

Decision Notice



Decision 038/2010 Mr C and South Lanarkshire Council

Whether requirements for review were vexatious

Reference No: 200901925
Decision Date: 8 March 2010

www.itspublicknowledge.info

Kevin Dunion
Scottish Information Commissioner

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



Summary

Mr C requested certain information from South Lanarkshire Council (the Council), in two separate requests. The Council responded by providing Mr C with information in response to one request and notifying him that it did not hold any information in response to the other. Mr C subsequently made a requirement for a review for both of these information requests. The Council regarded these requirements as vexatious and refused to carry out a review, citing section 21(9) of FOISA in both cases. Mr C remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that South Lanarkshire Council had dealt with Mr C's request for information in accordance with Part 1 of FOISA, by refusing to carry out the reviews on the basis that Mr C's requirements for review were vexatious. He did not require South Lanarkshire Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 21(8) and (9) (Review by Scottish public authority).

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

1. On 25 September 2009, Mr C wrote to the Council to request information as to "who stole the caravan".
2. The Council responded to Mr C's request on 21 October 2009, notifying him that it did not hold the information he had requested.
3. Mr C wrote to the Council on 24 October 2009 requesting a review of its decision, drawing its attention to information he believed to be relevant to this request.
4. Mr C submitted a second request for information to the Council on 8 October 2009, asking whether the individual that he had written to was "one of the Council bosses".



5. The Council provided a response to this request on 21 October 2009, giving the job title of the individual concerned and explaining that they were a senior officer of the Council.
6. Mr C wrote to the Council on 23 October 2009 requesting a review of its decision on this second request. He indicated that he was not satisfied with the Council's response to his request and provided an explanation by way of clarification of the information he was seeking.
7. On 3 November 2009, a response was provided by the Council to both of Mr C's requests for review. The Council explained that it considered his requests for review to be vexatious and therefore was giving him notice under section 21(9) of FOISA that it would not comply with his requirements for review.
8. On 6 November 2009, Mr C wrote to the Commissioner, stating that he was dissatisfied with the Council's response to his requests for review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr C had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

10. On 4 December 2009, Mr C was advised that the Commissioner's decision would consider only whether the Council had been correct to treat his two requests for a review as vexatious and, on that basis, to refuse to carry out reviews of its previous decisions in respect of the relevant information requests.
11. Also on 4 December 2009, the investigating officer wrote to the Council, notifying it that an application had been received from Mr C and giving it an opportunity to provide comments on the application (all as required by section 49(3) of FOISA). It was asked to respond to specific questions, and in particular to justify its arguments that the requests for review were vexatious.
12. A full response was received from the Council on 17 December 2009. Further submissions were received from the Council during the course of the investigation.
13. Insofar as relevant, the submissions received from both the Council and Mr C will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

14. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr C and the Council and is satisfied that no matter of relevance has been overlooked.

Section 21(8) and (9) – Review by Scottish public authority

15. Under section 21(8) of FOISA a Scottish public authority is not obliged to comply with a requirement for review if the requirement is vexatious or the request for information to which the requirement for review relates was one with which the authority was not obliged to comply by virtue of section 14 of FOISA. Section 21(9) of FOISA states that where the authority considers that either part of subsection (8) applies, it must give the applicant a notice in writing to that effect, within the time allowed by subsection (1) for complying with the requirement for review (i.e. within the 20 working days after receipt of the requirement – this has not been raised as an issue in this particular case).
16. Although the Commissioner has not published guidance on the application of section 21(9) of FOISA, he considers that his guidance on the application of section 14(1) would also be applicable in this case. This states:
- There is no definition of “vexatious” in FOISA. The Scottish Parliament acknowledge that the term “vexatious” was well established in law and opted to give the Commissioner latitude to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.*
- The Scottish Information Commissioner’s general approach is that a request (which may be the latest in a series of requests) is vexatious where it would impose a significant burden on the public authority and:*
- a. It does not have a serious purpose or value; and /or*
 - b. It is designed to cause disruption or annoyance to the public authority; and /or*
 - c. It has the effect of harassing the public authority; and/or*
 - d. It would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.*
17. In this case, the Council refused to respond to the two requests for review submitted by Mr C as it considered the requirements to be vexatious.
18. In support of its view, the Council provided the investigating officer with copies of correspondence which had passed between Mr C and itself over the course of the last 4 years. This correspondence relates to a number of requests for information made by Mr C and the Council's responses to these.



19. The Council has advised that Mr C has a number of ongoing grievances against it and it is of the view that he is, through his requests for review, seeking to re-open matters that have already been completed through the relevant complaints procedure. The Council has suggested that information has been provided to Mr C in the past and this has not altered his firmly held views. It believes this can be demonstrated by his repeated requests for information which the Commissioner, ultimately, has determined the Council does not hold. The Council considers it unlikely that holding a review in relation to the information now requested by Mr C would shed any further light on or alter his situation. It suggests that this is not the purpose behind Mr C's numerous requests for information and requests for review.
20. The Council states that the requests for review under consideration here are the latest in a series of requests for review that have imposed a significant burden on it and (given the circumstances of the relationship between it and Mr C) are designed to cause disruption or annoyance to, and have the effect of harassing, the Council.
21. It is also the Council's view that the language used in the requests for review is such that a reasonable person, if in full knowledge of the past interactions between it and Mr C, would describe it as manifestly unreasonable, as the requests for review include unsubstantiated allegations and offensive remarks against individuals. These include allegations in relation to professional activities and personal comments about employees of the Council. This, the Council argues, is an attempt to pressurise the employees concerned or cause them annoyance in order that Mr C can get matters re-opened.
22. Resolution of the matters raised by Mr C would not, in the Council's view, be brought any closer by carrying out a review of the responses to his requests and would instead lead to further correspondence with the Council and its employees. It is the view of the Council that, as well as using the process as a method of expressing his views, Mr C is making requirements for review in order to annoy the Council or its employees or to cause disruption to it by diversion of its resources to deal with the requirements until such time as the Council concedes its position to his own views. Mr C, in the Council's opinion, continues to pursue these matters despite being advised of the position and having either exhausted or voluntarily waived his options to seek redress through external bodies.
23. The Council has argued that Mr C is aware of the Council's review procedures, but has sent the requests for review in question to an employee of the Council who is not part of that process. In the Council's view, this is clearly designed to attack the integrity of the employees concerned because of their previous involvement in matters concerning Mr C. In seeking to evidence its view, the Council has commented on particular phrases used by Mr C in these requests for review, which they consider are targeted against those to whom they are addressed.



24. The Council has advised that because of the burden of dealing with Mr C's communications, it has now ceased to correspond with him in relation to the complaints and accusations underlying his information requests and requests for review. This has led, the Council believes, to Mr C utilising the FOI legislation to harass and annoy it in order to re-open these issues, which have not been resolved to his satisfaction. It submits that it has continued to deal with these requests and requests for review, where they are not vexatious.
25. The Commissioner considers that, viewed dispassionately and in isolation from the extensive correspondence between Mr C and the Council, it would not be manifestly unreasonable, unduly burdensome or disproportionate to request information on the matters raised in Mr C's requests. On the other hand, it is not immediately apparent that either request has any serious purpose or value. In any event, the Commissioner notes that the Council appears to have responded to these requests reasonably, by seeking to provide information where it can and to issue a notice where none is held.
26. However, in assessing whether Mr C's requirements for review should be regarded as vexatious, it is reasonable and relevant to examine the wider context in which the requirements for review were made, which may help in considering whether these requirements were without serious purpose or value, were designed to disrupt or cause annoyance to the Council, or otherwise had the effect of harassing the Council.
27. The Council has provided evidence to demonstrate that the requests for information, requirements for review and related correspondence between itself and Mr C are extensive in volume. It is also apparent that this correspondence relates to a few core subjects about which Mr C regularly seeks information. The Council has demonstrated in its submissions and supporting documentation that it has sought to address and answer such requests, including requests with the same subject matter as the requirements for review under consideration here, on a number of occasions occasion. The handling of some of these requests has been the subject of applications to the Commissioner, although on a number of other occasions Mr C appears to have taken matters no further following the Council's response on review.
28. The Commissioner also accepts that some of the language used by Mr C in these and other requirements for review goes beyond what a Scottish public authority should reasonably be expected to accept in this context, being generally challenging in tone and tending to prejudge matters. In particular, he notes language and comments which appear to be directed against the integrity or professionalism of individual members of staff. The Commissioner accepts the Council's view that this could cause annoyance to the staff members in question, who would not be unreasonable in considering themselves to be the subject of harassment.



29. The Commissioner also accepts that the Council has in the past responded to Mr C's requests and requirements for review, and that the same questions have tended to arise again repeatedly. It does appear that the Freedom of Information process is being used by Mr C simply to continue an extended dialogue in relation to his complaints. In the circumstances, it appears unlikely that resolution of the matters raised by Mr C in the requirements for review under consideration here would be brought any closer by carrying out a review. Therefore, the Commissioner is inclined to accept that these requirements for review have no serious purpose or value, other than causing disruption or annoyance to the Council.
30. Having viewed these two requirements for review in the context of the extensive ongoing correspondence between the Council and Mr C, therefore, the Commissioner is satisfied that the Council was entitled to consider them to be vexatious. As a result, he finds that the Council was not obliged (by virtue of section 21(8) of FOISA) to comply with the requirements and therefore was correct to give Mr C notice to that effect in terms of section 21(9) of FOISA.

DECISION

The Commissioner finds that the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr C.

Appeal

Should either Mr C or South Lanarkshire Council 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.

Kevin Dunion
Scottish Information Commissioner
8 March 2010



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

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
 - (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.
- (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.