had prejudged the issue in favour of the any lawyers involved in the decision. He commented that the SLCC was effectively deciding on the outcome of any future professional misconduct complaint against those individuals, which might be considered valid by the relevant professional body and upheld. This, he submitted, was manifestly unfair and, in effectively granting a unique immunity from regulation to lawyers involved in the SLCC's decision-making, contrary to the public interest.
20. While acknowledging that an effective immunity of the kind suggested by Mr G would not be in the public interest, the Commissioner is not persuaded that these concerns are in fact relevant to the point the SLCC is making. At the root of this request appears to be Mr G's continuing dissatisfaction with the SLCC's decision on his original complaint to that authority. What appears evident from the tenor of his correspondence with the SLCC on this request is a desire to pursue that continuing dissatisfaction, rather than any specific concern about the professional conduct of any individual. He acknowledges that there is an appropriate channel for pursuing that dissatisfaction, which is not the professional misconduct process: if anything is contrary to the public interest in this case, he would suggest that it is the use of procedures designed to address individual conduct to challenge a corporate decision. That, the Commissioner finds, would be considered by a reasonable person to be manifestly unreasonable.

Commissioner's conclusions

21. Having considered carefully the submissions received from both Mr G and the SLCC, therefore, the Commissioner is satisfied that the SLCC was justified in refusing to respond to Mr G's request, on the grounds that it was vexatious in terms of section 14(1) of FOISA. While the SLCC presented additional arguments for considering the request to be vexatious, the Commissioner has not found it necessary to consider them in this case.

Decision 136/2011
Mr G
and the Scottish Legal Complaints
Commission



The Commissioner finds that the Scottish Legal Complaints Commission complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr G.

Appeal

Should either Mr G or the SLCC 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.

Kevin Dunion
Scottish Information Commissioner
8 July 2011



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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