



Scottish Information  
Commissioner  
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# Decision Notice 099/2024

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## Whether request was vexatious

**Applicant: The Applicant**

**Authority: Fife Council**

**Case Ref: 202200700**

### Summary

The Applicant asked the Authority for all correspondence between either of two named Authority employees and a third named Authority employee from 1 November 2021 until 7 April 2022. The Authority declined to comply with the request as it considered it to be vexatious or manifestly unreasonable. The Commissioner investigated and found that the request was vexatious or manifestly unreasonable, and so the Authority was not obliged to respond, but that it should have informed the Applicant that it was responding in terms of both FOISA and the EIRs.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(1) (vexatious or repeated requests); 39(2) (Health, safety and environment); 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner”) (Interpretation); 5(1) and 2(b) (Duty to make environmental information available on request); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available); 17(1), (2)(a) and (b) (Enforcement and appeal provisions)

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 7 April 2022, the Applicant made a request for information to the Authority. He asked for all correspondence, email, hard copy, minutes of telephone conversations and any other communications between either of two named Authority employees and a third named Authority employee from 1 November 2021 until 7 April 2022.
2. The Authority responded on 9 May 2022. It found that the request fell within section 14(1) of FOISA. The Authority believed that the information would be used to cause harassment to the staff involved.
3. On 10 May 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision as he wished to challenge much of the assumptions and assertions made.
4. The Authority notified the Applicant of the outcome of its review on 9 June 2022. It explained that under section 14(1), the Authority is not obliged to respond to requests that are vexatious, and that the effect a request has on it can be a factor taken into account when deciding if a request is vexatious. The Authority informed the Applicant that due to previous public posts he had made, it was satisfied that the effect of the request was harassing the relevant members of staff, and upheld that the request was vexatious.
5. On 17 June 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he did not agree with the assumptions made by the Authority that led it to consider section 14(1), and does not agree that his request is vexatious.

## Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 4 July 2022, the Authority was notified in writing that the Applicant had made a valid application.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application.
9. The case was subsequently allocated to an investigating officer.
10. During the course of the investigation further comments were sought and received from the Authority.

## Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

### ***Section 14(1) – Vexatious or repeated requests***

12. 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.

13. The Commissioner's general approach, found in [his guidance](#)<sup>1</sup> on section 14(1), is that the following factors are relevant when considering whether a request is vexatious. 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
14. 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 term "vexatious" must be applied to the request and not the requester, but 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 request and surrounding circumstances.

#### *The Applicant's submissions*

15. The Applicant believed that the Authority had prejudged what he intended to do with the information, and had made assumptions and assertions about him personally in coming to its decision to consider his request as vexatious. The Applicant explained that he had made several FOI requests to the Authority previously, and had published a very small amount of that information into the public domain when he considered it to be necessary, as he considered was his right when he believed it was in the public interest.
16. The Applicant commented that he considered the Authority was treating his request as vexatious as a means to hinder publication of the information he had requested, whilst it advertised its policy of openness, accountability and transparency.

#### *The Authority's submissions*

17. The Authority submitted that it had taken account of previous interactions with the Applicant and concerns that had been raised previously due to the effect recent requests were having on staff welfare. It considered that the impact of these equated to harassment, and that there was an underlying aim to have individuals removed from their positions within the Authority.
18. The Authority additionally identified that, over three information requests, the Applicant had sought 8 years' worth of colleagues' correspondence that did not relate to any specific subject matter. In its view this request was unlikely to produce records of serious value to

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<sup>1</sup> <https://www.itspublicknowledge.info/sites/default/files/2023-07/BriefingSection14VexatiousorRepeatedRequests.pdf>

the Applicant. The Authority, therefore, considered that the request lacked serious purpose or value, stating that a more specific request may have led to a different conclusion.

19. The Authority highlighted that since its refusal of this request under section 14(1), the Applicant had continued to make further requests, that were, in the Authority's view, more focused, and that these requests had not been deemed vexatious, with information being provided to the Applicant. In addition, the Authority provided the Commissioner with evidence that it had tried to engage with the Applicant, outside of FOISA, in an attempt to address his concerns with it and its actions in his community.
20. With regard to the Applicant's view that it was his right to publish information that was in the interest of the public, the Authority stated that he had been removed from the social media accounts of community forums due to the negative impact his comments were having on the community.
21. The Authority also provided the Commissioner with screen shots of comments made about particular staff on social media, and with evidence of the effect that this had on staff.

#### *The Commissioner's view*

22. The Commissioner has taken account of all of the relevant submissions and supporting evidence from the Authority, intended to demonstrate that the Applicant's request has no serious purpose or value and the effect of dealing with this would be to cause harassment to the authority's staff.
23. He has also fully considered the submissions made by the Applicant.
24. Taken in isolation, the Applicant's request might not appear to be vexatious or manifestly unreasonable. However, the vexatious or manifestly unreasonable nature of a request may only emerge after considering the context created by previous or ongoing correspondence.
25. The Commissioner does not agree with the Authority that the request does not have serious purpose or value. It is clear from reading the subject heading in the Applicant's information request that he has specified what he expects the requested correspondence to cover (matters relating to a play area within the country park). Furthermore, it is evident from publicly available information that developments to this area of the country park involved significant sums of public money and included input from local communities. The Commissioner therefore considers it reasonable to conclude that given the role of at least one of the named staff members, as well as the scope of the Applicant's request, the correspondence would relate to matters that were of interest to the Applicant, and possibly the wider local community.
26. That said, a request which has value and serious purpose can still be vexatious if it has the effect of harassing, or distressing, the public authority and/or its staff or individuals connected to the Authority.
27. "Harassing" is not defined in FOISA or the Commissioner's own guidance. The First Tier Tribunal (Information Rights) ruling [EA/2011/0224 Roger Conway and the Information Commissioner](#)<sup>2</sup> was of the view that "harassing" should be given its ordinary meaning, that is, to disturb persistently, bother continually, pester or persecute. In the Commissioner's view, the question is whether (viewed from the perspective of a reasonable person) the request

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<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i690/20120301%20Decision%20EA20110224.pdf>

has the effect of harassing the authority and/or its staff, and not whether the requester intended it to harass.

28. The Commissioner has taken into account all of the relevant submissions and supporting evidence from the Applicant and the Authority.
29. Having done so, the Commissioner does not agree, that the request, when considered in the context created by previous social media comments made by the Applicant in relation to the named staff, has had the effect of harassing particular members of the Authority's staff, even if this was not the Applicant's intention.
30. For this reason, the Commissioner is satisfied that this request should be properly characterised as vexatious in line with section 14(1) of FOISA.

#### ***Handling of the request under FOISA or EIRs***

31. The Authority submitted that it had responded to the Applicant's initial request under FOISA, and that as the request was considered to be vexatious, the information was not reviewed, and the EIRs were not considered at that stage.
32. The Authority stated that, due to the work carried out in relation to another request made by the Applicant, and the work carried out by the named individuals covered by the request, it was likely that some of the information held would be environmental information, as defined in regulation 2(1) of the EIRs and, as such, would fall to be considered under the EIRs.
33. Where information falls within the scope of this definition, a person has a right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to the various restrictions and exceptions contained in the EIRs.
34. The Commissioner accepts that, given the nature of the request, and the roles of the named staff, the Authority should correctly have considered the request under the EIRs (as well as FOISA).

#### ***Section 39(2) of FOISA – Environmental information***

35. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. In this case, the Commissioner accepts that the Authority was entitled to apply this exemption to the information it identified as environmental information.
36. As there is a statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to the request under the EIRs) outweighs any public interest in disclosing the information under FOISA.
37. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA, and consider the Applicant's information request (to the extent that they related to environmental information) under the EIRs.

#### ***Regulation 5(1) of the EIRs – Duty to make environmental information available***

38. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to information that is held by the authority when it receives a request.

39. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
40. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.
41. Under regulation 10(4)(b) of the EIRs, a Scottish public authority may refuse to make environmental information available, to the extent that the request for information is manifestly unreasonable.
42. In considering whether the exception in regulation 10(4)(b) of the EIRs applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure. Even if it finds that the request is manifestly unreasonable, it is still required to make the information available unless, in all the circumstances, the public interest in doing so is outweighed by that in maintaining the exception.
43. The Authority considered that, as some of the information falling within the scope of the Applicant's request was environmental information, it should have also provided a response in terms of the EIRs, and that specifically regulation 10(4)(b) (Manifestly unreasonable) would apply.
44. The Authority considered the public interest and various contributing factors, including the wellbeing of its employees, and found that the public interest in maintaining the exception outweighed that in responding to the request.
45. The EIRs, do not define "manifestly unreasonable", however, the Commissioner's approach is similar to that described above when considering section 14(1) of FOISA.
46. For the same reasons to those outlined previously with regards to section 14(1) of FOISA, the Commissioner accepts that the Authority was entitled to refuse to comply with the request by virtue of regulation 10(4)(b) of the EIRs, but that it should have informed the Applicant that it was relying on the provisions in both FOISA and the EIRs.
47. Although the Commissioner has concluded that the Authority was correct, in this case, to deem the Applicant's request vexatious and manifestly unreasonable, he would note his understanding that the Applicant has since submitted more focussed requests for information to the Authority for which he has received some information.
48. Whilst a particular request to an authority for information may be considered to be vexatious, as in this case, it must be remembered that this does not, and should not, affect an Applicant's ability to submit other information requests in future. Any such future information requests should be considered by an authority on their own merit.

## **Decision**

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by the Applicant by responding in terms of section 14(1) of FOISA and regulation 10(4)(b) of the EIRs.

However, by failing to inform the Applicant that it was relying on regulation 10(4)(b) at the time of the request, or request for review, for certain of the information, the Authority failed to comply with regulation 5(1) of the EIRs.

## **Appeal**

Should either the Applicant or the Authority 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.

**David Hamilton**  
**Scottish Information Commissioner**

**23 May 2024**

## **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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...
- ...

#### **39 Health, safety and the environment**

- ...
- (2) Information is exempt information if a Scottish public authority-
  - (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
  - (b) would be so obliged but for any exemption contained in the regulations.
- ...
- ...

#### **47 Application for decision by Commissioner**

- (1) A person who is dissatisfied with -
  - (a) a notice under section 21(5) or (9); or
  - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.



- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
  - (b) state the name of the applicant and an address for correspondence; and
  - (c) specify –
    - (i) the request for information to which the requirement for review relates;
    - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);  
and
    - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...

# The Environmental Information (Scotland) Regulations 2004

## 2 Interpretation

(1) In these Regulations –

“the Act” means the Freedom of Information (Scotland) Act 2002;

“applicant” means any person who requests that environmental information be made available;

“the Commissioner” means the Scottish Information Commissioner constituted by section 42 of the Act;

...

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

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- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

## 5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1)-

...

(b) is subject to regulations 6 to 12.

...

## **10 Exceptions from duty to make environmental information available**

- (1) A Scottish public authority may refuse a request to make environmental information available if-
  - (a) there is an exception to disclosure under paragraphs (4) or (5); and
  - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
  - (a) interpret those paragraphs in a restrictive way; and
  - (b) apply a presumption in favour of disclosure.

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that

...

- (b) the request for information is manifestly unreasonable;

...

## **17 Enforcement and appeal provisions**

- (1) The provisions of Part 4 of the Act (Enforcement) including schedule 3 (powers of entry and inspection), shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in paragraph (2).
- (2) In the application of any provision of the Act by paragraph (1) any reference to -
  - (a) the Act is deemed to be a reference to these Regulations;
  - (b) the requirements of Part 1 of the Act is deemed to be a reference to the requirements of these Regulations;

...

- (f) a notice under section 21(5) or (9) (review by a Scottish public authority) of the Act is deemed to be a reference to a notice under regulation 16(4); and

...