

# Decision Notice



Decision 187/2010 Mr Peter Cherbi and the Scottish Legal Complaints Commission

Whether a request was vexatious

Reference No: 201001589  
Decision Date: 10 November 2010

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## Summary

Mr Cherbi asked the Scottish Legal Complaints Commission (the SLCC) for information relating to alleged threats received by members of staff and other individuals connected to the SLCC, and to other bodies. The SLCC refused to comply with Mr Cherbi's request on the grounds that it was vexatious, in terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mr Cherbi remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SLCC failed to comply with Part 1 (and in particular section 1(1)) of FOISA in refusing to comply with Mr Cherbi's request for information under section 14(1) of FOISA. The Commissioner required the SLCC to respond to Mr Cherbi's request for information in terms of Part 1 of FOISA, other than in terms of section 14(1).

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement) and 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

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1. On 18 June 2010, Mr Cherbi wrote to the SLCC to request information relating to the following statement from a previous decision by the Commissioner (*Decision 101/2010 Peter Cherbi and the Scottish Legal Complaints Commission*):  
  
"The SLCC submitted that disclosure of such information would impact upon the physical or mental health of the individuals concerned as anonymous threats had been received by members of staff and other individuals connected to the SLCC. The SLCC also referred to threats made to other bodies."
2. Mr Cherbi asked for "information relating to these alleged threats received by members of staff and other individuals connected to the SLCC and threats made to other bodies including the identities of those other bodies."



3. On 6 July 2010, the SLCC wrote to Mr Cherbi to ask him to confirm whether he was making the request on his own behalf or on behalf of another, unnamed, person. The SLCC referred to the Court of Session decision in the case of *Glasgow City Council v the Scottish Information Commissioner 2009 CSIH 73* (issued on 30 September 2009) (the Court of Session judgement)<sup>1</sup> and provided a web link to the Commissioner's published guidance on the judgement.
4. Mr Cherbi confirmed (email, 6 July 2010) that he was making the request on his own behalf, as a journalist.
5. On 16 July 2010, the SLCC wrote to Mr Cherbi to advise him that his request was considered to be vexatious within the terms of section 14(1) of FOISA. Accordingly, the SLCC was not obliged to comply with his request.
6. On 19 July 2010, Mr Cherbi wrote to the SLCC to request a review of its response. He stated that he had not requested the information previously, or had any knowledge of the information he was requesting.
7. On 6 August 2010, the SLCC wrote to Mr Cherbi to confirm its decision that his request was vexatious.
8. On the same day (6 August 2010), Mr Cherbi wrote to the Commissioner, stating that he was dissatisfied with the way in which the SLCC had dealt with his request, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. He disputed that his request was vexatious. He noted that in previous decisions the Commissioner had commented that he had seen no evidence of the alleged threats referred to by the SLCC, and argued that it was a matter of public interest whether staff from the SLCC or other bodies had received threats.
9. The application was validated by establishing that Mr Cherbi 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. The case was then allocated to an investigating officer.

## Investigation

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10. On 20 August 2010, the SLCC was notified in writing that an application had been received from Mr Cherbi and was invited to provide comments on the application (as required by section 49(3)(a) of FOISA), along with any evidence or arguments to support the view that Mr Cherbi's request of 1 March 2009 was vexatious in terms of section 14(1) of FOISA.
11. On 11 September 2010, the SLCC provided the Commissioner with its submission in relation to Mr Cherbi's application for a decision.

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<sup>1</sup> <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>



12. The SLCC explained that, in the absence of any statutory definition of “vexatious”, it had relied on sources including the Commissioner’s published guidance on section 14(1) of FOISA<sup>2</sup>.
13. The SLCC understood from the Commissioner’s guidance that the general approach is that a request is vexatious where it:
  - would impose a significant burden on the public body; and
  - does not have a serious purpose of value; and/or
  - is designed to cause disruption or annoyance to the public authority; and/or
  - has the effect of harassing the public authority; and/or
  - would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
14. The SLCC accepted that Mr Cherbi’s request had a serious purpose, but provided a submission which argued each of the other bullet points above applied to his request. The SLCC’s arguments are considered in the next section of this Decision Notice.

## Commissioner’s analysis and findings

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15. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Cherbi and the SLCC and is satisfied that no matter of relevance has been overlooked.

### Section 14(1) of FOISA

16. Section 14(1) of FOISA states that the general right of access to information “does not oblige a Scottish public authority to comply with a request for information if the request is vexatious”.
17. As previously noted, the Commissioner has published guidance on the application of section 14(1) of FOISA. This states:

*“There is no definition of “vexatious” in FOISA. The Scottish Parliament acknowledged that the term “vexatious” was well-established in law and opted to give the Commissioner latitude to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.”*

The Commissioner’s general approach is set out in paragraph 13 above. The Commissioner has gone on to consider the SLCC’s submission in relation to each of the points identified by the SLCC as being applicable in this case.

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<sup>2</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.asp>



18. In summary, the SLCC's arguments in support of the application of section 14(1) of FOISA were as follows:
- the cumulative effect of the 37 requests made by Mr Cherbi had been to impose a significant burden on the SLCC, particularly as some of those requests were very broad ranging in scope
  - the evidence on Mr Cherbi's blog suggested he was heading a campaign to keep the SLCC busy with FOISA requests
  - the effect of the requests, cumulatively, was to harass the SLCC and its staff, particularly when considered in the context of comments posted on Mr Cherbi's blog and in the use of an image of the SLCC logo with blood spattered on it
  - collectively, these points demonstrated that the request, in the opinion of a reasonable person, could be considered to be manifestly unreasonable.

*Significant burden*

19. In terms of the burden posed by Mr Cherbi's request, the SLCC argued that this was significant, in terms of the amount of information they would potentially have to read through and the time required to analyse it. The SLCC considered that this would include information on Mr Cherbi's blog and website, which changed frequently.
20. The Commissioner does not accept this argument, as presented. Mr Cherbi's request was for information about threats referred to in the submission the SLCC had provided the Commissioner for an earlier case. The Commissioner does not accept that it is likely to be unduly burdensome to retrieve information to which the SLCC referred in its previous submission (and presumably, therefore, considered to be of relevance to its position in relation to that particular case).
21. The SLCC has referred to information on Mr Cherbi's blog and website. Such information is already available to Mr Cherbi and as such would be exempt from disclosure under section 25 of FOISA (Information otherwise accessible). In addition, it is understood that the SLCC holds printouts of information from Mr Cherbi's blog and website. It is conceivable that such information might fall within the scope of Mr Cherbi's current request, but there is no reason why the SLCC would have to carry out further searches of the contents of Mr Cherbi's website and blog in order to respond to his request for information held by the SLCC.
22. However, the SLCC has also argued that even if the situation outlined in paragraph 19 did not exist, the cumulative effect of Mr Cherbi's requests to the SLCC would still constitute a significant burden. Mr Cherbi had made 37 requests in the space of 21 months, and the SLCC considered that, given its limited resources, this was excessive and had an impact on its ability to deliver core business. The SLCC believed it should also be borne in mind that it was not publicly funded. The SLCC submitted that, in real terms, Mr Cherbi's requests had cost in excess of £20,000 in staff time (these figures were based on actual average hourly costs of staff time rather than the £15 per hour maximum permitted under the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations)).



23. The Commissioner does not accept that a request should be deemed vexatious simply on the grounds of the projected cost of compliance. In circumstances where the cost of compliance with a single request is more than the £600 limit laid down in the Fees Regulations, a Scottish public authority is not required to comply with the request in line with section 12 of FOISA (Excessive cost of compliance). The Commissioner notes that if the £20,000 cost cited by the SLCC is divided equally among the 37 requests made by Mr Cherbi, the cost of complying with each request is less than £600, even calculated using actual average hourly costs of staff time rather than the £15 hourly maximum permitted by the Fees Regulations.
24. There is currently no provision for Scottish public authorities to aggregate the cost of compliance for more than one request from the same person. The question remains whether the cumulative cost of compliance with a series of requests from a single applicant can amount to a significant burden on a Scottish public authority, to the point where the next request received becomes “vexatious” in terms of section 14(1) of FOISA. The Commissioner has previously stated that the cumulative impact of an individual's information requests might on occasion justify a decision to treat further requests from the same requestor as vexatious for the purposes of FOISA. He accepts that this may include the cumulative financial impact of an individual's requests.
25. However, the £600 limit set by the Fees Regulations shows that public authorities responding to information requests should expect to bear costs up to this level in relation to each request. Neither FOISA nor the associated Fees Regulations limit the number of requests which can be made by any one person. While 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, in this case Mr Cherbi's 37 requests have been spread over a period of nearly two years. In the circumstances, the Commissioner does not accept that the costs and associated administrative demands accumulated in dealing with his requests have (so far) amounted to an unreasonable burden upon the SLCC.
26. The SLCC found that the way in which Mr Cherbi framed his requests added to their burdensome effect, in that he regularly framed his requests in very broad terms such as “all material/information and discussions” on a particular subject. The SLCC made reference to the Commissioner's *Decision 074/2008 Mr David Emslie and the Scottish Ministers*, in which the Commissioner noted that Mr Emslie's requests repeatedly referred to “all” in relation to correspondence or documents, and concluded that complying with such requests would impose a significant burden.
27. The Commissioner is sympathetic to this argument in principle, but takes the view that, in the case currently under consideration, Mr Cherbi's information request related to a set of information which is capable of being narrowly defined (information about threats made to the SLCC's staff, individuals connected to the SLCC, and other bodies). He therefore does not accept the point made by the SLCC as it relates to the current case, but would advise Mr Cherbi, if intending to make further requests, to be aware of his views as expressed in *Decision 074/2008*.



*Request is designed to cause disruption or annoyance*

28. The SLCC made reference to Mr Cherbi's blog and website, highlighting some comments which appeared to indicate that Mr Cherbi was heading a campaign to keep the SLCC busy with FOI requests.
29. The Commissioner notes that some of the comments to which the SLCC has referred were posted by anonymous individuals rather than by Mr Cherbi. The Commissioner believes it would be unreasonable to assume that the views expressed by such commentators are necessarily shared by Mr Cherbi.
30. The Commissioner believes it is evident from Mr Cherbi's website that he campaigns on a range of issues relating to legal services in Scotland, which has led him to make information requests to a number of Scottish public authorities, including the SLCC. Having considered the content of the website, therefore, he does not accept that the request currently under consideration, or the general pattern of Mr Cherbi's previous requests, indicates that Mr Cherbi's purpose is to cause disruption or annoyance rather than to obtain information.

*Request has the effect of harassing the SLCC*

31. The SLCC did not accuse Mr Cherbi of intentional harassment, but it took the view that his requests had the effect of harassing the SLCC by deflecting staff time from core business because of the number of requests made, the way in which requests were expressed, and the volume of information which required to be reviewed.
32. The SLCC referred again to the Commissioner's *Decision 074/2008*, in which he noted that the applicant's requests overlapped significantly with previous requests which had been responded to. In that case, the applicant was requesting information that had already been the subject of an information request and had been supplied, or was the subject of a previous decision by the Commissioner, and the Commissioner had found that this could, in certain circumstances, be viewed as having the effect of harassing a public authority.
33. The SLCC considered that Mr Cherbi's request, as described in paragraphs 1 and 2 of this Decision Notice, was essentially asking for information that had been provided to the Commissioner during the investigation of another case involving Mr Cherbi and the SLCC. The SLCC submitted that, although the Commissioner's decision in that case was not in respect of the set of information requested in the case currently under consideration, it was nonetheless information which had been considered by the Commissioner, and in relation to which the Commissioner had previously issued a decision.



34. The Commissioner takes the view that it was reasonable for Mr Cherbi, or any other person reading the Decision Notice in *Decision 101/2010*, to note the reference to information about threats received by the SLCC, and to make an information request in order to learn more about this matter. If the SLCC had then decided to withhold the information it held under one or more of the exemptions in FOISA, that decision could have been referred to the Commissioner, who would then have decided whether the information should be disclosed. However, it cannot be argued that the disclosure of the information forming the subject matter of this present case is something which the Commissioner has already considered or decided upon.
35. The Commissioner does not dispute that Mr Cherbi's request of 18 June 2010 was for information that had been provided to the Commissioner during the investigation of another application for a decision. However, that earlier investigation did not (and was not required to) consider whether the information now in question should be disclosed under FOISA, and the Commissioner's decision in that case did not concern the information now requested (the request in that case was for copies of the minutes of all SLCC meetings up to 28 November 2008). In that respect, the Commissioner's decision in the previous case is irrelevant to the current case. The Commissioner does not, therefore, accept the argument put forward by the SLCC on this point.
36. The SLCC also drew the Commissioner's attention to the effect of the language used on Mr Cherbi's website. While the SLCC did not accuse Mr Cherbi of using inappropriate language in his requests, they noted that some of the comments contributed to his blog (for which he was understood to have editorial responsibility) contained such language and were threatening in tone. They submitted that such comments had the effect of harassing the SLCC staff when a request was received by the SLCC, because the pattern of postings on his website suggested that Mr Cherbi was likely to post the correspondence on the website, inciting further comments with similar inappropriate tone and language.
37. The SLCC drew a distinction between the harassing effect of the content of the request, and the harassing effect of the comments and other material appearing on the website following receipt of the SLCC's response. The SLCC considered the cumulative effect of the requests to be harassing staff, while the content of Mr Cherbi's current request in particular was likely to result in a reaction that would add to that harassment when it was posted to his website. The SLCC considered that in both cases the harassment was manifestly unreasonable. The SLCC also referred to the harassing effect of a blood-spattered SLCC logo which had appeared on Mr Cherbi's website.



38. The issue may be whether the very nature of the website and its tone constitutes harassment, as opposed to the effect of gathering and subsequently posting information on the website or any consequential action from the disclosure of information on the site. The Commissioner notes that it is relatively common practice for information released under FOISA to appear online, in personal blogs or websites. Even on national newspaper websites, the capacity exists for third parties to submit views which may reasonably be thought by some, including the subjects of such views, to be offensive or to constitute a form of harassment by those posting them. The Commissioner recognises in particular that an authority or its staff may feel aggrieved at being subject to what they may believe to be unfair, misleading or incorrect views.
39. However, after reading through much of the material on Mr Cherbi's website relating to FOI or the SLCC, the Commissioner has not identified any content about the SLCC or its staff which encourages harassment or is explicitly threatening, although he accepts that much of it is strongly critical and even hostile in tone, and the use of a blood-spattered version of the SLCC logo is unpleasant and could be upsetting. Against this, he notes that, on at least one occasion, Mr Cherbi has clearly exercised his editorial judgement and withheld comments posted by others "due to their strength".<sup>3</sup> In the circumstances of this case, therefore, the Commissioner does not find the SLCC to be well founded in its apprehensions that the likely use to which the information would be put would constitute harassment.
40. The Commissioner notes in passing that in relation to the information currently requested, the SLCC's argument appears to rest in part on the view that disclosure and subsequent publication of this information will occur, although (as far as the Commissioner is aware) no decision has yet been taken on whether this information is exempt from disclosure under FOISA.
41. The Commissioner has also considered the SLCC's argument that the cumulative effect of Mr Cherbi's requests is harassing staff, through a combination of the number of requests made and the way they are expressed, which deflects staff time from core business. As noted previously, however, the Commissioner does not accept that Mr Cherbi's requests have yet reached a volume or frequency which could be termed vexatious. Nor has the SLCC shown that Mr Cherbi's requests have over-lapped to a significant degree or have re-visited matters already answered or established in earlier correspondence. In all the circumstances, therefore, the Commissioner does not accept the SLCC's arguments on the question of harassment.

*Request is manifestly unreasonable or disproportionate*

42. The SLCC submitted that, for the reasons set out above, Mr Cherbi's request would, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate. The SLCC also argued that the cumulative effect of the serial nature of Mr Cherbi's requests created a context which demonstrated an unreasonable and vexatious intent.

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<sup>3</sup> <http://petercherbi.blogspot.com/2009/07/suicides-illness-broken-families-and.html>



43. The Commissioner does not accept that Mr Cherbi's request should be considered manifestly unreasonable or disproportionate, for the reasons given in the course of this Decision Notice. He is not persuaded that the SLCC has demonstrated in this case that Mr Cherbi's requests are serial in nature, or that, taken together, they show him to have had any vexatious intent in making his requests.

### Conclusion

44. The Commissioner recognises that factors such as the volume of previous requests, the nature of the information requested, the manner in which the request is expressed or the use to which information has been or is likely to be put, can mean that a request is vexatious. However in this instance, for the reasons given above, the Commissioner finds that the SLCC was not entitled to refuse to comply with Mr Cherbi's request under section 14(1) of FOISA. He requires the SLCC to comply with the request, either by providing the information requested or, if it considers that the information is exempt information, by issuing a refusal notice in terms of section 16 of FOISA (or by dealing with it in some other way which is permitted by Part 1 of FOISA).

### DECISION

The Commissioner finds that the Scottish Legal Complaints Commission (the SLCC) failed to comply with Part 1 (and in particular section 1(1)) of FOISA in refusing to comply with Mr Cherbi's request for information under section 14(1) of FOISA. The Commissioner requires the SLCC to respond to Mr Cherbi's request for information in terms of Part 1 of FOISA, other than in terms of section 14(1), by 5 January 2010.

### Appeal

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Should either Mr Cherbi 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**  
**10 November 2010**



## Appendix

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### 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.

...