



Scottish Information
Commissioner
www.foi.scot

Decision Notice 124/2025

Whether request was vexatious

Authority: Queens Cross Housing Association
Case Ref: 202500202

Summary

The Applicant requested various information regarding the Authority's complaint handling processes. The Authority explained that it considered the request would be considered vexatious under FOISA but elected to respond to the request outwith FOISA. The Commissioner investigated and found that the Authority failed to comply with FOISA in responding to the request. He required the Authority to issue the Applicant with a revised review outcome, which must not refuse to comply with the request on the basis it was vexatious.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 16(1) and (5) (Refusal of request); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 5 December 2024, the Applicant made a request for information to the Authority. He asked a series of questions regarding the Authority's complaint handling processes. The full text of the request (subject to the removal of names and addresses) can be found in Appendix 1.
2. The Authority responded on 11 December 2024. It advised the Applicant that it had decided his request should not be answered in terms of FOISA, but instead as a general request for information and in part under the UK GDPR. It explained that it considered the request would be considered vexatious under FOISA, but instead of refusing to comply with the request it decided to respond outwith FOISA.

3. On 16 December 2024, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he did not agree that his request was vexatious.
4. The Authority notified the Applicant of the outcome of its review on 22 December 2024, which fully upheld its initial response. While it had chosen to respond to his request outwith FOISA, the Authority explained it felt it had fully responded and that it had upheld “FOISA requirements to be supportive and transparent”.
5. On 3 February 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority’s review for the same reason set out in his requirement for review.

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 12 March 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
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 and to answer specific questions related why it considered the request was vexatious.
9. The Applicant did not raise dissatisfaction in his application to the Commissioner regarding the Authority’s decision to respond to questions 9, 12 and 13 of his request under the UK GDPR. Consequently, the Commissioner will not consider the Authority’s handling of these parts of the request in his Decision Notice.

Commissioner’s analysis and findings

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

Section 14(1) – Vexatious or repeated requests

11. Under section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.
12. The Commissioner has published [guidance](#)¹ on the application of section 14(1) of FOISA. This states:

“There is no definition of “vexatious” in FOISA. The Scottish Parliament considered that the term “vexatious” was well-established in law and chose to give the Commissioner latitude to interpret the term in that context, so that the interpretation might evolve over time in light of experience and precedent.”

¹ <https://www.foi.scot/sites/default/files/2023-07/BriefingSection14VexatiousorRepeatedRequests.pdf>

13. In the Commissioner's view, there is no single formula or definitive set of criteria that allow a formulaic approach to be taken to determining whether a request is vexatious. Each request must be considered on the merits of the case, supported by evidence, clear evaluation and reasoning. Although this is not an exhaustive list, the following factors will be relevant to a finding that a request (which may be the latest in a series of requests or other related correspondence) is vexatious:
- (i) it would impose a significant burden on the public authority,
 - (ii) it does not have a serious purpose or value,
 - (iii) it is designed to cause disruption or annoyance to the public authority,
 - (iv) it has the effect of harassing the public authority,
 - (v) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
14. While the Commissioner's view is that the term "vexatious" must be applied to the request and not the requester, he also acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering whether a request is vexatious.
15. The Authority stated that it considered the Applicant's request vexatious for the following reasons:
- the information requested was only of interest to the Applicant
 - the request had the effect of harassing the Authority and its staff.

Serious purpose or value

16. The Applicant explained that his interest in this information is to assist him in identifying specific complaints to the Authority that had not been recorded individually and instead been aggregated. He also provided background information on the difficulties he had had in housing provided by the Authority.
17. The Applicant highlighted that the Authority had purported to have responded fully to his request. He considered that the only effect of refusing to respond under FOISA would be to prevent him from appealing to the Commissioner regarding the substance of the Authority's response.
18. The Authority considered that the information requested was of interest to the Applicant alone, not in the "general public interest". It stated it would therefore not publish a response to this request on its website under its publication scheme.
19. While it had responded to the request outwith FOISA, the Authority explained it had fully disclosed the information requested by the Applicant. It said it understood there was precedent for disclosing information outside of FOISA and that the Commissioner had supported such an approach where it was evident that the public authority has "still been supportive and still thus been transparent".

Harassment

20. The Authority explained that it considered the request vexatious as it was demonstrably aimed at causing, and did cause, harm and distress to its employees. The request was

repetitive, written in language intended to offend and simply repeated in different words requests for information that has already been addressed.

21. The Authority further explained that it considered the language used by the Applicant was threatening and had caused “extreme distress” to those handling his “multifarious” requests. It said his persistent refusal to accept apologies and offers to work with him to correct any recording errors demonstrated that these requests were intended to cause harm and distress to the Authority.
22. The Authority provided specific evidence of distress experienced by staff, and highlighted that the Applicant had made numerous requests under FOI law: 33 requests for information, two requirements for review and three appeals to the Commissioner since 2023.
23. The Applicant denied that his correspondence was threatening or intended to cause harm. He considered it bizarre that the Authority said his request intended to cause harm and had caused extreme distress when the Authority nevertheless responded to the same request for information outwith FOISA.

The Commissioner’s view

24. The Commissioner has carefully considered the submissions made by the Applicant and the Authority.
25. The Authority does not appear to have actually relied on section 14(1) of FOISA in responding to the Applicant’s request. Instead, it responded outwith FOISA but stated that it would have considered the request vexatious had it responded in terms of FOISA.
26. In this case, the Commissioner will consider whether the Authority has provided sufficient evidence and submissions to support its claim that the application of section 14(1) of FOISA would have been appropriate, in the circumstances, had it responded in terms of FOISA.
27. The Commissioner does not agree, on the submissions provided by the Authority, that the request is so lacking in serious purpose or value that it can only be seen as vexatious. He accepts, as does the Authority, that the Applicant has a genuine personal interest in – and purpose in seeking – the information requested. There is no requirement in FOISA that the information requested must be of wider interest or value. Whether, viewed objectively, the request can be said to lack serious purpose or value is another matter – and not one the Commissioner considers himself able to reach a conclusion.
28. The Commissioner does not agree that seeking information that may only be of personal interest to a requester necessarily means the request must be vexatious. In this context, whether the response merits publication on the Authority’s website is irrelevant.
29. The Commissioner accepts that the nature and tone of some elements of the Applicant’s correspondence is forceful and challenging, e.g. he highlights what he considers to be failings by the Authority and names specific employees whose actions he is concerned by.
30. The Commissioner notes the steps taken by the Authority to address such correspondence, including apologies, the offers of meetings and the use of its managed contact policy. He would advise the Applicant to be mindful of his tone and language in future correspondence with the Authority: he cannot discount the possibility that continuing expression in this manner may factor in future consideration of section 14(1).

31. In this case, as stated above, the Commissioner must note that the Authority responded to the Applicant's request outwith FOISA. This was despite the harassing effect it claimed his correspondence was having.
32. In the circumstances, the Commissioner cannot accept that the Authority could respond to the request outwith FOISA but that it was not obliged to respond in terms of FOISA because the request was vexatious. The Authority's position that the harassing effect of the request meant that the request would be vexatious in terms of FOISA, but that it could still respond to the same request outwith FOISA, is simply untenable – regardless of its motivation for doing so.
33. In effect, the Commissioner considers the only difference between the Authority responding to the request outwith FOISA and responding to it in terms of FOISA is that the Applicant has been denied his right of appeal to the Commissioner in relation to the substantive responses provided by the Authority outwith FOISA.
34. The Commissioner acknowledges that there are circumstances where it may be appropriate for a public authority to disclose information outwith FOISA. However, this does not mean that a public authority can simply decide not to respond in terms of FOISA to an information request. If the Authority considered the request in this case was vexatious, it was required to notify the Applicant of this decision unless:
 - (i) such a notice has already been given in relation to a previous identical or substantially similar request, and
 - (ii) in all the circumstances, it would be unreasonable to expect the authority to serve another notice in relation to the current request, in accordance with section 16(5).
35. Neither of the above factors appear applicable to the request in this case, nor has the Authority argued they are. The Authority was therefore obliged to respond to the request in terms of FOISA – and it failed to do so.
36. Consequently, in all the circumstances, the Commissioner finds that the Authority failed to comply with Part 1 of FOISA in responding to the request and that it was not entitled to refuse to comply with the request in this case on the basis that section 14(1) of FOISA applied or would have applied. He requires the Authority to provide the Applicant with a revised review outcome, other than in terms of section 14(1) of FOISA.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

Specifically, the Commissioner finds that the Authority was not entitled:

- to choose not to respond to the request in terms of FOISA
- to refuse to comply with the Applicant's request on the basis that it was, or would have been, vexatious.

The Commissioner therefore requires the Authority to carry out a review, in terms of section 21 of FOISA, and respond otherwise than in terms of section 14(1), by **4 July 2025**.

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

20 May 2025

Appendix 1: Request

- 1) As 'complaints received' figures are reported to the Scottish Housing Regulator, can you provide me with the details of 'all' public, private, charitable and any other bodies or organization's (including voluntarily and obligatory) where [the Authority] publishes /reports complaints received figures?
- 2) Are the 'complaints received' by [the Authority] and published /reported to the SHR and above bodies the 'aggregated' complaints received figures (in accordance with the 46 complaints received figures provided to myself in qcha's FOISA (2002) response of 7th Sep 2023 and upheld as 46 complaints received in [the Authority]'s FOISA review response of 14th Nov 2023)?
- 3) Are the 'complaints received' by [the Authority] and published/reported to the SHR and above bodies the now claimed 'actual' complaints received figures (in accordance with the 62 complaints received figure provided to myself and the information commissioner in [the Authority]'s revised review response (9th Aug 2024))?
- 4) On 1st and 2nd Aug 2023 respectively, I submitted 50 'service' complaints to [a named staff member], these complaints were responded to on 8th Aug 2023 at 10:13pm as logged with only 2 complaint reference numbers. Therefore, can you confirm that these specific complaints were subjected to the above recently acknowledged 'aggregation' of complaints received 'process' and confirm that these specific 50 'actual' complaints received were 'aggregated' as 2 complaints received and thereafter reported to the SHR and other bodies above?
- 5) On 31st Aug 2023, the above 50 complaints were responded to as Stage two complaints now with only with one single complaint reference number stating your complaints have been upheld, therefore can you confirm that my 50 'actual' complaints referred to in this response where 'aggregated' into one single complaint logged and thereafter published/reported to the SHR and other bodies noted above?
- 6) Can you tell me on what date did [a named staff member] first become 'involved in any way with' or in responding to the above noted 50 service complaints?
- 7) As [the Authority] where more than happy to provide specific details re sections of policy when sanctioning me with 'managed contact' could I ask for similar 'specific details' of exactly where any documented reference of scope/criteria and decision making procedures might be found with regard to an 'aggregation' of both service and ASB complaints policy and process in place at the time the tenants of [a named property] complaints were being 'aggregated'?
- 8) As I trust [a named staff member's] stage 2 investigation was thorough and comprehensive, can I please be informed as to 'how many' complaints [the named staff member] was referring to when stating complaints were not concealed 'deliberately or maliciously' and that she could not disclose actions taken against staff re this matter?
- 9) Can I ask for the details (i.e. dates received/dates logged/reference numbers provided/investigation details/date of outcome provide) for the 8 complaints that were used by [the Authority] to sanction me with managed contact on 5th Dec 2023?
- 10) Can I ask 'how many' tenants have been sanctioned since July 2023 using [the Authority]'s managed contact policy, either specifically or in part for; a) Submitting a FOSIA and review? b) Submitting a SAR and review?

- 11) Can I ask how many tenants have been sanctioned since July 2023 using [the Authority]'s managed contact policy 'without' firstly receiving a warning in accordance with section 1 of [the Authority]'s managed contact policy?
- 12) As my SAR review response did not include the details of where I can seek a further review, can you please tell me what public body deals with such reviews of a Subject Access Requests?
- 13) Could you please provide me with the details of how many 'actual' complaints [the Authority] have received from me personally since 1st Jan 2002 and how many of these complaints were without my or any other tenants knowledge 'Aggregated' in this 'Russian doll process' of publishing/ reporting complaints received numbers to the public, SHR and other agencies noted above?
- 14) Can you confirm that the tenant board members are aware and have approved the 'aggregation of complaints process/policy' and can you provide the contact details of all tenant board members in order that we can personally make them aware of how other neighbours and myself have been 'treated' by [the Authority] with regard to our prolonged unbearable living conditions and [the Authority]'s responses and lack thereof?