

Decision Notice



Decision 191/2012 Mr James Milligan and Glasgow City Council

Whether a request was repeated

Reference No: 201201597

Decision Date: 23 November 2012

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Rosemary Agnew

Scottish Information Commissioner

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



Summary

Mr Milligan requested from Glasgow City Council (the Council) information relating to the content of signage at a particular voucher parking scheme area and specific information relating to a parking penalty notice. The Council did not respond to this request or to Mr Milligan's subsequent request for review.

Following an investigation, the Commissioner accepted the Council's submission that the request was repeated, but also found that the Council had failed to comply with the requirements of FOISA in relation to giving notice to Mr Milligan.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(2) (Vexatious or repeated requests); 16(5) (Refusal of request)

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 23 May 2012, Mr Milligan wrote to the Council requesting the location of signage within the Garnethill Voucher Parking Scheme area and the distance between where a penalty charge notice had been issued and the nearest shop where a parking voucher could be purchased.
2. The Council did not provide any response to these requests and, on 10 July 2012, Mr Milligan wrote to the Council requesting reviews of its handling of the requests.
3. Mr Milligan did not receive any response to his requests for review. On 15 August 2012, he wrote to the Commissioner, stating that he was dissatisfied with the Council's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
4. The application was validated by establishing that Mr Milligan had made requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its responses to those requests. The case was then allocated to an investigating officer.



Investigation

5. On 29 August 2012, the Council was notified in writing that an application had been received from Mr Milligan. The Council was given an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA.
6. In response, the Council advised that it was relying on section 14(2) of FOISA, on the basis that the request of 23 May 2012 was repeated. The Council stated that it had responded to this particular request on 16 June 2011, providing Mr Milligan with the information requested and advising that if he was dissatisfied he should appeal to the Commissioner. A copy of this letter was provided to the investigating officer. The Council advised that Mr Milligan did not take the opportunity to appeal to the Commissioner and continued to write to the Council with regard to the request.
7. The investigating officer contacted Mr Milligan and advised him of the Council's position with regard to his request. Mr Milligan was provided with an opportunity to state if/why he did not consider the request to be repeated and/or state why he considered a reasonable time period to have elapsed between the requests. Mr Milligan did not respond.
8. The relevant submissions received from both the Council and Mr Milligan will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Milligan and the Council and is satisfied that no matter of relevance has been overlooked.
10. Section 14(2) of FOISA states:
"Where a Scottish public authority has complied with a request for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request."
11. When considering section 14(2) of FOISA, the following points need to be considered:
 - whether Mr Milligan's request of 23 May 2012 was identical or substantially similar to his request contained in a letter received by the Council on 18 May 2011.
 - whether the Council complied with Mr Milligan's first request and, if so
 - whether there was a reasonable period of time between the submission of the first request and the submission of the subsequent request.



Was the previous request identical or substantially similar to the first?

12. The Council supplied the investigating officer with a copy of its response to Mr Milligan dated 16 June 2011. At the outset, this letter quoted the terms of Mr Milligan's earlier request. The Commissioner, having considered the terms of these requests, recognises that the two requests are not identical (being worded and structured slightly differently), but has no difficulty in accepting that the requests are substantially similar. Mr Milligan's earlier request specifically relates to the same penalty charge notice issued in the Garnethill Voucher Parking Scheme area and, as with the more recent request, seeks the location of all signage related to that scheme and the distance to and address of the closest shop displaying the logo for the purchase of a parking voucher.
13. The Commissioner therefore considers it reasonable for the Council to consider these requests to be substantially similar.

Was the previous request complied with?

14. The Council's response of 16 June 2011 advised Mr Milligan that it did not hold some of the information he sought, while providing details of the location of signage and of the premises in the Garnethill area participating in the selling of Parking Vouchers. The Commissioner also notes that this response notified Mr Milligan appropriately of how to challenge its decision if dissatisfied with the response provided. Mr Milligan did not challenge that decision within the timescales allowed by FOISA.
15. In the absence of any application at the appropriate time, the Commissioner is unable to conclude that the response given to the previous request for information did not comply with that request. Equally, the Commissioner cannot conclude that Mr Milligan did not have adequate opportunity to challenge the Council's previous decision had he wished to do so.
16. In the circumstances, the Commissioner is satisfied that the Council complied with the previous request in line with the requirements laid down in FOISA.

Has a reasonable period of time passed?

17. The Commissioner notes that there was a period of approximately one year between the response to the previous request and the making of the request under consideration here.
18. The Commissioner notes that there is no attempt to defined "a reasonable period of time" in the legislation, because that will depend on the circumstances of the case. Consideration should be given to two questions which will help to assess whether a reasonable period of time has elapsed. These are:
 - Has the information changed?
 - Have the circumstances changed?



19. The information requested in this and the previous case relates to a defined geographical area and the parking restrictions in that area. It also relates to the issue of the same penalty notice, issued prior to both of these requests. The Commissioner accepts that neither the information nor the circumstances, other than the passage of time, have altered in this case.
20. The Commissioner considers that the simple passage of time between requests may eventually be sufficient to allow the conclusion that a reasonable period of time has passed between two identical or substantially similar requests, irrespective of whether there has been any other change in the circumstances surrounding the request. In this case, however, having taken into account the relatively static nature of the information concerned, the Commissioner does not accept that the period of one year is sufficient to find that the passage of time alone means that a reasonable period passed between the two requests.
21. In all the circumstances, therefore, noting also the absence of any relevant submissions from Mr Milligan, the Commissioner finds that the Council was entitled to refuse to comply with Mr Milligan's request on the grounds that section 14(2) applied.

Requirements of section 16(5)

22. If an authority has decided there are grounds for refusing a request under section 14(2), it must issue a notice to this effect to the applicant within 20 working days unless:
 - a notice has already been given in relation to a previous identical or substantially similar request; and
 - in all the circumstances, it would be unreasonable to expect it to serve another notice.
23. In this instance, the Council did not provide Mr Milligan with either an initial response or a response to his requirement for review.
24. The Council stated that, due to the volume and frequency of the requests submitted by Mr Milligan to the Council over the past three to four years, and the considerable amount of Council resources used to respond to his requests, it would be unreasonable for the Council to be expected to allocate further resources to serving a notice on Mr Milligan advising that the Council considered his request to be repeated.
25. The Council directed the Commissioner to a previous decision where Mr Milligan's requests had been found to be vexatious (*Decision 235/2011 Mr Allan Milligan and Glasgow City Council*¹). Against this background, the Council took the view that, in line with section 16(5)(b), it would be unreasonable for it to be expected to write to Mr Milligan advising that the Council considered his request to be repeated.

¹ <http://www.itspublicknowledge.info/UploadedFiles/Decision235-2011.pdf>



26. The Commissioner notes that previous requests made by Mr *Allan* Milligan have indeed been considered vexatious by the Council and this position has been upheld on application to the Commissioner. From the nature, content and context of their correspondence with the Council, it may be reasonable to conclude that the two Mr Milligans are acting together. That does not, however, absolve the Council of responsibility for giving notice to the right Mr Milligan when dealing with a particular request.
27. In any event, in this instance the Council considered Mr Milligan's request to be *repeated*, in line with section 14(2) of FOISA. Any previous notice issued to a Mr Milligan was in respect of requests being *vexatious*, in line with section 14(1). The Council was unable to provide the Commissioner with evidence of (this or any other) Mr Milligan being advised that his requests were considered by the Council to be repeated. The Commissioner considers that the provisions of section 16(5) will remove the requirement to give notice in a particular case *only* when the authority is relying on the same provision of section 14 under which it has previously given notice: in her view, fairness to the applicant must require at least that.
28. Consequently, the Commissioner considers that the Council did not fulfil the technical requirements of section 16(5) of FOISA in this particular case. She therefore requires the Council to give Mr Milligan notice that his request is repeated, in line with section 16(5).

DECISION

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

The Commissioner finds that the Council was entitled to conclude that Mr Milligan's request was repeated in terms of section 14(2) of FOISA.

However, in failing to provide Mr Milligan with a notice to advise that it considered his request to be repeated, the Council failed to comply with section 16(5) of FOISA. She now requires the Council to give Mr Milligan such notice, in accordance with section 16(5), by 10 January 2013.

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and Glasgow City Council



Appeal

Should either Mr Milligan or Glasgow City 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.

Margaret Keyse
Head of Enforcement
23 November 2012



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

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

16 Refusal of request

...

- (5) A Scottish public authority which, in relation to such a request, claims that section 14 applies must, within that time, give the applicant a notice which states that it so claims; except that the notice need not be given if-
- (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and
 - (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.

...