

Decision Notice



Decision 145/2011 Mr Alvaro A. Macias Diaz and the University of St Andrews

Whether a request was vexatious

Reference No: 201002309

Decision Date: 4 August 2011

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Mr Macias Diaz asked the University of St Andrews (the University) for information from the University Court and referring to the Head of the School of Management.

The University refused to comply with Mr Macias Diaz' request, considering it to be vexatious in terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Mr Macias Diaz requested a review of this response, but the University informed him that it would not comply with this request, under section 21(8) of FOISA, on the basis that his initial request was vexatious. Mr Macias Diaz subsequently applied to the Scottish Information Commissioner for a decision.

Following an investigation, the Commissioner found that the University had dealt with Mr Macias Diaz' request in accordance with Part 1 of FOISA, and was justified in treating Mr Macias Diaz' request as vexatious, in terms of section 14(1) of FOISA.

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 30 September 2010, Mr Macias Diaz asked the University's Court department for (1) any information (including correspondence, emails, audits, minutes/notes from meetings, and reports) where the Head of School of Management is mentioned, during 2010 and (2) any information (including correspondence, emails, audits, minutes/notes from meetings, and reports) related to the change of Head of School of Management in January, February, March, April, May, June, July, August and September 2010.



2. On 28 October 2010, the University wrote to advise Mr Macias Diaz that it was refusing to comply with his request as it was considered to be vexatious in terms of section 14(1) of FOISA. The University acknowledged that, when viewed in isolation, the request would not appear to be manifestly unreasonable; however, in reaching its decision, the University had taken into account the volume and “persistent nature” of the requests submitted by Mr Macias Diaz over the previous nine months. The University took the view that Mr Macias Diaz had made a series of closely linked requests which were causing disruption to its core business activity and were a significant burden on the organisation.
3. On 29 October 2010, Mr Macias Diaz wrote to the University to request a review of its response, rejecting the arguments put forward by the University.
4. On 26 November 2010, the University wrote to inform Mr Macias Diaz that it had decided not to comply with his requirement for review, explaining that under section 21(8) of FOISA, a Scottish public authority is not obliged to comply with a requirement for review if the request to which it relates is considered to be vexatious.
5. Mr Macias Diaz remained dissatisfied with the University’s response, and applied for a decision from the Commissioner on 16 December 2010. He provided reasons for his dissatisfaction, which are considered later in this decision.
6. The application was validated by establishing that Mr Macias Diaz had made a request for information to a Scottish public authority and had applied for a decision from the Commissioner, in terms of section 47(1) of FOISA, only after asking the authority to review its response to that request. The case was allocated to an investigating officer.

Investigation

7. On 21 December 2010, the University was notified in writing that an application had been received from Mr Macias Diaz and was asked to provide any comments it wished to make on the application (as required by section 49(3)(a) of FOISA). The University was asked to provide information about the background to its decision, including the number and nature of the requests which Mr Macias Diaz had submitted; the ways in which his requests had disrupted the University’s business activities; and the nature of the burden which his requests had placed on the University. The University was asked to provide a detailed account of any harm or disruption caused by Mr Macias Diaz’ requests, particularly in relation to the amount of time spent dealing with those requests.
8. The University responded on 21 January 2011, addressing each of the points listed above.
9. On 27 January 2011, Mr Macias Diaz was asked to comment on the argument that his requests, taken together, had placed a significant burden on the University. He provided his comments on 8 February 2011.



10. All relevant submissions received from the Council and Mr Macias Diaz will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the submissions which have been presented to him and is satisfied that no matter of relevance has been overlooked.

Section 14(1) of FOISA

12. In terms of section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information if the request is vexatious.

13. The Commissioner has published guidance on the application of section 14(1) of FOISA¹. 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."

14. The Commissioner's interpretation, as set out in his guidance on section 14(1), is that a request is vexatious where it:
- would impose a significant burden on the public body; and
 - does not have a serious purpose or value; and/or
 - is designed to cause disruption or annoyance to the public authority; and/or
 - has the effect of harassing the public authority; and/or
 - would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
15. As recognised in *Decision 108/2010 Mr Mark Irvine and South Lanarkshire Council*², the Commissioner's general approach to the question of whether a request is vexatious is that it will impose a significant burden on the public authority. This does not exclude the possibility that, in any given case, one or more of the other listed criteria may be of such overwhelming significance that it would be appropriate to consider the request vexatious in the absence of significant burden.

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

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/201000367.asp>



16. In the Commissioner's briefing on section 14 of FOISA, he has indicated that a request will impose a significant burden on a public authority 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.

The University's submission

17. The University provided the Commissioner with a list of the requests submitted by Mr Macias Diaz between January and September 2010, and a spreadsheet showing where some of those requests had overlapped (i.e. been submitted before the University had responded to a previous request), with an estimate of the time taken to respond to each request.
18. The University has argued that the cumulative effect of the requests made by Mr Diaz between January and September 2010 has imposed a significant burden on the University, leading to the decision to treat his most recent request as vexatious under section 14(1) of FOISA. The University's reasons are summarised in the following paragraphs.
19. Firstly, the number of requests received was a cause for concern. The University received 17 separate communications from Mr Diaz over a nine-month period, some of which contained multiple questions which could be answered independently from each other, making them separate FOI requests in their own right. The University calculated that 101 separate questions had been asked.
20. Secondly, the University found the requests, particularly the requests for statistical information, demanded substantial resources and were very time-consuming to process for a number of reasons:
- the questions were very specific and detailed, requiring a high level of accuracy;
 - many of the questions asked for information covering a 10-year period, which had required additional work to be carried out to clarify the accuracy of data from some of the earlier records;
 - data from different sources had to be married up to capture data for reporting periods specified in the requests;
 - the requests tended to focus on specific areas where only a limited number of staff had the expertise and knowledge required to process the information.
21. The University went on to provide details of the disruption the requests had caused to certain parts of the University. It advised that, in those parts, the requests had placed additional demands on key members of staff and at times this had occurred when they were already working to tight deadlines, for example, in relation to payroll. Staff had sometimes had to be diverted away from their normal daily activities, affecting their own workload and the workload in their area. Many of the requests focussed on the School of Management, where there were only two members of staff (one part-time) with access to the relevant records and the expertise required in order to provide information relating to post-graduate matters. One member of staff had calculated that the time spent on Mr Macias Diaz' series of requests amounted to 10% of their yearly allocated time for research. On occasion, staff had worked extra hours to meet statutory deadlines and provide information.



22. The University felt that the quantity and narrow scope of the requests had resulted in some parts of the University being placed under undue pressure at times. While this had been manageable in the short term, the University was concerned about the persistent nature of Mr Macias Diaz' series of requests and the difficulty of sustaining the resources required to provide timely answers.
23. The University argued that the time and resources involved in dealing with this series of requests was manifestly unreasonable and disproportionate due (among other things) to:
- requests being submitted in close succession or on the same day;
 - the number of individual questions (separate requests) submitted;
 - the general and wide-ranging nature of some of the requests.
24. The University advised that Mr Macias Diaz had been involved in an appeal against a decision it had taken in relation to his studies, and that a letter advising him of the outcome of the appeal process had been issued on 21 January 2010. Given the University's history with Mr Macias Diaz, and the fact that there was no indication that his information needs were being satisfied despite the volume of information already provided, the University felt justified in concluding that one of Mr Macias Diaz's primary aims was simply to prolong communications and cause disruption. The University took the view that the quantity of information already provided would be sufficient to satisfy the interests of a reasonable member of the public in terms of scrutiny and accountability.

Mr Macias Diaz' submission

25. Mr Macias Diaz was asked to comment on the University's argument that his request was vexatious when taken in the context of the series of requests he had made. He explained why, from his point of view, his request should not be seen as vexatious. He explained the background to his series of requests, and commented that the University had never advised him that his requests were complex to deal with, had taken many hours of staff time, or were causing a burden to the University.
26. In relation to two of his earlier requests, he had asked the University about the cost of retrieving the information, and had been told that the information would be provided without charge. He had provided clarification of his requests when required by the University, and had sought advice on whether to make his requests under FOISA or the Data Protection Act 1998. He stated that he had always waited for a response before making a new request until his most recent request, which was on a different topic and involved information held in a different part of the University.



27. Mr Macias Diaz also outlined his purpose in making the requests. He was not satisfied that his complaint had been independently investigated or fully addressed. He believed that University regulations had not been observed by a certain member of staff, and that it would be in the public interest to make clear the circumstances in which this member of staff had left his post. He advised that he had made all previous information requests in order to clarify the University's answer to his complaints, as their disclosures had been unclear and incomplete, and had raised further questions that he had not foreseen.

The Commissioner's view

28. The Commissioner recognises that Mr Diaz' request of 30 September 2010 does not appear to be vexatious, when viewed in isolation. However, he is aware that, in some cases, the vexatious nature of a request will only emerge after considering the request within its context; for example, in relation to previous or ongoing correspondence with the applicant (as argued by the University in relation to this case).

Whether the series of requests imposed a significant burden

29. The Commissioner has considered carefully the submission and supporting information provided by the University, which was intended to show that the requests made by Mr Macias Diaz have now had the cumulative effect of imposing a significant burden on the University.
30. Looking at the time taken to respond to the requests (figures for which were provided in relation to the 17 multi-part requests received between 20 January 2010 and 30 September 2010), the Commissioner notes that while two of the requests took 109 hours and 72 hours respectively, the others took considerably less time, with seven of the 17 multi-part requests taking less than five hours. However, there is evidence that, as the months have passed, the number and frequency of Mr Macias Diaz' requests has increased; for example, four requests were logged for 6 August 2010, containing 20 individual FOI requests between them.
31. The Commissioner also notes the University's explanation that Mr Macias Diaz' requests (for the most part) relate to one part of the University, and that only a few members of staff have the necessary knowledge and expertise to locate and retrieve the information. Given the number of requests involved, the Commissioner accepts that this is likely to have had a significant impact on the overall workload of those staff. Overall, the Commissioner accepts that Mr Macias Diaz' requests, taken together, have reached a point where they have imposed a significant burden on the University, and show no signs of abating.

Whether other "vexatious" factors were also in evidence

32. The Commissioner then went on to consider whether any of the other factors listed in his guidance on section 14 (see paragraph 15 above) could be identified in this case: in other words, whether it could be shown that Mr Macias Diaz' requests lacked serious purpose or value; were designed to cause disruption or annoyance to the University; had the effect of harassing the University; and/or would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.



33. The Commissioner first considered whether it could be shown that Mr Macias Diaz' requests lacked serious purpose or value.
34. The Commissioner's guidance on this issue is clear: public authorities should not lightly reach the conclusion that a request has no serious purpose or value. Even if a public authority thinks that a request lacks serious purpose or value, the applicant might, from a subjective and reasonable point of view, have a genuine desire and/or need to obtain the information. Furthermore, the applicant is not obliged to share his/her motives for seeking the information with the public authority. The inclusion of this criterion simply recognises that some requests may be so obviously lacking in serious purpose or value that they can only be seen as vexatious.
35. Mr Macias Diaz' requests cover a wide range of information. He has stated that all of his information requests were made in order to clarify the University's answer to his complaints, as (in his view) their disclosures were unclear and incomplete, and had raised further questions that he had not foreseen. Some requests clearly relate to his concerns about the way in which the University dealt with his complaint, while some seem to be less directly related to those concerns.
36. The Commissioner recognises the possibility that (as the University has argued) Mr Macias Diaz is simply "fishing" for information which would give grounds for fresh complaints against the University, rather than resolving matters raised in the previous appeal process; the varied nature of the information he has requested might give rise to such a suspicion. However, while the Commissioner acknowledges this to be a possibility, he considers it equally likely that there may be a serious purpose underlying Mr Macias Diaz' requests, as he has claimed, even though he did not focus narrowly on this purpose when formulating his requests.
37. Similarly, although he is aware that the University considers one of Mr Macias Diaz' primary aims has been to prolong communications and cause disruption, the Commissioner did not find there was clear evidence from the information available to him that Mr Macias Diaz' requests had been made with the intention of causing disruption or annoyance to the University. However, the Commissioner accepts that, whatever the motivation, the effect of Mr Macias Diaz' requests has been to harass the University.
38. Finally, the Commissioner considered whether the requests would be considered to be manifestly unreasonable or disproportionate for any other reason, in the opinion of a reasonable person. The University believes it has provided sufficient information to satisfy the interest of a reasonable member of the public, in terms of scrutiny and accountability. Mr Macias Diaz has commented that the quantity of information provided by the University was irrelevant if "the all important" information was missing.



39. After carefully considering the correspondence between the University and Mr Macias Diaz, the Commissioner has concluded that the burden imposed by Mr Macias Diaz' series of requests, viewed objectively, was manifestly disproportionate and unreasonable. Clearly the provisions of section 14(1) should not be used to shield a public authority from probing requests. However, whilst each of Mr Macias Diaz' requests may have had a purpose, this does not mean that no regard need be taken as to the volume, or frequency of requests or the extent and nature of the information sought and the effect that this could have upon an authority. In reaching his view that Mr Macias Diaz' requests have become manifestly disproportionate and unreasonable, the Commissioner has taken into account the large amount of information already provided in response to his requests, and the fact that most of this information relates to the activities of one University department.

The Commissioner's conclusion

40. The Commissioner has concluded that Mr Macias Diaz' requests, through their volume and frequency, have become unreasonably burdensome for the University. He is aware that the University has not previously warned Mr Macias Diaz of the difficulties his requests were creating; however, this is not a step required under FOISA, and the Commissioner takes the view that it would be reasonable to expect Mr Macias Diaz to have some awareness that answering his requests would require significant amounts of staff time.
41. The Commissioner has therefore found that the University complied with Part 1 of FOISA in refusing to comply with Mr Macias Diaz' request of 30 September 2010 on the grounds that it was vexatious, in terms of section 14(1) of FOISA. He does not require the University to take any further action in relation to Mr Macias Diaz' request.
42. The Commissioner is currently the Rector of St Andrews University. He has therefore, in line with his powers under section 42(10) of FOISA, authorised Graham Smith, Deputy Information Commissioner, appointed under paragraph 4(1)(a) of Schedule 5 to the Data Protection Act 1998, to determine on his behalf whether Mr Macias Diaz' information request has been dealt with by the University in accordance with Part 1 of FOISA, in line with section 42(10).

DECISION

The Commissioner finds that the University of St Andrews complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to comply with Mr Macias Diaz' request for information under section 14(1).



Appeal

Should either Mr Macias Diaz or the University 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.

Graham Smith
Deputy Information Commissioner
4 August 2011



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.

...