

# Decision Notice

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## **Decision 088/2015: Mr Jim Donnelly and the Chief Constable of Police Service of Scotland**

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### **Whether request vexatious**

Reference No: 201500342

Decision Date: 19 June 2015



## Summary

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On 4 October 2014, Mr Donnelly asked the Chief Constable of the Police Service of Scotland (Police Scotland) for information relating to a specified incident in 2002.

Police Scotland stated that they considered Mr Donnelly's request to be vexatious. Following a review, Mr Donnelly remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated, and agreed that Police Scotland were entitled to refuse to comply with Mr Donnelly's request on the basis that it was vexatious.

## Relevant statutory provisions

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

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

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1. On 4 October 2014, Mr Donnelly made a request for information to Police Scotland. He asked for information about why Police Scotland took particular action in relation to a specified incident in 2002.
2. Police Scotland notified Mr Donnelly 6 November 2014 that they had decided his request was vexatious. Accordingly, they concluded that they were not required to comply with the request, in terms of section 14(1) of FOISA.
3. On 21 January 2015, Police Scotland received a letter from Mr Donnelly requesting a review of their decision. He did not accept that his request was vexatious.
4. Police Scotland notified Mr Donnelly of the outcome of their review on 17 February 2015. They stated that they were not required to comply with his requirement for review, as they considered his original request to be vexatious.
5. On 20 February 2015, Mr Donnelly wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Donnelly did not accept Police Scotland's conclusions in relation to his request.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr Donnelly made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. The case was allocated to an investigating officer. On 10 April 2015, Police Scotland were notified in writing that Mr Donnelly 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. Police Scotland were invited to comment

on this application and answer specific questions. In particular, they were asked to justify their reliance on section 14(1) of FOISA.

## Commissioner's analysis and findings

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9. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr Donnelly and Police Scotland. She is satisfied that no matter of relevance has been overlooked.

### Section 14(1) – vexatious requests

10. In terms of section 14(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information made under section 1(1) if the request is vexatious.
11. FOISA does not define the word “vexatious”. The Commissioner’s general interpretation, as set out in her guidance on section 14(1)<sup>1</sup>, is that the following factors are relevant when considering whether a request is vexatious:
- (i) It would impose a significant burden on the public body
  - (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 manifestly unreasonable or disproportionate.
12. 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.
13. While the Commissioner’s view is that “vexatious” must be applied to the request and not the requester, she acknowledges that the applicant’s identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of a request and its surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.

### Analysis and findings

14. Mr Donnelly’s request relates to a specified incident in 2002. Police Scotland stated that for the past 13 years, Mr Donnelly had written to various departments within the former Strathclyde Police and, more recently, Police Scotland. Police Scotland described his correspondence as incoherent, difficult to read and follow, and using various fonts and handwritten elements with illustrations. Police Scotland explained that the correspondence went over the same issues, addressed by various departments over the past 13 years.

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

15. Police Scotland described and provided evidence of this correspondence to departments including: Freedom of Information (including five information requests), Data Protection, Professional Standards and Legal Services.
16. Referring to this evidence, Police Scotland submitted that Mr Donnelly's correspondence, all in relation to the same subject matter, had tied up an unreasonable and disproportionate amount of staff time across the various departments, thus placing an unacceptable pressure on resources at a time of deep budgetary constraints. Police Scotland submitted that they had reached a stage where they had provided Mr Donnelly with all possible advice and information in relation to the incident in 2002. They did not believe they had anything new to add to previous responses.
17. The Commissioner recognises that Mr Donnelly's request of 4 October 2014 might not appear, on the face of it, to be vexatious. On the other hand, she acknowledges that the vexatious nature of a request may only emerge after considering the request in context. Such context may include previous or ongoing correspondence between the authority and the applicant. In this case, Police Scotland clearly consider Mr Donnelly's wider pattern of communications to be relevant.
18. The Commissioner has considered carefully the submissions and supporting documentary evidence provided by Police Scotland. She is satisfied that the documentary evidence demonstrates that the request made by Mr Donnelly was part of a course of continuing correspondence from him about the same subject matter.
19. The Commissioner has also been provided with evidence of Police Scotland's attempts over a 13 year period (without success) to resolve the grievances raised by Mr Donnelly.
20. The Commissioner has some sympathy with the frustrations encountered by both Mr Donnelly and the police. She notes the comment by Police Scotland that Mr Donnelly's correspondence was often difficult to read and interpret, but does not accept that of itself this means a request is vexatious.
21. Commissioner has taken account of the advice and assistance offered to Mr Donnelly over the years, and the content of his correspondence. She has concluded that his correspondence can only be interpreted as being intended to extend the dialogue about his long-standing concerns in relation to the underlying issues. The Commissioner does not believe resolution of Mr Donnelly's concerns would be brought any closer by Police Scotland responding to this request.
22. Having considered the evidence, the Commissioner is satisfied that Police Scotland have demonstrated that Mr Donnelly's request, viewed in context, presented a significant burden and that correspondence had become disproportionate. The Commissioner is also satisfied that, in the circumstances of this case, any reasonable person would take the same view.
23. The Commissioner has therefore found that the Council was not obliged to comply with Mr Donnelly's information request of 4 October 2014, on the grounds that it was vexatious in terms of section 14(1) of FOISA.

## **Decision**

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The Commissioner finds that the Chief Constable of the Police Service of Scotland complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Donnelly.

## **Appeal**

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Should either Mr Donnelly or the Chief Constable of the Police Service of Scotland 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.

**Rosemary Agnew**  
**Scottish Information Commissioner**

**19 June 2015**

### 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.

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- (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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