

Decision Notice



Decision 092/2010 Mr N and South Lanarkshire Council

Whether request vexatious

Reference No: 201000148
Decision Date: 14 June 2010

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr N requested from South Lanarkshire Council (the Council) copies of changes to planning legislation and the Council's guiding policy. The Council responded that it regarded the request as vexatious in terms of section 14(1) of FOISA. Following a review, Mr N remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr N's request for information in accordance with Part 1 of FOISA, as it was justified in treating Mr N's request as vexatious and therefore was not obliged to comply with the request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement) and 14(1) (Vexatious or repeated requests)

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 16 November 2009, Mr N wrote to the Council requesting "copies of the relevant changes to planning legislation and the Council's guiding policy." This referred to a comment in a newspaper about a planning application (of 2009), attributed to a Council official. Mr N said that this comment seemed to contradict what had been said in connection with an earlier planning application (of 2003). He therefore wondered what changes had occurred between the two applications.
2. The Council responded on 11 December 2009, advising that it was refusing to comply with the request because it considered it vexatious in terms of section 14(1) of FOISA. It stated that it believed Mr N was using his requests under FOISA to put forward his own views and suspicions rather than to make requests for information. It considered the request to be part of a series of requests which imposed a significant burden on the Council and which were designed to cause disruption or annoyance to the Council and/or certain of its employees and had the effect of harassing the Council and those employees.



3. On 16 December 2009, Mr N wrote to the Council requesting a review of its decision, disagreeing with the Council's use of section 14(1) of FOISA.
4. On 19 January 2010, the Council notified Mr N of the outcome of its review. The Council upheld its original decision, with the same reasoning, that the request was vexatious in terms of section 14(1) of FOISA.
5. Mr N wrote to the Commissioner on 20 January 2010, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr N 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

7. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, it was asked to provide detailed arguments and evidence to support its view that Mr N's request for information was vexatious.
8. A response was received from the Council on 10 May 2010. That response will be considered fully, insofar as relevant, in the Commissioner's analysis and findings below.
9. Mr N disagreed with the Council's position that his requests were personalised attacks of employees or elected members of the Council, which he did not believe could be substantiated. He referred back to the 2003 planning application referred to above, about which he had long-standing concerns. While Mr N has raised issues in the course of the investigation, the Commissioner must note that he can only comment on whether the Council dealt with the request for information of 16 November 2009 in terms of Part 1 of FOISA, in the respects identified in Mr N's application to him.

Commissioner's analysis and findings

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



Section 14(1) (Vexatious requests)

11. Section 14(1) of FOISA states that the general right of access to information in section 1(1) of FOISA does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.
12. As previously noted, the Commissioner has published guidance¹ on the application of section 14(1) of FOISA. This states:

"There is no definition of "vexatious" in FOISA. The Scottish Parliament acknowledged 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:

 - it does not have a serious purpose or value; and/or
 - it is designed to cause disruption or annoyance to the public authority; and/or
 - it has the effect of harassing the public authority; and/or
 - it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate."
 - 13. Mr N stated that he was aware of recent changes made to the planning legislation, and that he simply wondered if it was those changes which allowed a Council employee to make a reported comment, which he regarded as contradicting the Council's approach to an earlier planning application, or whether the comment was misquoted. He explained the context of the request as being his concerns about the planning application from 2003, referred to in his request and subsequent correspondence.
 - 14. In this case the Council stated that it wished to reiterate the submissions it had given the Commissioner in previous cases involving Mr N and also to reiterate the reasoning of its Review Panel's decision in this case.
 - 15. The Council submitted, in line with what it had told Mr N on review, that a request would impose a significant burden on the Council where dealing with it would require a disproportionate amount of time, and the diversion of an unreasonable proportion of its financial and human resources away from its core operations. It cited the Commissioner's guidance in support of this proposition, and also in support of the argument that public authorities could take into account a series of requests collectively when assessing the burden on the public authority.

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.asp>



16. The Council was of the view, having considered his previous requests, that Mr N had been making a number of requests for information on particular topics, sometimes repeatedly, one of the areas subject to these requests being the granting of the 2003 planning application referred to in his request for information. The Council considered that responding to all of the previous requests from Mr N on this topic had resulted in a significant burden on it.
17. In reaching a decision on review, the Council said it had taken account of Mr N's intention in making the request, noting that the request could be vexatious if the intention was to cause disruption of annoyance rather than to access information. Having considered his previous requests, it noted that Mr N had been aggrieved by the Council's granting of the 2003 planning application and that his complaints on this had ultimately been unsuccessful. The Council concluded that Mr N was now seeking to use requests for information and requirements for review to open up avenues of complaint that had been closed. It also took the view that these requests and requirements for review were often subsidiary to the expression of his views.
18. The Council believed Mr N was making his requests for information and 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 requests, until such time as the Council conceded its position to his views. It also noted that those requests and requirements were being couched in ways that included allegations in relation to professional activities of, and personal comments about, employees of the Council. It concluded that he was thus attempting to pressurise those employees or to cause them annoyance in order to get matters re-opened.
19. The Commissioner considers that, viewed dispassionately and in isolation from the ongoing correspondence between Mr N and the Council, the request under consideration here would not necessarily be manifestly unreasonable, unduly burdensome or disproportionate. In the ordinary course of events, it would not be manifestly unreasonable or disproportionate to seek information about changes to planning legislation or planning policy over a period of time.
20. However, in considering whether Mr N's request should be regarded as vexatious, the Commissioner considers it reasonable and relevant to take into consideration the context in which the request was made, which might help in considering whether it was without serious purpose or value, was designed to disrupt or cause annoyance to the Council, or otherwise had the effect of harassing the Council.
21. The Commissioner accepts that the Council has provided evidence demonstrating extensive correspondence with Mr N on various information requests. The correspondence relates to a small number of issues about which Mr N regularly seeks information from the Council. The subject matter of this particular request, at least when considered in context, relates to one of these issues (the 2003 planning application) and the correspondence referred to by the Council during the investigation shows that there has been considerable correspondence between itself and Mr N already on the planning application and events involving Mr N related to this application, prior to this particular request.
22. The Commissioner accepts that Mr N's request of 16 November 2009 should be viewed in the context of his ongoing correspondence with the Council, and that the Council has shown that this correspondence has become unduly burdensome and unreasonably voluminous.



23. As mentioned previously, the Council was of the view that Mr N was seeking to use requests for information and requirements for review to open up avenues of complaint to the Council that had been closed.
24. Having looked at the correspondence between the Council and Mr N in this request, and the previous correspondence, the Commissioner accepts that it was reasonable in the circumstances for the Council to conclude here that the freedom of information process was being used by Mr N primarily to continue extended dialogue in relation to his concerns about the 2003 planning application. It also appears unlikely in the circumstances that resolution of the matter raised in Mr N's request would be brought any closer by responding to the request. The Commissioner therefore accepts that the request had no serious purpose or value, other than causing disruption or annoyance to the Council.
25. Having considered the circumstances of this case carefully, the Commissioner accepts that Mr N's request for information was properly viewed in the context of his ongoing correspondence with the Council and that the Council was therefore entitled to consider Mr N's request as vexatious in terms of section 14(1) of FOISA (and to refuse to comply with it on that basis).

DECISION

The Commissioner finds that Mr N's information request was vexatious and that, in terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA), South Lanarkshire Council (the Council) was not obliged to comply with the request. As such, he finds that the Council complied with Part 1 of FOISA in the way in which it responded to Mr N's request.



Appeal

Should either Mr N 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.

Margaret Keyse
Head of Enforcement
14 June 2010



Appendix

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.

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