

Decision Notice 188/2021

Whether requirement for review was vexatious

Applicant: The Applicant

Public authority: West Lothian Council

Case Ref: 202100493



Scottish Information
Commissioner

Summary

The Council was asked about the training of Children and Families Social Workers. The Council responded but declined to conduct a review, as it believed the Applicant's requirement for review was vexatious.

The Commissioner found that the Council was not obliged to conduct a review, but that the Council should have notified the Applicant why no review was being carried out.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(6) (General entitlement); 14(1) (Vexatious or repeated requests); 20(1) (Requirement for review of refusal etc.); 21(1), (8) and (9) (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

1. On 21 February 2021, the Applicant made a request for information to West Lothian Council (the Council). The information request was as follows:

The Code QE.52 (Caregiver-Child Relationship Problem) has been recognised by the World Health Organisation (WHO) in the International Classification of Diseases 11th Revision (ICD-11) that was passed on 25 May 2019 comes into effect on Jan. 1, 2022 i.e. in less than a year.

Under FOISA 2002 please provide the following information within your records.

- *The date when Children & Families Social Workers received training on ICD-11 Code QE.52. (part 1)*
 - *If point 1 is a nil response then the date when the training on ICD-11 Code QE.52 for Children & Families Social Workers is scheduled to take place. (part 2)*
 - *The training providers who have been contracted by the council Social Work Department to undertake training of social workers on in ICD-11 Code QE.52. (part 3)*
 - *The accreditation details for the organisations who have [delivered] or will be delivering the training on ICD-11 Code QE.52 for Children & Families Social Workers, to ensure Value for Money (VfM) for costs from the public purse. (part 4).*
2. The Council responded on 3 March 2021. It told the Applicant that training had not taken place (part 1) and that no training dates were planned for this (part 2). For parts 3 and 4, it replied "N/A" – i.e. non-applicable.
 3. On 15 March 2021, the Applicant wrote to the Council requesting a review of its decision. The Applicant made several points, but she confirmed she was "dissatisfied with the Council's response to points 1 and 2 and asked the Council to look again at its recorded information.

4. Having not received a response, on 18 April 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA on the basis that the Council had failed to conduct an internal review of its response to point 1 and 2.

Investigation

5. 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.
6. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and to answer specific questions.

Commissioner's analysis and findings

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

Section 21 of FOISA - Review by Scottish public authority

8. The Council told the Commissioner that it considered the Applicant's request for review to be vexatious and that it was not obliged to comply with the request for review.
9. Section 21(1) of FOISA states that a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or unless section 21(8) applies) comply promptly; and in any event by not later than the twentieth working day after receipt of the requirement.
10. Section 21(8)(a) states that a Scottish public authority is not obliged to comply with a requirement for review if the requirement is vexatious.

Is the requirement for review vexatious?

11. FOISA does not define the word "vexatious". The Commissioner has published guidance¹ on section 14 of FOISA. Each case must be considered on its own merits, but he has identified a number of factors he considers relevant in finding that a request is vexatious. In the Commissioner's view, these factors are equally relevant to the application of section 21(8)(a) of FOISA. They are that
 - the request (or requirement) would impose a significant burden on the public authority;
 - it does not have a serious purpose or value;
 - it is designed to cause disruption or annoyance to the public authority;
 - it has the effect of harassing the public authority;
 - it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

¹ <https://www.itspublicknowledge.info/uploadedfiles/BriefingSection14VexatiousorRepeatedRequests.pdf>

12. This is not an exhaustive list. Depending on the circumstances, and provided the impact on the authority can be supported by evidence, other factors may be relevant.
13. While "vexatious" must be applied to the request (or, in this case, the requirement for review) and not to the requester, the Commissioner acknowledges that 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 requirement for review. It may be reasonable, for example, for the authority to conclude that a particular requirement for review represents a continuation of a pattern of behaviour it has deemed vexatious in another context, which may in turn permit it to treat the requirement for review as vexatious.
14. This may be the case particularly where it is unlikely that additional information would inform or alter the applicant's situation. It does not follow that a request or requirement for review should automatically be refused in a case like this: each decision has to be based on its own facts and circumstances.
15. The Commissioner understands that the Applicant believes that the actions of the Council had caused her and her family severe harm, loss and injury. The Council believed it was clear that the purpose of the Applicant's requirement for review was not to obtain information, but was rather to argue that a specific assessment was invalid as the Council's social workers "have no accreditation in identifying psychological manipulation and coercive control in minors which is a criminal offence".
16. The Council believed that any review would either confirm that no training has taken place or was planned, or would confirm the training dates. Neither of those responses would assist the Applicant in establishing whether a specific assessment was valid or whether she had suffered the harm, loss and injury she alleged. Rather than seeking information, the Applicant seemed - the Council claimed - to be using the FOI process to point out what she perceived as deficiencies in the operation of the Council and other agencies. The Council believed it was unlikely that any information provided would either change the Applicant's position or resolve any issues she has.
17. The Council explained that the Applicant had, in last three years, submitted more than 30 information requests about the dealings the Council has had with her on the same or related subject matter. The Council said that meetings with the Applicant have taken place in an attempt to resolve matters. The volume of requests submitted impose a significant burden on the Council, it claimed, and while the Council recognised that it has a statutory duty to respond to FOISA requests, it has many other significant statutory duties.
18. The Council's position was summarised by the Investigating officer and conveyed to the Applicant, who was invited to comment on whether or not her requirement for review could be reasonably described as vexatious. The Applicant supplied her view. The Commissioner will not reproduce her comments here. He notes, however, that they relate to the Applicant's concerns with Council and its actions rather than the FOI aspect i.e. whether the requirement of view was or was not vexatious. The Applicant did however make clear she did not consider her requirement for review to be vexatious. She commented "using FOI and SAR [subject access requests] and Complaints is not vexatious...".
19. First, the requirement for review at issue would not itself impose a significant burden on the Council: the requirement relates to parts 1 and 2 of the request, which relate to specific questions on specific training – on ICD-11 Code QE.52. Specifically, the requirement for review asks the Council to "relook at your [the Council's] recorded information" in respect of

its answer that training had not taken place and “there are no training dates planned for this”. The Commissioner would not regard either as imposing a significant burden on the Council.

20. As the Commissioner has indicated in his guidance, referred to above, a request (or, as in this case, a requirement for review) may be deemed vexatious where, viewed from the perspective of a reasonable person, it has the effect of harassing the public authority and/or its staff. This may include language and tone which a reasonable person would consider abusive or otherwise inappropriate in the circumstances. There is nothing in the requirement for review that uses language which would be seen to be abusive or inappropriate, although the language does indicate the strong feelings of the Applicant and includes serious allegations.
21. As to the question of whether the requirement for review has a serious purpose or value, the Commissioner agrees with the arguments of the Council. The requirement for review is almost entirely focussed on the concerns of the Applicant about past actions by the Council, rather than to the information requested. The concerns about training do appear to relate almost wholly to past issues and actions by the Council, and others, and are fundamentally linked to the Applicant’s concerns through specific allegations about the proper and adequate training of Council staff.
22. The Commissioner is aware that the Applicant has made many related requests to the Council on the same subject matter and related ongoing concerns. (Indeed, the Applicant has made a wide number of applications to the Commissioner). In this case, he is satisfied that it is relevant to take account of the Applicant’s previous contact with the Council. He is satisfied that the requirement for review under consideration here can be viewed as part of a course of conduct by the Applicant.
23. In the Commissioner’s view, the FOI process is being used by the Applicant to continue an extended dialogue in relation to her complaints. In the circumstances, it is highly unlikely that resolution of the matters raised by the Applicant in the requirement for review would be brought any closer by carrying out a review. Therefore, the Commissioner accepts that the requirement for review can be said to have no serious purpose or value, other than causing disruption or annoyance to the Council.
24. In all the circumstances of this case, the Commissioner considers it reasonable to conclude that the Applicant’s requirement for review was vexatious and that section 21(8)(a) of FOISA applied. Accordingly, the Council was not required to conduct a review in terms of section 21(1) of FOISA.

Technical failings and comments

25. Section 21(9) of FOISA states that, where an authority considers that section 21(8) applies, it must notify the applicant that section 21(8) applies within 20 working days. The Council acknowledged it failed to do this.

Decision

The Commissioner finds that the Applicant’s request for review to West Lothian Council (the Council) was vexatious and that, under section 21(8) of the Freedom of Information (Scotland) Act 2002 (FOISA), the Council was not required to conduct a review in terms of section 21(1) of FOISA.

However, by failing to notify the Applicant of this in line with section 21(9) of FOISA, the Council breached Part 1 of FOISA. Given that the Applicant was subsequently notified of this, the

Commissioner does not require the Council to take any action in respect of this failure in response to the Applicant's application.

Appeal

Should either the Applicant or the Council 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

18 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.

...

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

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

- (a) the requirement is vexatious; or

...

- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info