

# Decision Notice



Decision 047/2011 Mr Eddie Cairns and the Scottish Legal Complaints Commission

Complaints handling arrangements

Reference No: 201002182  
Decision Date: 8 March 2011

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**Kevin Dunion**  
Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Cairns requested from the Scottish Legal Services Commission (the SLCC) information relating to its complaints handling arrangements and a specific complaint. The SLCC responded by supplying Mr Cairns with information in relation to part of his first request, while stating that it did not hold the remainder. For Mr Cairns' second request, the SLCC stated that it refused to comply because the request was vexatious. Following a review, Mr Cairns remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SLCC had dealt with Mr Cairns' request for information in accordance with Part 1 of FOISA. He was satisfied that the SLCC had disclosed all the information it held in relation to the first request, and that it had been justified in dealing with the second request as vexatious.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 14(1) (Vexatious or repeated requests), and 17(1) (Notice that information is not held).

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. It may be helpful to explain here that the SLCC was set up under the Legal Profession and Legal Aid (Scotland) Act 2007 to deal with complaints against legal practitioners in Scotland. The SLCC came into operation on 1 October 2008.



2. On 17 October 2010, Mr Cairns wrote to the SLCC about a number of matters including a specified complaint it had handled. Within this letter he requested information on “the arrangements for ensuring the impartial and independent handling of serious complaints or allegations of wrong doing against senior employees in your organisation, for example board members, or against others where senior employees were implicated in the events”. In particular, he asked whether any such arrangement existed, and whether in recent years any such allegations had been “transferred for handling by an independent and impartial tribunal in order to comply with the Human Right Act 1998 and Article 6 of the European Convention on Human Rights”.
3. Although the SLCC responded to this as two separate requests, the Commissioner takes the view that its constituent parts are wholly interdependent and therefore that it can only reasonably be dealt with as a single request (referred to in the remainder of this decision as request 1).
4. Later in his letter, Mr Cairns made a separate request for “who made this decision”, in the context of the specified complaint referred to above, indicating that if any of the SLCC’s board members had been involved he intended to make a complaint to the Standards Commission (request 2).
5. The SLCC responded to Mr Cairns on 8 November 2010, supplying Mr Cairns with copies of its complaints policy and sections of its staff and members’ codes of conduct in relation to request 1 (while advising that this information was in any event available on its website). Responding to the more specific part of request 1 (i.e. whether an arrangement of the kind described by Mr Cairns existed and whether any allegations had been transferred to an independent and impartial tribunal), the SLCC notified Mr Cairns that it did not hold this information.
6. In respect of request 2, the SLCC notified Mr Cairns that it considered the request to be vexatious in terms of section 14(1) of FOISA.
7. On 10 November 2010, Mr Cairns wrote to the SLCC requesting a review of its decision in respect of both requests. He believed that the SLCC must hold further information falling within the scope of request 1, and did not consider its decision in respect of request 2 to be reasonable in the circumstances. He reiterated that he required the information requested in request 2 for the purposes of a complaint to the Standards Commission.
8. The SLCC notified Mr Cairns of the outcome of its review on 16 November 2010, upholding its decision in respect of both requests. Regarding its decision that request 2 was vexatious, the SLCC explained to Mr Cairns that it had considered the request in the context of his wider dealings with the SLCC.
9. On 20 November 2010 Mr Cairns wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SLCC’s review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.



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

## Investigation

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11. The investigating officer wrote to the SLCC on 30 November 2010, notifying it that an application had been received from Mr Cairns and giving it an opportunity to provide comments, as required by section 49(3)(a) of FOISA. It was asked to respond to specific questions, with particular reference to the steps it had taken to establish what information it held falling within the scope of request 1. It was also asked to provide reasoning for its conclusion that request 2 was vexatious.
12. The SLCC responded in respect of both requests. The submissions received from both the SLCC and Mr Cairns, insofar as relevant, will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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

### Request 1

14. In terms of section 1(4) of FOISA, the information to be given to an applicant in response to a request under section 1(1) is (subject to exceptions which do not appear to be relevant in this case) that information held by the authority at the time the request is received. Where a Scottish public authority receives a request for information it does not hold, it must, in line with section 17(1) of FOISA, notify the applicant in writing that it does not hold the information.
15. Mr Cairns' request 1 is set out in paragraph 2 above. In response to this request, the SLCC disclosed some information while advising Mr Cairns that it held no further information falling within the scope of the request. It is now for the Commissioner to consider whether this was the appropriate response. He would emphasise that his role in this connection is to satisfy himself as to what relevant information the SLCC actually held, as opposed to what it should have held (although consideration of the latter question may be relevant in coming to a conclusion on the former).



16. Mr Cairns did not believe that the information provided by the SLCC addressed his request adequately. He noted that the SLCC had only provided details of its normal complaints procedure, without indicating whether any arrangements were in place to deal with cases where a conflict of interest arose. He believed the SLCC's conclusions on the more detailed part of the request (i.e. that no information was held on actual arrangements and the transfer of cases to an independent and impartial tribunal) to be ill-founded, on the basis that the authority "must have such basic information available". He referred to previous arrangements whereby the Scottish Legal Services Ombudsman had transferred cases involving a conflict of interest to the Legal Services Ombudsman for England and Wales.
17. The SLCC submitted that it held no information falling within the scope of request, other than that provided to Mr Cairns in response to his request (which was in any event available on its website). It explained that it had no set procedures to be followed in relation to arranging independent investigations. This, it submitted, was because the independent body dealing with the conduct of its members was the Standards Commission: any complaint made about an SLCC member to the Standards Commission would be made directly to that body and not through the SLCC. In relation to staff, it would be a matter of discretion for the SLCC's Chief Executive and/or its Chair to determine in any particular case whether an independent investigation was required, on the basis of the merits and substance of the complaint in question.
18. The SLCC advised that it had conducted an electronic search for the information covered by request 1, including all emails, files and folders. As a small organisation, and taking account of the personal knowledge of its staff and members, it had not considered further searches to be necessary. On the question of cases being transferred to an independent and impartial tribunal, the SLCC advised that its Chief Executive had been consulted as she was aware of all complaints about staff and members which had not been resolved or dealt with internally. She had confirmed that no relevant information was held.
19. Having considered carefully all the submissions made by Mr Cairns and the SLCC, the Commissioner has concluded that the SLCC took adequate steps to identify and locate all of the information it held and which fell within the scope of Mr Cairns' request 1. He is also satisfied that, at the time the SLCC received the request, it held no information falling within its scope in addition to the information it supplied to Mr Cairns at that time. Consequently, he is satisfied that the SLCC dealt with request 1 in accordance with Part 1 of FOISA. In this connection, the Commissioner thinks it only fair to observe that he can identify no reason why any Scottish public authority, acting rationally, would have in place and implement arrangements of the kind Mr Cairns has in mind while claiming that such arrangements did not in fact exist (or, for that matter, that they existed but were not in fact used in appropriate cases).
20. The Commissioner will now consider Mr Cairns' request 2 and whether the SLCC was correct in concluding this request was vexatious.



## Request 2

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

### *Whether a request is vexatious*

22. FOISA does not define the word "vexatious". However, the Commissioner's general approach is that a request (which may be a single request, the latest in a series of requests, or one among a large number of individual requests) may be vexatious where it would impose a significant burden on the public authority and one or more of the following conditions can be met:
- (a) it has the effect of harassing the public authority; and/or
  - (b) it does not have a serious purpose or value; and/or
  - (c) it is designed to cause disruption or annoyance to the public authority; and/or
  - (d) it would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
23. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requestor, he acknowledges that the 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 relevant surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a particular request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.
24. As the Commissioner noted in *Decision 108/2010 Mr Mark Irvine and South Lanarkshire Council*<sup>1</sup>, his *general* approach to the question of whether a request is vexatious is that he will require a significant burden on the public authority. As he acknowledged in that decision, this does not exclude the possibility that, in any given case, one or more of the other listed criteria may be of such overwhelming significance that it would be appropriate to consider the request vexatious in the absence of significant burden.

### *Comments from the SLCC*

25. The SLCC contended that its decision that request 2 was vexatious had been based on the subject matter of the request rather than the identity of the person making it. The fact that the request was from Mr Cairns was only relevant, in the SLCC's view, insofar as this request could be linked to other information it held on the same subject matter.

<sup>1</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/201000367.asp>





26. The SLCC acknowledged that compliance with request 2, taken in isolation, would not amount to a significant burden. By way of context, however, it provided information on the volume of complaints from Mr Cairns it (and previously the Scottish Legal Services Ombudsman) had been required to deal with. It identified common themes in these complaints, advising that complaints and other communications from Mr Cairns generally ended in prolonged and protracted communication with him. It noted that he often asked about the same things in a number of slightly different ways, or for the same information but in relation to a different person or complaint. He communicated by letter and email, and when communicating by email he sent the same documents in several different formats. Consequently, all of his communications required careful checking.
27. The SLCC explained that at the simplest level Mr Cairns had already been provided with the answer to his question “who made the decision”, insofar as the decision in question had been made by the SLCC (as distinct from any individual person or persons). It provided a copy of a letter of 15 November 2010, sent in the context of the complaint to which request 2 related, which it believed had made this clear.
28. Underlying the SLCC’s conclusion that request 2 was vexatious was the fact that Mr Cairns had already made a complaint to the Standards Commission about the aspects of the SLCC’s decision which were of concern to him. He had been told that the matters raised did not amount to a breach of the relevant code of conduct and therefore could not be investigated further. Copies of the relevant correspondence were provided.
29. Mr Cairns had therefore been told, the SLCC submitted, that his complaint (to the Standards Commission) would not be upheld even if it related to a specific named individual. The SLCC also advised that he had made a previous complaint about a named individual relating to the same issue (albeit in respect of a different complaint considered by the SLCC), which he had also been advised did not amount to a breach of the code of conduct. In the SLCC’s view, therefore, Mr Cairns was aware when he made request 2 that neither the specific issue nor the type of issue he was complaining about constituted a breach of conduct standards, and consequently he was aware that his complaint to the Standards Commission would not succeed.
30. In the circumstances, the SLCC formed the view that the effect of request 2 was to harass it, whatever Mr Cairns’ personal intention may have been in this connection. It also concluded that while Mr Cairns might consider the request to have a serious purpose, it could not in fact have any value, given that (as he was aware) the provision of the name he had requested would not achieve the outcome he was seeking. Finally, the SLCC took the view that any reasonable person would consider the request to be unreasonable, because it was seeking information to enable Mr Cairns to pursue a complaint which would not be upheld.



*Comments from Mr Cairns*

31. Mr Cairns did not believe the SLCC to have any valid reason for considering his request to be vexatious. He stated that he required the name of the SLCC board member who had made the relevant decision in order to complain to the Standards Commission, contending that he believed there to have been a breach of the relevant code of conduct by individual board members. He argued that to deny him this information effectively nullified his rights of complaint to the Standards Commission.

*The Commissioners' conclusions*

32. The Commissioner must confine himself in this decision to considering whether the SLCC was correct in determining that Mr Cairns' request 2 was vexatious in terms of section 14(1) of FOISA. This means that there are a number of issues raised by Mr Cairns which he cannot consider. In particular, it does not fall within the Commissioner's remit to consider or comment upon whether either the SLCC or the Standards Commission acted appropriately in dealing with Mr Cairns' complaints (as opposed to this request for information), or whether the involvement in these complaints of the Standards Commission's Chief Investigating Officer (with whom Mr Cairns also appears to have an issue) has been appropriate.
33. The Commissioner has considered the SLCC's submissions in the context of Mr Cairns' wider dealings with the SLCC. Thus, he has taken into account the volume and nature of Mr Cairns' correspondence with the SLCC, the majority of which appears to be related to the matters underlying the request for information under consideration here. While he finds the question to be relatively finely balanced, the Commissioner can accept that dealing with request 2 (taken in context) did present a significant burden to the SLCC.
34. The Commissioner has gone on to consider the SLCC's more specific submissions in respect of the request itself and its effects. While not persuaded that the request (even taken with other related correspondence) has had the effect of harassing the SLCC, he does accept that there is considerable force in the SLCC's argument that the request lacked any value. Whatever the merits of the situation (which, as indicated above, do not fall within his remit to consider), it appears clear that those aspects of the SLCC's decision making with which Mr Cairns is unhappy will not be taken up by the Standards Commission. Consequently, the information (if disclosed) could not be used for the purpose of submitting a complaint which would have any reasonable prospect of being either accepted for determination or upheld. Mr Cairns has made it clear that his sole purpose in seeking the information was to submit a complaint to the Standards Commission, and the Commissioner also finds considerable force in the argument that it should be considered manifestly unreasonable for an applicant to seek information with a view to pursuing a complaint, in the knowledge that the complaint in question has no reasonable prospect of success.
35. In all the circumstances of this case, therefore, the Commissioner has concluded that the SLCC was correct in finding that Mr Cairns' request 2 was vexatious in terms of section 14(1) of FOISA.





## **DECISION**

The Commissioner finds that the Scottish Legal Complaints Commission complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with the information request made by Mr Cairns.

## **Appeal**

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Should either Mr Cairns or the Scottish Legal Complaints Commission 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**  
**8 March 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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

- (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.

...

##### 17 Notice that information is not held

- (1) Where-

- (a) a Scottish public authority receives a request which would require it either-
- (i) to comply with section 1(1); or
  - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),

if it held the information to which the request relates; but

- (b) the authority does not hold that information,



it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...