

Decision Notice

Decision 032/2020: The Applicant and the University of the Highlands and Islands

Whether a request was vexatious

Reference No: 201900917

Decision Date: 7 February 2020



Scottish Information
Commissioner

Summary

The University refused to respond to a request on the basis that it was vexatious.

The Commissioner investigated, but was not satisfied that the University had demonstrated that the request was vexatious. He required the University to respond otherwise than in terms of section 14(1) of FOISA.

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 Appendices form part of this decision.

Background

1. On 16 March 2019, the Applicant made a request for information to the University of the Highlands and Islands (the University). She asked for all documentation relating to the educational provision of the []. (The request is set out in full in Appendix 2.)
2. The University responded on 9 April 2019. In its response, the University gave the Applicant notice that it did not hold any QAA reports, but provided her with other information she had requested.
3. On 16 and 24 April 2019, the Applicant wrote to the University requesting a review of its decision on the basis that, in her view, the University had failed to provide her with all of the information falling within the scope of her request. She highlighted the information which she considered she had not been provided with and made a number of new information requests.
4. The University notified the Applicant of the outcome of its review on 9 May 2019. It considered the Applicant's request to be vexatious, in terms of section 14(1) of FOISA, and it provided the Applicant with its reasons for reaching this conclusion.
5. On 4 June 2019, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the University's review because she did not believe her request was vexatious.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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.
7. On 17 July 2019, the University was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The University was invited to comment on this application and to answer specific questions, focusing on its application of section 14(1) of FOISA.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the submissions, or parts of submissions, made to him by both the Applicant and the University. He is satisfied that no matter of relevance has been overlooked.

Section 14(1) of FOISA – Vexatious or repeated requests

10. 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.
11. FOISA does not define the word "vexatious". The Commissioner's general approach, 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. These are that the request:
- (i) would impose a significant burden on the public body
 - (ii) does not have a serious purpose or value
 - (iii) is designed to cause disruption or annoyance to the public authority
 - (iv) has the effect of harassing the public authority
 - (v) would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
12. 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 circumstances into account. 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 Applicant's submissions

13. In submissions to the Commissioner, the Applicant explained that she had asked the University to carry out a review as she did not consider that she had received a complete response to her information request. She did not accept that her request (or request for review) was vexatious. In its review outcome, the University had told her that compliance with the request would cost too much money, but she did not accept this either. She commented that the University had not given her any advice or assistance about revising her request in order to reduce the cost of compliance.
14. The Applicant argued that the information she had requested should be easily accessible, if the University had been following its own quality procedures correctly. She disputed the University's view that she was only seeking information to pursue an argument with the

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

University. She explained that her intention was only to get clear information and to see that the appropriate quality processes had been followed (or not). The Applicant submitted that some of the University's claims for the course do not seem to be accurate and students have had a poor experience. The Applicant contended that her information request was an attempt to obtain written evidence to demonstrate that student concerns about the course were justified.

The University's submissions

15. In response to the Applicant's request for review, the University stated that;

"...it is reasonable to conclude on the basis of your previous dealing with the University and because you have previously been provided with a significant amount of information in relation to your requests that your purpose for seeking additional information is actually to pursue an argument with the institution and not to obtain further information."

16. The University went on to state:

"Furthermore, it is apparent from the review that the provision of information has created a significant burden on resources and has impacted upon the institutions capacity to progress core activities including supporting other students. Additionally, the University believes that the provision of additional information would not shed light on, or alter, your current situation in any way because the subject in question has already been thoroughly addressed through the University's response to FOI 031 and through other procedures and channels."

17. In submissions to the Commissioner, the University stated that the Applicant's purpose for seeking additional information was to pursue an argument with the institution rather than to obtain further information. When asked how it had reaching this view, the University explained that it was partly because it had provided a comprehensive response to the original information request, and partly because the requester was already known to its staff.

18. The University explained that the Applicant had made a number of formal complaints, submitted subject access requests (made under the Data Protection Act 2018 (the DPA 2018)), initiated an academic appeal and raised a number of other concerns and issues with the University, so that it felt these actions could reasonably be described as an individual conducting an extended campaign to the point that the Applicant's behaviour could be considered obsessive.

19. The University provided the Commissioner with a "Timeline of activity" which evidenced all of the Applicant's contact with the University.

20. The University explained that the timeline of activity only provided part of the picture as the Applicant has also pursued matters with the QAA and the Scottish Public Services Ombudsman (SPSO). The University explained that the Applicant remains dissatisfied with many aspects of her course and continues to pursue an ongoing grievance with the Institution.

21. The University acknowledged that FOISA should be implemented in an "applicant blind" manner and that there is no requirement for an applicant to explain why they want particular information, but based on the Applicant's prior interactions with the University, it felt that the intention behind the request could not be disregarded.

22. The University explained that it wrote to the Applicant on 2 May 2019, advising her that it was conducting a review of her request and that this review would also consider a separate request she had made more recently, FOI 032. In this letter, the University noted how broad

the request was and asked if the Applicant could clarify why she wanted the requested information. On receipt of the Applicant's response, the University concluded that it could not provide her with any further information as everything had already been disclosed, and that all subsequent requests represented a continuation of a pattern of vexatious behaviour.

23. In reaching its conclusion, the University referred to a previous decision issued by the Commissioner, *Decision 133/2012 Mr A and the Chief Constable of Dumfries and Galloway Constabulary*² which found that underlying the request were historic investigations by the authority that Mr A was dissatisfied with. In that case, the Commissioner concluded that the requests were being used to extend the dialogue about those long-standing concerns, and it appeared unlikely that resolution would be brought any closer by responding to those requests.
24. The University explained that, if the request had been made by another person, the University would have sought to reframe the scope of the request, in consultation with the applicant, and it is likely that the original request would have been limited or refused on the grounds of excessive costs. It noted that section 15 of FOISA requires the University to provide requesters with reasonable advice and assistance, and if processing the request was likely to impose a significant burden on the University, it acknowledged that it should have asked the requester to refine the request to make it more manageable. The University submitted that because the Applicant was known to staff, and because of ongoing dialogue and issues raised by the individual concerned, it took the decision to provide her with a full response.
25. The University submitted that the request was significantly burdensome and had prevented it from carrying out its core functions, including supporting other students. It provided information on the amount of hours that certain staff had spent on the Applicant's FOI requests. It submitted that the Programme Leader estimated that they had spent 66 hours of time dealing with the Applicant's FOI requests since February 2018; the Head of Curriculum estimated they had spent 360 hours dealing with various interactions from the Applicant since February 2018; the Faculty Officer had spent 20 hours dealing with request FOI 031; the Academic Registrar had expended six hours and the Subject Network Leader had spent more than 100 hours over the last year (estimated at two hours per week).
26. The University referred to the "Timeline of activity" it had provided, which contained a table of the various investigations and activities that were instigated by the Applicant. This included information on various complaints, FOI and SAR requests, and meetings with staff. The University also provided the Commissioner with comments from the staff involved with the Applicant; these included concerns about the negative impact the Applicant was having on the staff who were dealing with the Applicant's ongoing dialogue and correspondence as well as the amount of time the requests had taken up.
27. The University submitted that the Applicant had made three FOI requests in 2018 and four FOI requests in 2019.
28. The University argued that the Applicant's concerns had been addressed through other means. It noted that its response to her information request contained all of the relevant information that the University held. The University also provided the Commissioner with a copy of its official response to a formal complaint received from the Applicant about her "hours of study" and whether she was formally classified as a full or part time student.

² <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2012/201200835.aspx>

The Commissioner's view

29. The Commissioner has carefully considered the submissions made by the University, intended to demonstrate that dealing with the Applicant's request was unduly burdensome, that it was having a detrimental impact on its staff and that she was using FOISA to continue dialogue on matters that have already been addressed through other means.
30. In this case, the Commissioner is limited to considering whether the University has provided sufficient evidence and submissions to support its claim that the application of section 14(1) was appropriate in the circumstances.
31. Even if a requester does not intend to cause inconvenience or create a significant burden, if a request has the effect of harassing a public authority and/or its staff, it may be deemed vexatious when considered from the perspective of a reasonable person.
32. The University has argued that the request made by the Applicant was unduly burdensome and has taken up a significant amount of staff time and resources. The University has provided the Commissioner with a copy of the information it provided to the Applicant. The Commissioner notes that the response contained some 72 documents, including module descriptors, minutes of meetings, student course feedback and annual quality monitoring. (While 72 is a relatively large number of documents, it is not, in the Commissioner's experience, an unexpectedly high number of documents to be subject to a single information request.)
33. It is clear that, since February 2018, University staff have spent a considerable amount of time dealing with concerns raised by the Applicant, as well as the time spent complying with the FOI requests she has submitted. In this particular request, the information disclosed to the Applicant in the University's initial response was substantial. However, the Commissioner notes that the Applicant was not satisfied with this response as she took the view that the University should have provided her with additional information.
34. The Commissioner cannot say whether or not the University does hold further information that is relevant to the Applicant's request, but he considers that the Applicant does have a right to challenge the University on this point and to seek a review on that basis.
35. In addition, the University acknowledged that it did not treat the request as "applicant blind" and, if it had, it is likely that it would have contacted the Applicant, under the provisions of section 15 of FOISA, and offered them advice on how to limit the scope of the request to make it manageable. Instead, the University proceeded to comply with a request that it considered to be unduly burdensome.
36. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation 5 of the Fees Regulations). The Commissioner considers that, if the University considered compliance with the request likely to incur costs greater than £600, it should have relied on section 12(1) to withhold the information and given the Applicant advice on how to narrow the scope of the request to bring compliance within the £600 cost ceiling. The University chose not to do this.
37. In addition, the University chose not to issue a fees notice under section 9 of FOISA. This would have allowed the University to charge for the costs of locating, retrieving and providing the information in line with the regulations made under section 9 (the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004).

38. In the circumstances, the Commissioner cannot uphold that compliance with the request was unduly burdensome, when the University itself failed to invoke the provisions of FOISA that would have prevented it from complying with the request and incurring such costs. In future, the Commissioner would recommend that the University give consideration to the cost of complying with a request, regardless of the identity of the requester.
39. As noted above, the University has provided the Commissioner with comments from its staff, along with the estimated amount of hours each staff member spent dealing with the request, and with other requests and complaints made by the Applicant. The Commissioner notes that some staff have expressed concerns regarding the stress they have been caused by dealing with the Applicant's correspondence, including the process of FOI requests and other matters of complaint. The University has also argued that the Applicant's motivation in making this information request was not to obtain information, but was to pursue an argument with the University.
40. The Commissioner recognises that the University has an obligation to ensure that its staff work in a safe environment and that they are not subjected to unjustified levels of stress. The University has a duty of care to its staff and must consider their wellbeing. However, the University also has responsibilities under FOISA and it cannot deny the Applicant her right to access recorded information without just cause.
41. The Commissioner notes that the Applicant made four FOI requests in 2019 and three in 2018. However, much of the Applicant's engagement with the University, which is detailed on the "Timeline of activity" it provided, concerns course-related complaints and issues. The Commissioner considers it is reasonable to expect a University student to contact the University department she is studying at with questions about course materials, assessments, academic appeals and other aspects of the course which are specific to her. The Commissioner notes that a number of the complaints raised by the Applicant were partially upheld by the University. In addition, the Applicant has made several requests for her own personal data, which she is entitled to do under the DPA 2018.
42. The Commissioner notes the University's remarks regarding the Applicant's involvement of the SPSO and the QAA, but again he considers that each of these regulators consider different aspects of an authority's discharge of its functions and the Applicant is entitled to raise her concerns with the relevant regulator. In addition, the Commissioner notes that neither of the regulators had completed their consideration of the Applicant's concerns at the time of her information request, so the outcomes of those investigations were unknown.
43. The Applicant has argued that she is not trying to pursue an argument with the University, but is simply trying to obtain information that has not been forthcoming, so she can see whether or not the University has been following its own quality procedures.
44. The Commissioner has examined the submissions made by both the Applicant and the University and he is not convinced that the Applicant's sole motivation is pursuing an argument with the University. In correspondence with the University, the Applicant stated that "*Requests for information from tutors and other staff have not been forthcoming so unfortunately I have had to resort to FOI requests to get information about the course that in my experience is usually freely available, to students, if not on the internet, the student intranet*". As noted above, the Commissioner understands that the Applicant has raised a number of queries with the University regarding the course she is enrolled on, and that she has also engaged external regulators to investigate her concerns. However, having given consideration to the information requested by the Applicant, the Commissioner has been

provided with no compelling evidence to persuade him that the Applicant is only seeking to continue an argumentative dialogue with the University.

45. In all the circumstances of the case, the Commissioner finds that the University was not entitled to refuse to comply with the request on the basis that section 14(1) of FOISA applied. He requires the University to carry out a review in respect of the Applicant's request, and to respond to her otherwise than in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that the University of the Highlands and Islands (the University) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant. He finds that the University was not entitled to refuse to comply with the Applicant's request on the basis it was vexatious. In doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the University to carry out a review, in terms of section 21(4)(b) of FOISA, by **23 March 2020**.

Appeal

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

Margaret Keyse
Head of Enforcement

7 February 2020

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.

...

Appendix 2: the request

I would like to make a Freedom of Information request, please.

Please could you provide me with the following information which I cannot find on the UHI website.

All documentation relating to the educational provision of the [] which should include at a minimum:

All the current module descriptors and programme specifications, particularly those which have been updated in the last academic year.

All the documents concerning the most recent revalidation/reaccreditation by COSCA

I believe these were all updated towards the end of last year.

I would also like to see:

- programme approval and the results of the annual monitoring and review processes
- reports of periodic reviews of the appropriateness of assessment methods used

for the last five years.

I would like to see the student satisfaction reports for the course for the last 5 years, including all campuses over which the course is delivered.

I would like to see the minutes of meetings concerning the administration and delivery of the []. This includes course committees and similar staff-student meetings.

I would also like to see any QAA reports concerning the [].

Thank you for your assistance in this matter.

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info