

Decision Notice



Decision 268/2013 Mr H A Cook and Social Care and Social Work
Improvement Scotland

Repeated request

Reference No: 201301639
Decision Date: 26 November 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 4 December 2012, Mr Cook asked Social Care and Social Work Improvement Scotland (SCSWIS) for the dates when two named Care Commission Officers were awarded their Regulation of Care Awards. SCSWIS refused the request under section 14(2) of FOISA, on the basis that it was repeated. Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(2) (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 4 December 2012, Mr Cook wrote to SCSWIS requesting the dates on which two named Care Commission Officers (referred to in this decision as Officer A and Officer B) were awarded their respective ROCA (Regulation of Care Award) qualifications.
2. SCSWIS responded on 23 January 2013 and, in terms of section 14(2) of FOISA, refused the requests as repeated requests. SCSWIS referred to its responses to Mr Cook's previous information requests, also on the subject of individuals' qualifications.
3. On 29 January 2013, Mr Cook wrote to SCSWIS requesting a review of its decision. He provided reasons why he believed the information should be disclosed, and again asked SCSWIS to do this.
4. SCSWIS notified Mr Cook of the outcome of its review on 13 February 2013, upholding its application of section 14(2) of FOISA.
5. On 12 July 2013, the Commissioner received an application from Mr Cook, in which he stated that he was dissatisfied with the outcome of SCSWIS's review and was applying to the Commissioner for a decision in terms of section 47(1) of FOISA



6. The application was validated by establishing that Mr Cook made requests for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to those requests. The case was then allocated to an investigating officer.

Investigation

7. The investigating officer subsequently contacted SCSWIS, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, SCSWIS was asked to justify its reliance on section 14(2) of FOISA.

Commissioner's analysis and findings

8. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by Mr Cook and SCSWIS. She is satisfied that no matter of relevance has been overlooked.
9. Mr Cook expressed his concern, both to SCSWIS and the Commissioner, that the dates of the qualifications were being withheld. He believed they should be disclosed.
10. The Commissioner will consider whether the request of 4 December 2012 was a repeated request in terms of section 14(2) of FOISA. Only if she concluded that it was not would she be able to require SCSWIS to respond to Mr Cook otherwise in terms of Part 1 of FOISA.

Section 14(2) - Repeated request

11. SCSWIS confirmed that it wished to rely on section 14(2) of FOISA. Section 14(2) provides:
Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.
12. If section 14(2) applies to a request, the applicant (in this case Mr Cook) is not entitled to be given the requested information.
13. To be repeated, the initial and subsequent requests must have been made by the same person. This is not disputed and the Commissioner is satisfied that they were both made by Mr Cook.



14. For section 14(2) of FOISA, the following need to be considered:
- Whether Mr Cook's previous request was identical or substantially similar to the request under consideration here;
 - Whether SCSWIS complied with Mr Cook's previous request; and, if so,
 - Whether there was a reasonable period of time between the submission of the first request and the submission of the subsequent request.

Was the previous request identical or substantially similar to the first?

15. A request will be identical if both its wording and scope match that of a previous request.
16. SCSWIS referred the Commissioner to three previous requests made by Mr Cook.
17. Firstly, there was a request to which the Care Commission (to which SCSWIS is the statutory successor) responded on 4 May 2009. This included a request for:
- A copy of all of the formal child care qualifications that each of the Care Commission officers who are based at the Central West Region of the Care Commission, presently hold.*
18. SCSWIS confirmed that Officers A and B were both employed within Central West Region at the time the 2009 request was dealt with. Therefore, the qualifications of both officers would have been covered by that request.
19. SCSWIS also confirmed that it responded to subsequent requests (between that of 2009 and that of 4 December 2012) for information related to these officers' qualifications as repeated, in terms of section 14(2) of FOISA.
20. Having considered SCSWIS's submissions and supporting evidence, the Commissioner considers it reasonable to conclude that the request of 2009, to which the SCSWIS responded on 4 May 2009, was substantially similar to the request of 4 December 2012. She is satisfied that SCSWIS could not have responded fully to that previous request without disclosing the dates of the relevant qualifications.

Was the previous request complied with?

21. SCSWIS supplied the investigating officer with evidence of how it had dealt with Mr Cook's previous requests.
22. SCSWIS's response to Mr Cook of 4 May 2009 withheld details of the relevant qualifications under section 38 of FOISA (Personal information).
23. SCSWIS's initial response in 2009 notified Mr Cook how to challenge its decision if he were dissatisfied. SCSWIS confirmed that it had no record of Mr Cook requesting a review for this, or any other, previous request. As far as the Commissioner is aware, therefore, Mr Cook did not challenge that decision of 2009 within the timescales allowed by FOISA.



24. In the absence of any review being sought at the time, the Commissioner is unable to conclude that SCSWIS's response of 4 May 2009 did not comply with Mr Cook's information request, in terms of section 14(2). The Commissioner therefore accepts that the SCSWIS complied with Mr Cook's previous request for the information.

Had a reasonable period of time passed?

25. There is no attempt to define "a reasonable period of time" in the legislation, because that will depend on the circumstances of the case. Consideration should be given to two questions which will help to assess whether a reasonable period of time has elapsed. These are:
- Has the information changed?
 - Have the circumstances changed?
26. SCSWIS has confirmed to Mr Cook on more than one occasion that Officers A and B hold the relevant qualifications. It submitted to the Commissioner that this remained the case. In the circumstances, the Commissioner accepts that the information has not changed in this case.
27. The Commissioner considers that the simple passage of time between requests may eventually be sufficient to allow the conclusion that a reasonable period of time has passed between two identical or substantially similar requests, irrespective of whether there has been any other change in the circumstances surrounding the request.
28. In this case, however, having taken into account the static nature of the information, the Commissioner does not accept that the period in question is sufficient to find that the passage of time alone means that a reasonable period passed between the two requests.
29. In all the circumstances, the Commissioner finds that SCSWIS was entitled to refuse to comply with Mr Cook's request on the grounds that section 14(2) applied.

DECISION

The Commissioner finds that Social Care and Social Work Improvement Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Cook on 4 December 2012.



Appeal

Should either Mr Cook or Social Care and Social Work Improvement Scotland 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
26 November 2013



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

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.