

Decision Notice

Decision 162/2018: Mr K and Glasgow City Council

Whether request was vexatious

Reference No: 201800757

Decision Date: 15 October 2018



Scottish Information
Commissioner

Summary

The Council was asked about the handling of previous information requests. The Council considered the request was vexatious and refused to comply with it. The Commissioner agreed the request was vexatious.

Relevant statutory provisions

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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 17 December 2017, Mr K made a request for information to Glasgow City Council (the Council). Mr K sought information relating to the administration of his previous information requests.
2. The Council did not respond to this request and, on 2 February 2018, Mr K sought a review. The Council did not respond to Mr K's request for review and, on 4 March 2018, he applied to the Commissioner for a decision.
3. The Council notified Mr K of the outcome of its review on 27 April 2018. It apologised for its failure to respond to his initial request or request for review within the timescales set out in the legislation but notified Mr K that it considered his request to be vexatious, in line with section 14(1) of FOISA. It was the Council's view that the intention behind Mr K's request was to cause disruption or annoyance to the Council, rather than access the information set out in his request.
4. On 29 April 2018, Mr K wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr K did not accept that his request was vexatious, suggesting that the Council had misread the request.

Investigation

5. The application was accepted as valid. The Commissioner confirmed that Mr K made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
6. On 29 May 2018, the Council was notified in writing that Mr K had made a valid application.
7. 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 this application, with particular reference to its application of section 14(1) of FOISA.
8. The Council provided comments on its application of section 14(1). Mr K also provided comments, in support of his position that the request was not vexatious.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr K and the Council. He 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) if the request is vexatious.
11. FOISA does not define the word “vexatious”. The Commissioner’s general interpretation, as set out in his guidance on section 14(1)¹, is that the following factors are relevant when considering whether a request is vexatious:
- (i) it would impose a significant burden on the public body
 - (ii) it does not have a serious purpose or value
 - (iii) it is designed to cause disruption or annoyance to the public authority
 - (iv) it has the effect of harassing the public authority
 - (v) it would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
12. However, this is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided that the authority can support them with evidence. The Commissioner recognises that each case must be considered on its own merits, taking all the circumstances into account.
13. While the Commissioner’s view is that “vexatious” must be applied to the request and not the requester, he 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 a request and its surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.

Mr K submissions

14. In his application, Mr K stated that he did not consider his request to be vexatious, arguing that the Council had misunderstood the terms of the request. Mr K referred to what he considered to be a discrepancy in figures previously supplied to him. He argued that the Council’s grounds for treating his request as vexatious were unfounded. He believed the Council had been obstructive in its handling of his request.

The Council’s submissions

15. The Council submitted that in this instance it was appropriate to take into account both Mr K’s reasons for making the request and his previous dealings with the Council.
16. The Council considered that Mr K’s request was designed to cause disruption or annoyance to the Council rather than to access the information set out in his request; even if he did not

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

intend to cause annoyance or disruption to the Council or its staff, his request for information had the effect of harassing the Council and its staff.

Designed to cause disruption or annoyance

17. The Council acknowledged that Mr K had not previously requested information about the processing of his information requests, but it considered his information request to be a continuation of a pattern of behaviour designed to cause disruption or annoyance to the Council and its staff, because of his unresolved dissatisfaction with the outcome of the complaints process.
18. Mr K had made a complaint in early 2017, the Council explained, about the Council's payment of care home costs. The complaint was not upheld. He was advised by the Council that it would not be possible to revisit that complaint and was directed to the Scottish Public Services Ombudsman (the SPSO). The Council stated that the SPSO had advised Mr K in its decision letter (in July 2017) that he had three weeks to challenge their decision. It noted that Mr K chose not to do so. Consequently, the Council submitted, there was no prospect of that complaint process being re-opened.
19. The Council stated that there is no further information that might be provided to Mr K under FOISA that would have any bearings on these matters. In the Council's view, the issues had been explored exhaustively as a result of the investigations and appeals which had taken place.
20. The Council explained that Mr K attempted to re-open his complaint in September 2017 and did so based on assertions of discrepancies in figures paid by the Council for different care and support in various circumstances. The Council explained that this was the same type of objection as he raised following the fulfilment of his information request by the supply of full figures in December 2017.
21. When supplied on 5 December 2017 with a full list of rates paid to care homes for various models of care during 2016-17, which was the information he requested, the Council stated that Mr K responded by querying one individual figure from over 1,000. Mr K was provided with assurances that the data was correct and was asked to communicate any and all further queries that he might have. According to the Council, Mr K instead indicated that he might make further requests that might extend to individually requesting a re-check of each individual figure supplied. When advised that such a request would in all likelihood be considered vexatious, he made no further requests as regards individual figures, but instead made the request to which this appeal relates.
22. The Council argued that Mr K's request is part of a deliberate strategy to cause disruption or annoyance to Council staff, because of his dissatisfaction with the outcome of the complaints process. It submitted that there was no further information he could be provided with in relation to the care costs in question.

Significant burden, manifestly unreasonable or disproportionate

23. The Council states that it had spent a substantial amount of time dealing with Mr K's information requests. As a result, it held a significant volume of emails and documents which would fall within the scope of his request.
24. The Council provided the Commissioner with a document, detailing all the emails contained with the appeal file for a previous application. The correspondence consisted of 183 emails, 171 of which would fall within scope. The Council stated that a substantial amount of time would be required in assessing and redacting documents for third party personal data, and

legal professional privileged material. The Council believed this exercise would be considered, in the opinion of a reasonable person, to be manifestly unreasonable, given the volume of documents held and the amount of staff time required to provide the information.

All relevant information provided

25. The Council, although acknowledging that Mr K has not made a request for information relating to the handling of his previous information requests, advised the Commissioner that he had previously requested information about care home fees; the Council considers this to be a further attempt to continue dialogue about the matter. It was the view of the Council that, even if Mr K was provided with the information requested, it would be highly unlikely to shed light on, or alter, Mr K's situation as the subject matters in question had already been thoroughly addressed by the relevant complaints and appeals procedures.

Commissioner's conclusion

26. Taking account of the history between the parties, the Commissioner accepts the Council's position that this request was designed to cause disruption or annoyance to the Council. In reaching this conclusion, the Commissioner notes that Mr K's submissions to him centre largely on the discrepancy between the figures he identified (a very small proportion of the whole, as the Council has submitted), rather than the handling of his previous information requests.
27. Although Mr K may (or may not) have a legitimate concern relating to the apparent discrepancy in figures, his request focusses on the Council's actions in relation to the handling of his previous requests.
28. Having considered all relevant submissions, the Commissioner is satisfied that it is reasonable to believe Mr K was asking for this information to continue to press the Council on the underlying issue. The Commissioner is also satisfied that resolution of Mr K's concerns would not be brought any closer by the Council providing a response to this request. The Commissioner accepts that responding to this request would have the effect of prolonging correspondence on matters which appear to have been fully investigated through the processes established for dealing with such issues (or in respect of which, at least, all appropriate processes for investigation and review have been exhausted).
29. For his reasons, the Commissioner accepts that it was reasonable for the Council to conclude that Mr K's request was vexatious, in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr K.

Appeal

Should either Mr K 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

15 October 2018

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.

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