

Decision Notice



Decision 130/2012 Mr U and the Scottish Ministers

Whether requests are vexatious

Reference No: 201200310

Decision Date: 3 August 2012

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

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



Summary

Mr U made two information requests to the Scottish Ministers (the Ministers) relating to the efficacy of psychiatric treatment and medication, and the Ministers' decision to appeal against a particular decision by the Mental Health Tribunal. The Ministers refused both requests on the grounds that they were vexatious, taking into consideration the nature of the requests and the history and pattern of Mr U's communications with them. Following a review of both requests, Mr U remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner agreed that the Ministers were entitled to refuse both requests on the basis that they were vexatious.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

Request 1

1. On 20 December 2011, Mr U wrote to the Ministers requesting the following:
*"[...] all data that proves psychiatry cures or any area of psychiatric dosage gives a cure
[...] all data that displays all psychiatric dosages and their method of action (how the dosage works, no fiction, no ifs buts or maybes. Science, truth only)."*
2. The Ministers responded on 20 January 2012, notifying Mr U that they considered his request to be vexatious in terms of section 14(1) of FOISA, and so they were not obliged to comply with it. They commented that answering this request would place a significant burden on the Mental Health Team and that the request had been judged potentially harassing of departmental members in view of its language and tone.



3. On 23 January 2012, Mr U wrote to the Ministers requesting a review of their decision. He maintained that the Ministers should be able to answer his request from data they held and expressed dissatisfaction with their decision that his request was vexatious.
4. The Ministers responded to Mr U's request for review on 14 February 2012. They notified him (in line with section 21(8)(b) of FOISA, which removes the obligation to conduct a review of a request to which section 14 applies) that they considered they were not obliged to comply with his request for review. The Ministers explained that this was because they had refused his initial request on the basis that it was vexatious and there was nothing in the request for review which provided grounds to suggest that their decision had been incorrect.

Request 2

5. On 9 January 2012, Mr U wrote to the Ministers to request the following:
"[...] all whom – inclusive of names, job titles, company details if applicable – have had involvement in the decision to bring [a particular appeal to the Court of Session brought by the Ministers, against a decision by the Mental Health Tribunal¹].
[...] any documentation of discussion by the Ministers of above (particular the decision to agree to a legal dispute)."
6. The Ministers responded on 1 February 2012, notifying Mr U that this request had been judged to be vexatious in terms of section 14(1) of FOISA, and so they were not obliged to comply with it.
7. They indicated that, having taken into consideration the volume of requests received from Mr U over an extended period of time, together with the lack of clarity in these requests, responding to his request would impose a significant burden. They added that this request was a continuation of a pattern of persistent and successive requests for information which had resulted in the disproportionate use of staff resources, and diverted resources from the Ministers' core work.
8. The Ministers also considered that Mr U's request lacked serious purpose and value, and had the effect of harassing the staff involved in the court case rather than being a genuine request for information.
9. On 1 February 2012, Mr U wrote to the Ministers requesting a review of their decision. He commented that it is the right of every citizen to be clear about their Government's workings, and did not accept that his request met criteria associated with vexatious requests.
10. The Ministers notified Mr U of the outcome of their review on 13 February 2012. They upheld their decision that request 2 was vexatious, and so they were not obliged to comply with it.

¹ www.scotcourts.gov.uk/opinions/2011CSOI76.html



11. On 13 February 2012, Mr U wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Ministers' review of each request and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
12. The application was validated by establishing that Mr U 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

13. On 20 March 2012, the Ministers were notified in writing that an application had been received from Mr U and were invited to provide comments on the application (as required by section 49(3)(a) of FOISA). The Ministers were also asked to respond to specific questions concerning their reasoning when judging Mr U's requests 1 and 2 to be vexatious in terms of section 14(1) of FOISA.
14. The Ministers responded on 11 April 2012, providing detailed submissions on the history of their communications and dealings with Mr U, and explaining their reasoning in concluding that his requests were vexatious. They subsequently provided additional information in response to further questions from the investigating officer.
15. Comments were also sought, and received, from Mr U during the course of the investigation on the submissions received from the Ministers and why he considered that his requests for information were not vexatious.
16. The relevant submissions received from both the Ministers and Mr U will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

17. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr U and the Ministers and is satisfied that no matter of relevance has been overlooked.

Section 14(1) of FOISA

18. Under section 14(1) of FOISA, a public authority is not obliged to comply with an information request if the request is vexatious.



19. FOISA does not define the word “vexatious”. The Commissioner’s guidance on section 14 of FOISA sets out a *general* approach taken in determining whether a request is vexatious; that a request is vexatious where it:
 - would impose a significant burden on the public body; and
 - does not have a serious purpose or value; and/or
 - is designed to cause disruption or annoyance to the public authority; and/or
 - has the effect of harassing the public authority; and/or
 - would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
20. While the Commissioner’s view is that the term “vexatious” must be applied to the request and not the requestor, she also 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 surrounding circumstances.
21. Notwithstanding the general approach set out above, she recognises that each case must be considered on its own merits, and in all the circumstances of the case. She does not exclude the possibility that, in any given case, a request may not involve a significant burden, but one or more of the other listed factors may be of such overwhelming significance that it would be appropriate to consider the request(s) vexatious in the absence of a significant burden. She also recognises that other factors may result in a request being judged vexatious.

The Ministers’ submissions

22. The Ministers explained that Mr U regularly corresponds with them on mental health related matters. They indicated that between August 2007 and May 2012 he had written 61 letters to Ministers, and from November 2009 to May 2012, he had submitted at least 57 information requests. In addition, the Ministers noted that there had been a significant volume of other contact with Mr U which has not been recorded, including telephone calls and emails directed to specific officials.
23. The Ministers recognised that each request made under FOISA should be considered on its merits. However, they submitted that, in this case, they were justified to take into consideration Mr U’s previous correspondence and requests when placing requests 1 and 2 into context. They submitted that the requests were vexatious as they form part of a continual pattern of behaviour resulting in a significant burden to the Health and Social Care Directorate.
24. The Ministers commented that Mr U’s correspondence can be difficult to understand, and that attempts to clarify his requests have been met with resistance. They submitted that this level of correspondence had been immensely draining on the Health and Social Care Directorate’s resources, distracting it from its core business and (while this may not have been Mr U’s intention) having a harassing effect on the Directorate staff.



25. The Ministers went on to state that they do not have the resources to deal with the issues Mr U raises. Based on the history of their contact with Mr U, and his pattern of behaviour, they believed that responding to the requests would certainly generate and encourage further correspondence from Mr U.
26. They provided examples of his correspondence and postings on websites, highlighting examples in which language considered abusive or defamatory had been used in relation to officials or other individuals or organisations.
27. The Ministers maintained that they had made every effort to respond to Mr U's requests and had expended a considerable amount of time and effort to try and help address these as thoroughly as possible. They added that unfortunately none of the steps had brought an end to the issues raised by Mr U and, based on their history of correspondence with him, they considered it unlikely that they would be able to meet Mr U's expectations.
28. The Ministers provided additional comments regarding the particular features of each request, which will be discussed in more detail when the Commissioner sets out her findings below.

Submissions from Mr U

29. Mr U responded to the Ministers' suggestion that request 1 impose a significant burden on them, arguing that the information requested (regarding the efficacy of psychiatric medicine and dosages) already exists, and should be held by the Chief Medical Officer, setting out concisely and in plain English all of the approved medical studies accepted by the NHS in Scotland before approving any dose of treatment for administration to the Scottish people.
30. In response to the Ministers' view that the language, tone and content of his requests had the effect of harassing staff, Mr U explained that he did not intend to cause annoyance. He indicated that his requests were just requiring answers and simple reasons as to why a monopoly service provider (the Royal College of Psychiatry) executes its methods, which in Mr U's view amounts to no method of action and no cure upon patients, without proper modern safety systems and standards of governance.
31. However, Mr U's submissions to the Commissioner (which are not summarised in full in this decision) included descriptions of an individual official, staff of the Royal College of Psychiatrists and the Scottish Government in terms including "biased", "crooked", "bigoted", "intolerant", and "discriminatory". Mr U also commented that if his replies were seen as insulting, then one could only conclude that what had been given was returned; suggesting that the Ministers communications with him had been insulting also.
32. With regard to the Ministers' assertion that Mr U's requests lacked any serious purpose or value, Mr U has indicated that, in his view, the Scottish Government has never conducted any serious accessible or compliant studies, nor consultations in relation to psychiatric treatment.



The Commissioner's conclusions

33. The Commissioner recognises that the two requests from Mr U under consideration here may not appear to be vexatious when viewed in isolation. However, she is aware that, in some cases, the vexatious nature of a request will only emerge after considering the request within its context, for example, in relation to previous or ongoing correspondence with the applicant. The Ministers have argued that, in this case, it is justified to take into consideration the history and pattern of communications with Mr U on related matters when putting these requests into context.
34. When considering this point, the Commissioner has considered the First Tier Tribunal (Information Rights) ruling *EA/2011/0079*², *Alan Dransfield and the Information Commissioner*. In paragraph 36 of this ruling, the Tribunal draws a distinction between prolonged correspondence on a single issue, and ongoing correspondence on a variety of different issues, and the relevance of these two types of correspondence when considering whether an information request is vexatious. The Tribunal considered that prolonged correspondence on a single subject is a 'valid' consideration; considering correspondence on a variety of issues risks crossing the line from treating the request as vexatious to treating the requestor as vexatious. (Although the Tribunal case was decided in relation to the Freedom of Information Act 2000 and not FOISA, the Commissioner considers that the comments of the Tribunal are equally valid in relation to the current application.)
35. Having considered the content of requests 1 and 2, along with the samples of previous correspondence provided by the Ministers and Mr U's own comments on the reasons for making his requests, the Commissioner considers that the nature of both requests is such that they can be seen as directly related to and a continuation of that previous correspondence.
36. When considering whether these requests are vexatious, therefore, the Commissioner considers it reasonable to have regard to the wider context of Mr U's history and pattern of communications with the Ministers, prior to the point where he submitted those requests.

Would the requests impose a significant burden on the Ministers?

37. The Commissioner's briefing on section 14 of FOISA indicates that a request will impose a significant burden on a public authority where dealing with it would require a disproportionate amount of time, and the diversion of an unreasonable proportion of its financial and human resources away from its core operations. However, if the expense involved in dealing with the request is the only consideration involved, the authority should consider the application of section 12 of FOISA (under section 12 of FOISA, a public authority is not currently required to comply with a request if the cost of compliance exceeds £600).
38. With respect to request 1, which sought:
 - *all data that proves psychiatry cures or any area of psychiatric dosage gives a cure, and*

² [http://www.informationtribunal.gov.uk/DBFiles/Decision/i573/20110920%20Decision%](http://www.informationtribunal.gov.uk/DBFiles/Decision/i573/20110920%20Decision%20)



- *all data that displays all psychiatric dosages and their method of action (how the dosage works, no fiction, no ifs butts or maybes. Science, truth only)*

the Ministers argued the request was not one that they were equipped to answer based on information that the Scottish Government holds. They noted that there is a wide range of information in the public domain (for example in medical research, clinical guidance or from the Medical Royal Colleges). They indicated that compliance with request 1 would place a significant burden on the Mental Health Team because it necessitates a global overview of a large area of healthcare.

39. When considering the burden that request 1 would impose, the Commissioner has been mindful of the fact that a public authority is only required to locate and provide recorded information that it holds in response to a request for information. She does not accept that a response to request 1 would require research or provision of all information that may be available in the scientific literature about psychiatric medicine and dosages.
40. While the Commissioner accepts that the language of Mr U's request suggests that he is asking for the entire scientific literature on the field of psychiatric medicine, or at least the parts that Ministers consider provide the evidential basis for psychiatric medicine, its scope when considered in terms of FOISA is necessarily limited in accordance of the extent of information on this subject that the Ministers hold.
41. Mr U's submissions suggest that the information he intended request 1 to elicit is a list that he believes should be held by the Chief Medical Officer (CMO), of "approved" medical studies, accepted by NHS Scotland in relation to psychiatric medicine, treatment and dosages. While the request that was submitted appears wider than this (it was not limited to information held by the CMO, for example), it is clear that Mr U's request neither could, nor intended to, prompt the Ministers to provide an overview of the entire scientific literature on the efficacy of psychiatric medicine.
42. For this reason, the Commissioner does not consider the burden that would be imposed by compliance with request 1 would be as significant as the Ministers have suggested. Nonetheless, she recognises that, given the broad wording of that request, it is likely that the Ministers will hold some information relating to the efficacy of psychiatric treatments and dosages. She accepts that it is likely that compliance with request 1 would require a search of information held by a number of possible locations within the Government, which the Commissioner accepts would impose some burden on the Ministers.
43. Taking this into consideration, along with the cumulative burden of dealing with Mr U's related requests and correspondence over a number of years, the Commissioner accepts that compliance with request 1 would impose a significant burden on the Ministers. She accepts that the cumulative effect of Mr U's request and other correspondence has been the diversion of an unreasonable proportion of the Ministers resources, and that to respond to request 1 in this context would constitute a significant burden.



44. In request 2, Mr U asked for details of all individuals involved in the decision to appeal against a particular decision of the Mental Health Tribunal to the Court of Session, and documentation of any discussion by the Ministers about that decision.
45. Considered in isolation (and having regard to the limited submissions provided on this point by the Ministers), the Commissioner considers it would be unlikely that compliance with such a request would involve a significant burden. The request is focussed on a particular decision and specific information relating to that decision. However, again having considered the history and pattern of Mr U's communications with the Ministers, she accepts that the cumulative effect of those communications is to impose a significant burden on the Ministers. In that context, the Commissioner accepts that continuation of that pattern by complying with the request would also impose a significant burden.

Do the requests have the effect of harassing the Ministers?

46. When addressing this question, consideration should be given to the effect that a request has on a public authority, regardless of the requestor's intentions. Even if the requestor may not have intended to cause inconvenience or expense, if the request has the effect of harassing the public authority, then it may be vexatious. The Commissioner considers that the language and tone of the request may be relevant in assessing this.
47. Considering the language and tone used in Mr U's requests, the Commissioner notes that request 1 contains derogatory comments about a named official. Request 2 contains no such comments. However, the Commissioner has seen evidence that shows that in his communications with the Government (and other organisations, and in published postings on the internet), Mr U has written about individual employees and organisations more generally in very derogatory and insulting language. Similar language was used in Mr U's submissions to the Commissioner.
48. The Commissioner notes Mr U's statement that it was not his intention to cause harassment to the Ministers or staff members, but having regard to his other communications, she can only conclude that this was the effect of the manner in which he communicates with them.
49. In making this finding, she would add that she would expect professional government officials or holders of public office to be able to withstand reasonable criticism from members of the public. She also considers that officials would recognise that, in some instances, members of the public who feel strongly about particular matters might express their disagreement using intemperate language.
50. However, having considered the nature of Mr U's communications over an extended period, and the fact that similar statements have been made publicly, she considers that the Ministers have reasonably concluded that the effect of Mr U's correspondence, including both request 1 and 2 is that of harassing the Ministers and their staff.



51. She has reached this conclusion having regard to the extent and nature of Mr U's correspondence and request making, and that each response can be expected to prompt further questions or correspondence. She has also noted a number of instances where, no matter how well founded Mr U's concerns are, the manner in which he has expressed them has strayed beyond reasonable criticism and appropriate language.

Conclusion

52. Having concluded that, when considered in the context of Mr U's history and pattern of communication and request making, both of requests 1 and 2 would impose a significant burden on the Ministers, and that they would have the effect of harassing the Ministers, the Commissioner is satisfied that both requests were correctly refused by the Ministers on the basis that they were vexatious. In the circumstances, it is not necessary for the Commissioner to go on to consider other factors contributing to the application of section 14(1) to these requests by the Ministers.

DECISION

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in refusing to comply with Mr U's requests for information on the basis that they were, in terms of section 14(1), vexatious.

Appeal

Should either Mr U or the Scottish Ministers 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.

Rosemary Agnew
Scottish Information Commissioner
3 August 2012



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.

...