

Decision Notice

Decision 186/2014 Mr and Mrs X and Perth and Kinross Council

Whether complaints had been made

Reference No: 201400625

Decision Date: 27 August 2014



Scottish Information
Commissioner

Summary

On 13 January 2014, Mr and Mrs X (the couple) asked Perth and Kinross Council (the Council) about a complaints file. The Council provided some information, but the couple sought a review, querying the information in the response. The Council carried out a review and substituted its response, informing the couple it considered their request to be vexatious.

The Commissioner did not accept that the couple's request was vexatious and required the Council to respond to the couple other than in line with section 14(1).

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 21(3)(c) and (4)(b) (Review by Scottish public authority)

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. The Council dealt with a neighbour dispute involving the couple and their neighbours. At one point, the Council sought legal advice about using the ASBO process in relation to both parties to the dispute. The couple complained to the Scottish Public Services Ombudsman (the SPSO) as they had not been made aware of any complaints about them. The SPSO investigated matters and found in favour of the couple on three of the four complaints it investigated.
2. On 13 January 2014, the couple made an information request to the Council on the advice of the SPSO. The Council asked for clarification of the request, which can be summarised as:
 - (i) is the Council's case file (involving the couple) open or closed?
 - (ii) had complaints been received about the couple at a particular time?
3. The Council responded to the request on 11 February 2014.
 - (i) To part (i), the Council answered "Closed" and
 - (ii) to part (ii) the Council answered "No".
4. The couple were satisfied with the response to part (i) but not to part (ii). On 17 February 2014, they wrote to the Council requesting a review of its response to part (ii) as they did not believe the response could be accurate.
5. The Council notified the couple of the outcome of its review on 27 February 2014. It told them that it now considered the Couple's request as a whole to be vexatious in terms of section 14(1) of FOISA. (Under section 21(4)(b), a public authority, when carrying out a review, may substitute the decision it originally made in replying to a request.)

6. On 18 March 2014, the couple wrote to the Commissioner, stating that they were dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that the Couple made a request 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 that request. The case was then allocated to an investigating officer.

Investigation

8. On 16 May 2014, the Council was notified in writing that an application had been received from the Couple and was given an opportunity to provide comments, as required by section 49(3)(a) of FOISA.
9. The Council was asked to verify the accuracy of its responses and to justify its reliance on section 14(1) of FOISA.
10. On 6 June 2014, during the investigation, the Council emailed the couple with an explanation of the handling of their information request and of the Council's reasoning at the time it sought legal advice.
11. The Council provided the Commissioner with its submissions on 6 June 2014, confirming why it was continuing to rely upon section 14(1) of FOISA. On 19 June 2014, the investigating officer gave the Council an opportunity to make additional submissions, but it declined to do so. The couple were also invited to comment further during the investigation in light of the Council's further explanations, which they did.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both the Couple and the Council. She is satisfied that no matter of relevance has been overlooked.

Section 14(1) Vexatious or repeated requests

13. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.
14. FOISA does not define the word "vexatious". The Commissioner's general interpretation, as set out in her guidance on section 14(1)¹, is that the following factors are relevant when considering whether a request is vexatious. It:
 - 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 to be manifestly unreasonable or disproportionate.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.aspx>

15. 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 Commissioner also recognises that, depending on the circumstances, other factors may also be relevant. 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 Council’s submissions

16. The Council considered that the couple’s request was an attempt to pursue a matter already covered by a separate complaints process (which the SPSO had now ruled on). In other words, it looked at the context of the couple’s request and considered it to be a continuation of a separate complaints process. On this basis, the Council considered the request could not have a serious purpose or value as the complaint process in question had already been concluded.
17. In support of its position, the Council referred to the Commissioner’s *Decision 145/2014 Mr B and Aberdeenshire Council*² and to the Commissioner’s own guidance on section 14, both of which it considered relevant in this case. It commented that the two factors to consider here were that:
 - a) a request may be vexatious if there is no additional information that can be provided because all relevant information has already been disclosed; or
 - b) it is unlikely that the additional information would shed light on, or alter the applicant’s situation (because the subject in question has already been thoroughly addressed through the relevant complaints or appeals procedure).
18. In respect of point a), the Council suggested that the couple already had the answer. It drew attention to the SPSO’s decision letter to the couple. It suggested that this letter already informed the couple of the matters raised in their request. Consequently, the Council considered that point b) also applied here as the couple’s request was not capable of shedding any more light on their situation. They argued that the subject had already been thoroughly addressed by the SPSO complaints procedure.

The Couple’ submissions

19. The couple not only wished to verify that the Council had closed its operational file on them (as they explained in their clarification email to the Council), they were also interested in finding out why the Council considered taking ASBO proceedings against them. The couple contend that it was the SPSO which prompted them to make the request to the Council after the complaints process was completed, because the SPSO was unable to tell them what they wished to know about the Council’s operational file and intentions (the couple provided the investigating officer with a copy of a letter from the SPSO suggesting that they make the request to the Council).
20. The Couple argued that it was not unreasonable to make such a request, given that the Council had considered legal action against them without, to their knowledge, complaints

² <http://www.itspubliknowledge.info/ApplicationsandDecisions/Decisions/2012/201101578.aspx>

having been made about them. They stated that they had no desire to stretch the Council's resources or resurrect a closed case. Their concerns were twofold:

- (i) firstly, to ascertain why the Council informed the SPSO that they sought legal advice about possible ASBO proceedings (if no complaints had been made about them) and
- (ii) secondly, to understand why the Council considered their request to be vexatious.

Are any "vexatious" factors in evidence?

21. The Council did not think that the couple's request had a serious purpose or value when viewed within the context of the SPSO complaints process, arguing that the couple's request would not provide them with new information. That said, the Commissioner notes that the Council wrote to the couple during the investigation detailing its position on the operational file and responding to the point regarding legal action. This suggests at least a degree of recognition by the Council that the couple would benefit from some clarity on these points.
22. Turning to the SPSO letter which the Council referred to in its submissions, the Commissioner notes that the SPSO stated it could not investigate matters beyond a certain date, despite the couple informing the SPSO that there were continuing problems. It is therefore clear that, even after the SPSO had concluded its investigations, the couple remained concerned that legal action would be taken by the Council. It is also clear that it was the SPSO who suggested to the couple that they write to the Council for the information they were seeking. The Commissioner can understand why the couple thought a request to the Council would help establish what legal action, if any, could be taken in future.
23. It is apparent that the Council viewed the couple's information request in the context of a completed complaints process. However, the Council has not demonstrated that it took full account of the couple's situation when they made their request. It is reasonable to conclude from the request for a review that the couple remained concerned about the possibility of legal action against them and whether information held by the Council in this respect was accurate. The Council has not provided any evidence that it considered this. Consequently, the Commissioner is not persuaded by the Council's arguments that the request would not shed further light on matters for the couple.
24. Having considered all the circumstances of this case, the Commissioner is not satisfied that the Council has demonstrated that the couple's request lacked serious purpose or value. She appreciates there may have been a degree of frustration on the Council's part in trying to draw a line under the complaint process, but the Commissioner does not believe that this was sufficient to make the request vexatious.
25. The Commissioner finds that the Council was wrong to conclude that it was not obliged to comply with the couple's request on the basis that it was vexatious. She requires the Council to carry out a review in respect of the couple's request and to respond to them otherwise than under section 14(1). In other words, the outcome of the review should be that the Council substitutes a different decision for its decision that the request was vexatious, in accordance with section 21(4)(b) of FOISA.

Validity of the requirement for review

26. During the investigation, the Council appeared to suggest that the couple's requirement for review was not valid and that, instead of carrying out a review, it should have treated the requirement for review as a new request or could have sought "a valid reason for the review" from the Couple. The Commissioner does not agree. The couple's requirement for review

complied with section 20(3)(c) of FOISA: the Couple made it clear that their requirement for review related to their original request and set out their dissatisfaction with the response they had received to that request. The Commissioner is therefore satisfied that the only option to the Council at that stage was to respond to the requirement for review.

Decision

The Commissioner finds that Perth and Kinross Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr and Mrs X (the couple). She finds that the Council was not entitled to refuse to comply with the request on the basis that it was vexatious in terms of section 14(1) of FOISA.

She therefore requires the Council to respond to the couple's requirement for review, in terms of section 21(4)(b) of FOISA, otherwise than by concluding that the request is vexatious, by 14 October 2014.

Appeal

Should either Mr and Mrs X 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.

Enforcement

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Rosemary Agnew
Scottish Information Commissioner
27 August 2014

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

- (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

...

- (3) A requirement for review must –

...

- (c) specify –

- (i) the request for information to which the requirement for review relates; and
- (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).

- (4) The authority may, as respects the request for information to which the requirement relates –

...

- (b) substitute for any such decision a different decision; or

...

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