



Scottish Information
Commissioner

Decision 080/2005 – Mr David Emslie and the Scottish Executive

Information relating to communications between Cathy Jamieson, the Minister for Justice, and the Grampian Housing Association, the Housing Benefit Office at Aberdeen Council, the Department of Works and Pension, and the Lord Advocate.

Applicant: Mr David Emslie
Authority: Scottish Executive
Case No: 200501936
Decision Date: 16 December 2005

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
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Request for information relating to communications between Cathy Jamieson, Justice Minister and Grampian Housing Association, Aberdeen City Council, the Department for Work and Pensions and the Lord Advocate – Scottish Executive refused to respond to request as it was vexatious in terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 – decision upheld by Commissioner

Facts

Mr Emslie requested Cathy Jamieson, Justice Minister to provide him with information in relation to her communications with Grampian Housing Association, Aberdeen City Council, the Department for Work and Pensions and the Lord Advocate.

The Scottish Executive (the Executive) issued a formal notice advising Mr Emslie that it was refusing to deal with his application on the basis that it was vexatious in terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Mr Emslie was dissatisfied with this response and requested a review of that decision. The Executive did not carry out a review of its original decision, and failed to inform Mr Emslie of the decision not to conduct a review.

Outcome

The Commissioner found that the Executive did not breach Part 1 of FOISA by refusing to respond to Mr Emslie's request for information on the basis that the request was vexatious in terms of section 14(1) of FOISA.

However, the Commissioner found that the Executive breached section 19(b) and section 21(9) of FOISA by its failure to inform Mr Emslie of his right to an internal review and also by its failure to issue a formal notice under section 21(9) of FOISA advising him that it did not intend to carry out a review. The Executive is not required to take any remedial steps in respect of these technical breaches.



Appeal

Should either Mr Emslie or the Executive wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Background

1. On 12 April 2005, Mr Emslie made eight information requests (the request) to Cathy Jamieson, Justice Minister relating to, amongst other matters, her communications with the Grampian Housing Association, Aberdeen Council, the Department for Work and Pensions and the Lord Advocate. This request relates to an alleged fraud and alleged criminal activities.
2. On 21 April 2005, the Executive responded by informing Mr Emslie that his request for information was couched in terms which are wholly unacceptable (for instance, the inclusion of unsubstantiated allegations against individuals). The Executive found the request to be vexatious and refused to comply with it in terms of section 14 of FOISA. The Scottish Executive also advised Mr Emslie that any future requests couched in similar terms would be considered to be vexatious and would not be responded to.
3. The Executive informed Mr Emslie of his right of appeal to me within 6 months, but it failed to advise him of his right to an internal review in terms of section 19(b) of FOISA (read in conjunction with section 16(5)).
4. Despite this, Mr Emslie did request a review of that decision on 24 April 2005. The Executive did not, however, carry out a review.
5. On 25 May 2005, Mr Emslie applied to me for a decision and the case was allocated to an Investigating Officer.



The Investigation

6. Mr Emslie's appeal was validated by establishing that he had made a request to a Scottish public authority, i.e. the Executive, and had appealed to me only after asking the authority to review its response to his request for information.

The Commissioner's findings and analysis

7. The Investigating Officer invited the Executive to comment on why it had found Mr Emslie's application to be vexatious in terms of section 49(3)(a) of FOISA.
8. In its response, the Executive stated that Mr Emslie's request for information were addressed in terms which a reasonable person would describe as manifestly unreasonable, as it included unsubstantiated allegations and offensive remarks against individuals including the Justice Minister and the Lord Advocate. The Executive were of the view that it was not possible to look beyond the language of these offensive remarks and allegations to extract a clear request for information, as the allegations were an unseverable element of the information request itself.
9. The Executive also advised that, subsequent to Mr Emslie's letter of 12 April 2005, it has received further information requests from Mr Emslie, which were not couched in the same unacceptable terms and which it has processed by the Executive.
10. I have considered the Executive's submission and Mr Emslie's original request for information and I am satisfied that the Scottish Executive was correct to find the request vexatious. I find that the allegations and the language used by Mr Emslie are wholly inappropriate and that the Scottish Executive was correct in not complying with the request in terms of section 14 of FOISA.
11. The use of abusive or unacceptable language in an information request will not automatically mean that the request will be vexatious. However, in this case, the language used by Mr Emslie was such that it was almost impossible to work out what information Mr Emslie actually wanted from the Executive. In effect, the request appeared to be an opportunity for Mr Emslie to put forward his strongly held views and suspicions rather than an opportunity to make a request for information.



12. I have also considered the technical aspects of Mr Emslie's application and find that, although the Executive was correct to find Mr Emslie's application vexatious, it failed to comply with section 19(b) and section 21(9) of FOISA.
13. Section 19(b) requires that a refusal notice issued under section 16(5) of FOISA must contain information about the rights of the applicant to an internal review by the authority if, as in this case, the Executive had not previously given Mr Emslie such a notice.
14. When Mr Emslie requested a review, although the Executive did not have to carry out a review of its original decision (section 21(8)), it should have issued a formal notice to Mr Emslie advising him that it was not carrying out a review on the grounds that the application was vexatious (section 21(9)).
15. In correspondence with my Office, the Scottish Executive accepted that it had failed to comply with these procedural aspects of FOISA.

Decision

I am satisfied that Mr Emslie's request for information was vexatious. Therefore, I find that the Scottish Executive was correct to refuse to respond to his request in terms of section 14(1) of FOISA.

However, I find that the Scottish Executive breached section 19(b) and section 21(9) of FOISA by its failure to inform Mr Emslie of his right to an internal review and also by its failure to issue a formal notice under section 21(9) of FOISA advising him that it did not intend to carry out a review. I do not require the Scottish Executive to take any remedial steps in respect of these technical breaches.

Kevin Dunion
Scottish Information Commissioner
16 December 2005