

# Decision Notice



Decision 219/2011 Mr Peter Cherbi and the Scottish Legal Complaints Commission

Whether requests vexatious

Reference No: 201101570 and 201101573  
Decision Date: 8 November 2011

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**Kevin Dunion**  
Scottish Information Commissioner

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## Summary

Mr Cherbi requested from the Scottish Legal Complaints Commission (the SLCC) information relative to compensation payments and hospitality offered. The SLCC responded to the effect that the information requested was intended for publication and relied upon section 27(1)(a)(i) of FOISA. Following reviews, as a result of which the SLCC informed Mr Cherbi that it considered his requests to be vexatious in terms of section 14(1) of FOISA, Mr Cherbi remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, during which the SLCC withdrew its reliance upon section 14(1), the Commissioner found that the SLCC had failed to deal with Mr Cherbi's requests for information in accordance with Part 1 of FOISA, on the basis that Mr Cherbi's requests were not vexatious 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 5 July 2011, Mr Cherbi wrote to the SLCC requesting the total amount of money the SLCC has awarded (and total number of awards) in compensation to claimants.
2. On 8 July 2011, the SLCC wrote to Mr Cherbi seeking clarification of his request, indicating that it had assumed he was asking for the total number of settlements agreed and determinations (decisions on complaints) where the practitioner or firm was required to pay compensation in relation to complaints about inadequate Professional Service, and the total value of that compensation. It asked him to confirm that this was correct.
3. On 8 July 2011, Mr Cherbi confirmed that the SLCC's assumption was correct, while stating that he would expect each award to be listed by amount as well as a final total.



4. The SLCC responded to the request on 1 August 2011. Mr Cherbi was informed that, as the SLCC intended to publish the requested information (in its annual report) within 12 weeks, it was withholding the information under section 27(1)(a) of FOISA. The SLCC considered this reasonable, as it would enable it to publish the information in context and in conjunction with other information about complaints. It explained that the SLCC operational year ran from 1 July to 30 June and the information related to year end data, which was in the process of being checked for accuracy and completeness as part of the preparation of annual report information.
5. On 1 August 2011, Mr Cherbi, wrote to the SLCC requesting a review of its decision. He questioned the relevance of the SLCC's response, noting that he had requested information which went back further than could reasonably be expected to be included in an annual report. He also pointed out that the information requested had never been included in any of the SLCC's previous annual reports. He added that the SLCC's annual reports had been delayed from planned publication dates in the past and therefore it might well be more than 12 weeks before the latest one was published.
6. The SLCC notified Mr Cherbi of the outcome of its review on 25 August 2011. The SLCC responded to the effect that it considered Mr Cherbi's request to be vexatious in terms of section 14 of FOISA. It explained that it had considered the request to impose a significant burden on the SLCC, claiming that it considered Mr Cherbi's overall actions to have the effect of harassing the authority.
7. On 21 July 2011, Mr Cherbi wrote to the SLCC, requesting information on the kinds of hospitality (and its worth or value) the SLCC have offered or provided to others.
8. The SLCC responded on 17 August 2011, again in terms of section 27(1)(a) of FOISA. It stated that the information was intended to be published in compliance with the Public Records (Scotland) Bill: at the time of writing, publication was expected within 12 weeks. (The Commissioner understands that the SLCC may have intended to refer to the Public Services Reform (Scotland) Act 2010.) The SLCC stated that it considered withholding the information to be reasonable, as it would enable it to publish the information in context and in conjunction with other information. It also indicated that as the information related to accounting data, it was in the process of being checked for accuracy.
9. On 17 August 2011, Mr Cherbi wrote to the SLCC, requesting a review of its decision. He stated he was not satisfied with the basis on which the information was withheld, as the schedule for the Public Records Bill (Scotland) was not absolute and he considered it to be in the public interest for this information to be released under FOI legislation without delays and to be reported by the media upon its release. He noted that the SLCC had already published its register of hospitality received, so there should be no delay in publishing hospitality offered or provided by the SLCC.
10. The SLCC notified Mr Cherbi of the outcome of its review on 25 August 2011, informing him that it was also treating this request as vexatious in terms of section 14(1) of FOISA. Its reasons for this were similar to those advanced in relation to the request of 5 July 2011.



11. On 25 August 2011, Mr Cherbi wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of both of the SLCC's reviews and in each case applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
12. The applications were validated by establishing that, in each case, 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 Commissioner decided that the applications should be conjoined, with a view to making a single decision. The case was then allocated to an investigating officer.

## Investigation

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13. On 14 September 2011, the investigating officer notified the SLCC in writing that the applications had been received from Mr Cherbi, giving it an opportunity to provide comments on them (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the SLCC was asked to explain why it had considered Mr Cherbi's requests to be vexatious in terms of section 14 of FOISA.
14. The SLCC responded to the effect that, having read through Mr Cherbi's case files, and in light of discussions with the investigating officer, it had conducted reviews of both requests and responded to Mr Cherbi other than in terms of section 14(1) of FOISA. The SLCC intimated that it was no longer claiming that section 14(1) applied to the requests.
15. Mr Cherbi confirmed receipt of the responses to review which were otherwise than under section 14(1) of FOISA. However, he continued to require a decision from the Commissioner.
16. The relevant submissions obtained from Mr Cherbi and the SLCC will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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17. In coming to a decision on this matter, the Commissioner has considered all of 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) – vexatious requests

18. Section 14(1) of FOISA does not oblige a Scottish public authority to comply with a request for information under section 1(1) (which confers a general entitlement to information held by such authorities) if the request is vexatious.

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19. If the SLCC had been correct in its application of section 14(1), it would have been under no obligation to comply with Mr Cherbi's requests (although it would have remained under an obligation to, for example, notify Mr Cherbi that it was not complying with his request and why).
20. In this case, the Commissioner notes that the SLCC is no longer claiming that it was entitled to refuse to comply with the requests under section 14(1) of FOISA. In the circumstances, the Commissioner has no option but to find that it breached section 1(1) of FOISA in refusing to comply with the requests under that provision. While he does not consider it necessary to examine its reasons for doing so in detail, he would note that in both cases it appears to have attached some significance to the relatively short time which elapsed between the issue of its response to Mr Cherbi and his request for a review. Although he will (of course) consider each case on its merits, it is not apparent to the Commissioner why this factor might reasonably be considered relevant to a determination that a request is vexatious.
21. Given that the SLCC has provided responses to Mr Cherbi's requests for review otherwise than in terms of section 14(1) of FOISA, the Commissioner does not require the SLCC to take any action.

## 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 by considering Mr Cherbi's requests for information to be vexatious and, in terms of section 14(1) of FOISA, refusing to comply with them. Given that, during the investigation, the SLCC responded to Mr Cherbi's requests for review other than in terms of section 14(1) of FOISA, he does not require the SLCC to take any action.

## 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.

**Margaret Keyse**  
**Head of Enforcement**  
**8 November 2011**



## 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.

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- (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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