

Decision Notice 147/2021

Whether three requests were vexatious

Applicant: The Applicant

Public authority: Stirling Council

Case Ref: 202100070, 202100076 and 202100077



Scottish Information
Commissioner

Summary

The Council was asked, in three separate requests, for specified information on its children's social work services.

The Commissioner agreed that all three requests were vexatious and that the Council was not obliged to comply with any of them.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 9, 13 and 29 November 2020, the Applicant made three separate requests for information to Stirling Council (the Council) relating to aspects of its social services. All three requests are considered together in this decision. The information requested was:

Request 1

"The Social Worker grade/level of management responsibility assigned the task of recording guilty or acquittal details (i.e. Judgements) of solemn case prosecutions of the parent (or parents) of children (i.e. persons under 18 years of age) on the Children's Services – Children & Families Social Work Department system."

Request 2

"The Standard Operating Procedure (SOP) that is used by Social Services when a parent raises an emotional harm Child Welfare Concern."

Request 3

"The number of Children's Services Social Work instructions of termination of child contact at Child Contact Centres in the year[s 2018, 2019 and 2020] (up to date of request)."

2. The Council responded to all three requests on 8 December 2020, refusing each one under section 14(1) of FOISA, confirming that it had considered each request individually and explaining why it thought each request was vexatious.
3. The Applicant wrote to the Council seeking a review – the correspondence was dated 10 December 2020 for requests 1 and 3 and 16 December 2020 for request 2. In each case, the Applicant was dissatisfied with the Council's refusal to respond to the request.
4. The Council responded to each requirement for review, separately, on 14 January 2021. The Council upheld its application of section 14(1) of FOISA to each request, confirming (in terms of section 21(8) of FOISA) that it was not obliged to carry out a review.
5. On 15 January 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA for each of the three requests. The Applicant did not accept that any of the requests were vexatious, given their nature and circumstances.

Investigation

6. The applications were accepted as valid. The Commissioner confirmed that the Applicant had made three requests for information to a Scottish public authority and asked the authority to review its responses before applying to him for a decision.
7. On 11 March 2021, the Council was notified in writing that the Applicant had made a valid application in respect of requests 1 and 3. For request 2, the Council was notified on 15 March 2021. All three cases were allocated to an investigating officer and conjoined for investigation.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on all three applications and to answer specific questions. These related to its rationale in each case for finding the request to be vexatious.

Commissioner's analysis and findings

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

Were the requests vexatious?

10. Section 14(1) of FOISA states that section 1(1) (which confers the general entitlement to information held by such authorities) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious. Section 14(1) does not create an exemption, but its effect is to render inapplicable the general right of access to information contained in section 1(1). Accordingly, section 14(1) is not subject to the public interest test in section 2(1)(b) of FOISA.
11. Where a Scottish public authority considers section 14(1) to have been applicable to an information request, it is not obliged to comply with a subsequent requirement for review in relation to that request (section 21(8)(b)). The Council gave the Applicant notice to that effect in response to each of his requirements for review.
12. The Commissioner's general approach¹ is that the following factors are relevant when considering whether a request is vexatious (applying section 14 of FOISA). These are that the request:
 - 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 manifestly unreasonable or disproportionate

¹ https://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx

13. 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 recognises that each case must be considered on its merits, taking all the circumstances into account. The term “vexatious” must be applied to the request and not the requester, but an 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.

The Applicant’s submissions

14. In all three applications, the Applicant challenged the Council’s application of section 14(1) of FOISA, submitting that the requests were reasonable and proportionate, taking account of their subject matter and the issues raised. He believed that the Council should now either disclose the information, if held, or give notification that it was not held. He noted that other local authorities had responded to similar requests other than in terms of section 14(1).
15. The Applicant raised other issues which are more pertinent to the application of data protection legislation and therefore do not fall within the Commissioner’s remit under FOISA. All the Commissioner can consider here is whether section 14(1) was properly applied to the Applicant’s requests.

The Council’s submissions

16. In its submissions, the Council contended that these requests
 - were manifestly unreasonable and disproportionate;
 - had the effect of harassing the Council and
 - were designed to cause it disruption and annoyance.
17. The Council submitted that the Applicant had made a significant, disproportionate number of information requests to it since October 2020, in addition to subject access requests under data protection legislation and use of its corporate complaints process. Referring to examples, it submitted that, at times, the Applicant had accounted for 50% of requests (including subject access requests) made to its Children and Families Social Work and Education services. It provided details of a broad selection of these requests, noting that many of them sought multiple elements/pieces of information, often in significant amounts, and were intrinsically linked to other requests.
18. The Council took account of all of its interactions with the Applicant, over what it considered to be a short to moderate period of time, from which it believed it could establish a pattern to the number and type of his requests, linked to other interactions. It explained how these other interactions led to an increase in specifically targeted, linked information requests. It noted that its approach to these other interactions had been upheld through the appropriate channels. It explained specific concerns in relation to the purpose and wider impact of the information requests, and the substantial additional correspondence generated by them, which the Commissioner cannot expand on here.
19. Highlighting what it considered to be the persistent and, at times, relentless nature of the Applicant’s requests and other correspondence, the Council submitted that this had the clear effect of harassing the Council and individual officers, in its motivation as well the significant direct burden created in terms of volume of work. It described the content of the Applicant’s request correspondence as routinely frenzied and often incoherent, also referring to its aggressive tone. The Council submitted that this behaviour extended to public postings,

where the Council was named and staff feared they would be as well (as he had done – and made unfounded allegations – in relation to staff from other organisations).

20. From these submissions and the supporting evidence, the Council also believed it had clearly demonstrated the Applicant's determination to cause significant disruption and annoyance to the Council. In arriving at this conclusion, it took account of what it considered to be an excessive volume of requests and other correspondence, the increase in that volume over the past six to nine months and its perception from the correspondence that it was designed, in part at least, with that purpose.

The Commissioner's findings

21. Taking into account all the relevant submissions and supporting evidence from both the Applicant and the Council, the Commissioner accepts that the volume, frequency, pattern and content of the Applicant's requests and related correspondence combine to make them disproportionate: they clearly go well beyond what was required to simply elicit the actual information requested. For that purpose, there was no need to adopt the relentless approach taken by the Applicant. There is clear evidence of this Applicant repeatedly revisiting Council decisions (and wider issues), which had no prospect of being resolved by means of FOISA, via his information requests.
22. The Commissioner is satisfied that the requests under consideration here fit squarely into that wider pattern. It would not be appropriate to regard them simply as isolated requests, seeking discrete elements of information. In that context, he accepts that a reasonable person would find they were manifestly unreasonable and disproportionate. Whatever the Applicant's intention may have been, the Commissioner would also consider them, taken with the Applicant's other requests/correspondence, to have had the effect of harassing the Council and its staff. For these reasons, the Commissioner is satisfied that they should properly be characterised as vexatious.
23. In all the circumstances, therefore, the Commissioner is satisfied the Council was entitled to refuse to comply with the request by virtue of section 14(1) of FOISA (and with the requirement for review by virtue of section 21(8)(b)).

Decision

The Commissioner finds that Stirling Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information requests made by the Applicant.

Appeal

Should either the Applicant or the 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.



Margaret Keyse
Head of Enforcement

30 September 2021

Appendix 1: 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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info