

Decision Notice 174/2021

Pronto notebooks: whether request vexatious

Applicant: The Applicant

Public authority: Chief Constable of the Police Service of Scotland

Case Ref: 202100641



Scottish Information
Commissioner

Summary

Police Scotland were asked for a range of information about the use of Pronto notebooks. As the latest in a series of duplicate requests, Police Scotland considered the request was vexatious.

The Commissioner investigated and found that the request was vexatious and Police Scotland were not obliged to comply.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(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 Appendix forms part of this decision.

Background

1. Pronto notebooks are electronic notebooks used instead of traditional paper notebooks and other documentation carried by police officers.
2. On 10 February 2021, the Applicant made a request for information to Chief Constable of the Police Service of Scotland (Police Scotland) from her email address. The Applicant requested the total recorded number of Pronto Witness Statements that have failed to be recorded as a consequence of a system malfunction per division since 1 August 2018 until present date. The Applicant sought a breakdown of the figures on a year on year and month on month basis.
3. Police Scotland responded on 11 March 2021. They refused to comply with the request on the grounds that it was vexatious in terms of section 14(1) of FOISA. Police Scotland referred to an email they had sent the Applicant on 3 February 2021, in which she was asked to reconsider both the use of multiple What Do They Know (WDTK) accounts and the submission of repeated requests via that forum and her email address. Police Scotland referred to the disproportionate amount of time spent on these requests due to the complications caused by duplication. Police Scotland stated that this request was vexatious on the basis that it is identical to a request submitted via WDTK at the same time, leading them to conclude that this request had no serious purpose or value.
4. On 13 March 2021, the Applicant wrote to Police Scotland requesting a review of their decision on the basis that she did not consider her request vexatious. She stated that Police Scotland was aware of the circumstances behind her use of multiple accounts.
5. Police Scotland notified the Applicant of the outcome of their review on 3 May 2021. They confirmed their original response. They explained that both requests (from personal email address and WDTK account) were identical, and that they had responded to the other request (WDTK), which had been deemed repeated. Police Scotland considered the fact they considered the request to be repeat to further strengthen the arguments in favour of section 14(1) as the request had no serious value or purpose.
6. On 20 May 2021, the Applicant applied for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of Police Scotland's review

because she had informed Police Scotland why multiple accounts were being used and did not believe her request was vexatious.

Investigation

7. 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.
8. On 8 June 2021, Police Scotland were notified in writing that the Applicant had made a valid application. The case was then allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Police Scotland were invited to comment on this application and to answer specific questions. These related to their reasoning why they considered the request was vexatious.
10. The Applicant was also given a further opportunity to comment.
11. Submissions were received from both Police Scotland and the Applicant.

Commissioner's analysis and findings

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

Was the request vexatious?

13. Section 14(1) of FOISA states that section 1(1) (which confers the general entitlement to information held by such authorities) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious. Section 14(1) does not create an exemption, but its effect is to render inapplicable the general right of access to information contained in section 1(1). Accordingly, section 14(1) is not subject to the public interest test in section 2(1)(b) of FOISA.
14. The Commissioner's general approach is that the following factors are relevant when considering whether a request is vexatious (under section 14 of FOISA). These are that the request:
 - 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.
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 terms "vexatious" and "manifestly unreasonable" must be

applied to the request and not the requester, but an applicant's identity, and the history of their/its dealings with a public authority, may be relevant in considering the nature and effect of the request and surrounding circumstances.

The Applicant's submissions

16. The Applicant explained why she was using multiple accounts/emails to submit the same request. The use of her private email was to ensure that the requests had been received by Police Scotland.
17. She noted that the Pronto Notebooks were a capital investment for the force, so, in her view, it is very much in the public interest to seek a force wide sample of any malfunctions with these seriously important devices, as an error or malfunction could lead to a serious miscarriage of justice.
18. She considered that the information requested was reasonably accessible and should be a simple copy and paste of information recorded by Police Scotland.
19. The Applicant considered the reference to section 14 was being used to cover up the technical problems with the Pronto notebook or (of more concern) that Police Scotland are not keeping records of the issues with this new technology and do not want the public to be aware of this.

Police Scotland's submissions

20. Police Scotland explained that the Applicant began submitting FOI requests around late 2018. The volume of requests increased and the content has become increasingly disparaging of Police Scotland and highly personal. Requests have become increasingly repetitive, both generally in terms of subject matter but also specifically, with identical requests coming in from the Applicant's personal account and various WDTK accounts.
21. Police Scotland recognised from the correspondence that the Applicant is dissatisfied with their practices, particularly with regard to data protection/information sharing.
22. Police Scotland submitted that they have tried, wherever possible, to provide the Applicant with information of relevance to her requests despite the fact that for quite some time they could have been described as the continuation of a pattern of behaviour where a requester has an on-going grievance against a public authority, or could reasonably be described as conducting an extended campaign to the point that their behaviour can be described as obsessive.
23. Police Scotland explained that it had advised the Applicant that the use of multiple WDTK accounts, as well as the use of personal email addresses, was creating confusion and additional work. At the end of 2020, the Applicant started submitting every request twice; once from WDTK, and once from her personal email address – Police Scotland provided the Commissioner with a list of requests received from this Applicant.
24. Despite Police Scotland requesting that this practice stop, the Applicant continued to do so, and in early 2021 the first section 14(1) response was issued. One request was answered substantively, and the other was responded to in terms of section 14(1). This approach was used with 11 requests over a period of a few months and the Applicant eventually stopped duplicating requests as a result around April 2021. Now requests are from the Applicant's personal email address only. Police Scotland provided a list of the Applicant's requests in 2020 and 2021, to support their position that requests were repeated.

25. Police Scotland considered that there can be no legitimate reason for submitting duplicate requests to an authority at the same time. The Applicant did explain why she was using both mediums, but Police Scotland concluded that there was no reason to use both mediums at the same time. They had considered stating that the request was repeated in line with section 14(2) of FOISA, but considered that in the circumstances of the situation (i.e. they continued to respond to one of the duplicate requests), it was more appropriate to consider the request vexatious.

Significant burden

26. Police Scotland considered that answering this request (and others which followed the same pattern of behaviour) was double the burden on their time. It was appreciated that it could be argued that responding to similar requests could be simply a copy of paste process, but the process of comparing the requests, to ensure they were identical was in itself an unnecessary burden.
27. Police Scotland also noted that the Applicant tended to include superfluous content regarding personal matters which exacerbated the checking process. Police Scotland acknowledged that all requests require an element of administration, and this process was double what it otherwise would be.

No serious purpose or value

28. Police Scotland could identify no reason why it was necessary for the Applicant to duplicate requests from different accounts. The Applicant had justified the duplication as the WDTK requests were being annotated. Police Scotland did not consider such a practice amounted to serious purpose for submitting a duplicate request.

Designed to cause disruption or annoyance

29. Police Scotland emphasised that the Applicant was asked, prior to this request, not to submit duplicate requests, as it was causing disruption and annoyance, but she continued to do so. There was considered no reason for the Applicant to submit identical requests on the same day from different email accounts.

Harassing authority

30. Again, Police Scotland emphasised that they had requested that the Applicant refrain from submitting duplicate requests prior to the submission of the two related requests (about the Pronto notebook) but the Applicant continued to do so. Police Scotland submitted that, receiving these two duplicate requests, particularly given the matter therein had already been addressed with a substantive response some months earlier [November 2020], had the effect of harassing the authority. Although accepting that, on consideration of this request alone, it was not enough to warrant the application of section 14(1), Police Scotland submitted that it should be viewed in the context of a continuation of behaviour.

Otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

31. Police Scotland considered that it was not reasonable or proportionate for their resources to be diverted to one requester and noted that the Applicant has submitted the most requests to them in 2021. Only three other applicants have submitted more than ten requests this year. They noted that the Applicant had submitted 11 duplicate requests. The Applicant's requests remain a significantly disproportionate burden on the authority but, despite that, all of her non-duplicate other requests have received substantive responses.

32. Police Scotland concluded that this particular request (and other duplicates) represented a continued pattern of behaviour where a requester has an on-going grievance against the public authority, or could be reasonably described as conducting an extended campaign to the point that their behaviour can be described as obsessive.
33. Police Scotland highlighted that their response to an earlier request explained to the requester why section 12 (Excessive cost of compliance) applied to the request. The Applicant had submitted a review of this request and the decision was upheld. Police Scotland highlighted that the Applicant did not appeal the request to the Commissioner. Two months later, the Applicant made the same request (albeit for a much larger force area i.e. the requests were much wider in scope). Police Scotland provided a substantive response to one of the later requests, but sought to apply section 14(1) to this duplicate. Police Scotland emphasised that the position would not have changed in the intervening months.
34. Police Scotland stressed that the only requests to which they have applied section 14(1) are the duplicate requests, where one request was submitted through WDTK and another received from a personal email account. Police Scotland submitted that this demonstrated that they treat all of the Applicant's requests on a case-by-case basis.
35. Police Scotland submitted that, whilst many of the Applicant's requests are both challenging and frustrating to deal with, they have been extremely mindful not to apply section 14(1) lightly and have only done so with this series of requests which served no purpose and crossed the line in terms of meeting the various examples of vexatious behaviour.

The Commissioner's findings

36. The Commissioner has taken account of all the relevant submissions and supporting evidence from the Applicant and Police Scotland. Taken in isolation, the Applicant's request might not appear to be vexatious. However, the vexatious nature of a request may only emerge after considering it in the context created by previous ongoing correspondence. The Commissioner is satisfied, having reviewed the details of the requests made to date, that it was reasonable for Police Scotland to consider previous correspondence with the Applicant when deciding whether this request should be treated as vexatious.
37. As the requests were acknowledged as received by Police Scotland and a substantive response to one of the duplicate requests was provided, the Commissioner accepts that the duplicate request served no serious purpose of value.
38. The Commissioner notes that the Applicant was asked to refrain from such practice and was advised of the impact of duplicating requests by Police Scotland. Whatever the Applicant's intention may have been, the Commissioner considers this request, taken with the Applicant's other requests, and in light of the advice provided, to have had the effect of harassing Police Scotland and its staff. For these reasons, the Commissioner is satisfied that this request should be properly characterised as vexatious in line with section 14(1) of FOISA.

Decision

The Commissioner finds that the Chief Constable of the Police Service of Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or Police Scotland 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.

Margaret Keyse
Head of Enforcement

3 November 2021

Appendix 1: 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.

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