

# Decision Notice

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## Decision 238/2014: Mr Sergio Sabato and Highland Health Board

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### Whether requests vexatious

Reference Nos: 201401774, 201401775, 201401776, 201401777 and 201401778  
Decision Date: 18 November 2014



## Summary

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Between 29 March 2014 and 10 May 2014, Mr Sabato made a series of five requests to Highland Health Board (NHS Highland) related to staff accommodation. NHS Highland refused to comply with the requests on the basis that it considered them to be vexatious. Following an investigation, the Commissioner agreed with the approach taken by NHS Highland.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 21(8)(b) Review by Scottish public authority

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. In one email, and in four posts on the “What Do They Know” website<sup>1</sup>, Mr Sabato made five information requests to NHS Highland. These requests all broadly related to issues surrounding NHS Highland staff accommodation.
  - Request 1 was made on 29 March 2014. After receiving no response, Mr Sabato made a request for review on 10 May 2014.
  - Request 2 was made on 5 April 2014 and some information was disclosed to Mr Sabato on 7 May 2014. He made a request for review on 10 May 2014.
  - Requests 3, 4 and 5 were made on 10 May 2014.
2. NHS Highland notified Mr Sabato on 10 June 2014 that it had reached the conclusion that these requests were vexatious. Accordingly, it considered that it was not required to comply with the requests, in terms of section 14(1) of FOISA.
3. On 13, 16, 18 and 24 June 2014, Mr Sabato wrote to the Commissioner in respect of his information requests. Mr Sabato applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He was unhappy that NHS Highland had deemed his requests vexatious.
4. Mr Sabato simultaneously wrote again to NHS Highland on 17 June 2014, requesting a review of its decision not to respond to one of his requests, and on 1 July 2014 NHS Highland notified Mr Sabato, under section 21(8)(b) of FOISA, that it was under no obligation to comply with his request for review, confirming its original decision that section 14(1) applied.

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<sup>1</sup> <https://www.whatdotheyknow.com/>

## Investigation

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5. The applications were accepted as valid. The Commissioner confirmed that Mr Sabato made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to her for a decision. The case was then allocated to an investigating officer.
6. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 4 August 2014, NHS Highland was invited to comment on these applications and, in particular, on its use of section 14(1) of FOISA.
7. On the same day, Mr Sabato was given an opportunity to comment on the application of section 14(1) to his requests. The Commissioner subsequently received submissions from both parties.

## Commissioner's analysis and findings

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

### Section 14(1) - vexatious requests

9. In terms of section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information made under section 1(1) (which confers a general entitlement to information held by such authorities) if the request is vexatious.
10. Consequently, if NHS Highland was correct in its application of section 14(1), it would be under no obligation to comply with Mr Sabato's requests.

#### *Whether a request is vexatious*

11. FOISA does not define the word "vexatious." In her guidance<sup>2</sup>, the Commissioner identifies the following factors as relevant in reaching the conclusion that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:
  - (a) it would impose a significant burden on the public authority;
  - (b) it has the effect of harassing the public authority;
  - (b) it does not have a serious purpose or value;
  - (c) it is designed to cause disruption or annoyance to the public authority;
  - (d) it would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
12. The Commissioner recognises that (depending on the circumstances) other factors may be relevant.

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<sup>2</sup> <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.aspx>

### *Identity of applicant*

13. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requester, she also acknowledges (see the guidance on section 14, referred to above) that the applicant's identity, and the history of his/her dealings with a public authority, *may* be relevant in considering whether a request is vexatious. Each decision has to be based on its own facts and circumstances.
14. NHS Highland described Mr Sabato's requests as part of a continuing series of questions related to the same subject (NHS Highland staff accommodation). It provided evidence of the extent of this correspondence. The Commissioner has considered the requests, along with the submissions and supporting evidence provided by NHS Highland, and accepts that they share enough in common (with each other and with a considerable amount of other correspondence) for it to be reasonable to regard them as part of a series of correspondence on the subject identified by NHS Highland. She accepts that it was appropriate for NHS Highland to take the whole series and its impact into account in deciding whether these particular requests were vexatious.
15. While Mr Sabato acknowledged that he had been in correspondence with NHS Highland for a number of years (about issues with a direct link to staff accommodation), he did not feel his information requests were a burden to NHS Highland or that the requests were harassing the authority or its staff.

### *Significant burden*

16. The Commissioner's guidance 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 other statutory functions.
17. NHS Highland provided the Commissioner with an excel spreadsheet containing a sample of requests from Mr Sabato. It highlighted that a considerable number of these, many in multiple parts, related to the subject of staff accommodation. It also highlighted, with evidence, that a single incident could give rise to a series of requests.
18. NHS Highland stated that much of the information that Mr Sabato was asking for was either information already provided to him in response to previous information requests, or information it had already told him it did not hold. NHS Highland provided the Commissioner with documentary evidence of this.
19. NHS Highland also provided evidence of having made offers to Mr Sabato to discuss his requests and the issues arising from them (which he had not taken up), along with evidence of an opportunity to come and view documentation in person (again, not taken up).
20. NHS Highland submitted that it was a relatively small authority and that Mr Sabato's requests impacted disproportionately on a group of five core staff, which it identified. It explained that the impact of these and related requests diverted their time away from their other duties.
21. Taking into consideration the cumulative effect of Mr Sabato's correspondence, the Commissioner accepts that dealing with this correspondence (viewed as a whole) would demand a disproportionate amount of time and the diversion of an unreasonable proportion of NHS Highland's resources away from its other statutory functions. In this particular case, therefore, the Commissioner accepts that responding to Mr Sabato's requests would impose a significant burden.

*It has the effect of harassing the public authority*

22. NHS Highland also submitted that Mr Sabato's requests had the effect of harassing the small group of staff who handled the requests. It considered this to be the result of the volume and subject matter of the requests, their cumulative effect and Mr Sabato's refusal to take up offers to discuss them. Discussion of the requests, NHS Highland submitted, would have helped it understand the requests and have made it easier to provide appropriate responses.
23. NHS Highland also provided evidence that Mr Sabato had been asked several times to use its generic FOI mailbox address for his requests to help them identify and manage the volume. He had failed to do so. NHS Highland submitted that this meant requests could not be managed appropriately, adding to the pressure to respond and contributing to the perceived harassment.
24. The Commissioner acknowledges the attempts made by NHS Highland to manage the array of Mr Sabato's correspondence and other dealings with it. While his failure to use the generic FOI address is not of itself evidence of harassment, the Commissioner accepts that in the circumstances of this case, it is symptomatic of his overall approach. She acknowledges that the authority's attempts to communicate failed as a result of Mr Sabato's apparent refusal to engage with it in a reasonable manner, for reasons which are not entirely clear. She also acknowledges that many of Mr Sabato's requests revisited questions NHS Highland had already attempted to answer as fully as it could without such engagement, contributing to their impact on staff.
25. In all the circumstances, the Commissioner believes it would be reasonable to conclude that Mr Sabato's requests had the effect of harassing those most directly concerned with responding to them. She finds that any reasonable person would consider this to be the effect of the requests, considered as a whole, whatever his intention may have been. It was the ultimate consequence of the approach Mr Sabato took with his stream of correspondence on a common theme, in the face of genuine attempts by NHS Highland to manage it. The resulting pressure on staff can only reasonably be described as harassment.
26. In this case, therefore, the Commissioner concludes that NHS Highland was not obliged to comply with Mr Sabato's information requests, on the basis that the requests were vexatious and therefore section 14(1) of FOISA applied.

## Decision

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The Commissioner finds that Highland Health Board complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in dealing with the information requests made by Mr Sabato.

## **Appeal**

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Should either Mr Sabato or Highland Health Board 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**18 November 2014**

### 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**

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(8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if -

...

(b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.

...

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**