

# Decision Notice

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**Decision 235/2016: Mr A Milligan and Glasgow City Council**

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**Parking restriction signs: whether request vexatious**

Reference No: 201601335

Decision Date: 4 November 2016



Scottish Information  
Commissioner

## Summary

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On 11 January 2016, Glasgow City Council was asked for information about parking signs in a particular Glasgow street. It refused to respond because it considered the request to be vexatious.

The Commissioner did not agree. On the basis of the submissions she received from the Council, she was not persuaded that the request was vexatious. She ordered the Council to comply with the review request, substituting a different decision.

## 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); 21(4)(b) and (8)(b) (Review by Scottish public authority)

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 11 January 2016, Mr Milligan wrote to Glasgow City Council (the Council). He referred to a penalty charge notice and made the following request for information:

*I require to be provided with the location of all signage in place on [specified street] that the driver would have passed on route to where the vehicle had been parked that would advise/inform the driver of the requirement to pay for parking at the location where the vehicle had parked.*

2. The Council did not respond and, on 15 March 2016, Mr Milligan wrote to the Council requesting a review of its failure to respond.
3. On 16 March 2016, the Council wrote to Mr Milligan. It informed him that it was treating his request as vexatious, in terms of section 14(1) of FOISA. Therefore, in terms of section 21(8)(b) of FOISA, it did not consider it was obliged to comply with his requirement for review.
4. Mr Milligan made a further request for review to the Council on 5 April 2016. The Council did not respond.
5. On 25 July 2016, Mr Milligan wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He stated he was dissatisfied with the outcome of the Council's review because he did not believe his request was vexatious. He stated that he had a valid reason for requesting the information, explaining what he considered that reason to be.

## Investigation

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6. The application was accepted as valid. The Commissioner confirmed that Mr Milligan 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. On 3 August 2016, the Council was notified in writing that Mr Milligan had made a valid application and 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 Council was invited to comment on this application and provide its reasoning for finding the request to be vexatious.
9. The Council provided submissions to the investigating officer.

## **Commissioner's analysis and findings**

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

### **Section 14(1) of FOISA – vexatious request**

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 on the application of section 14(1)<sup>1</sup> 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.*

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, she 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.

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<sup>1</sup> [http://www.itspublicknowledge.info/Law/FOISA- EIRsGuidance/Section14/Vexatious\\_or\\_repeated\\_requests.aspx](http://www.itspublicknowledge.info/Law/FOISA- EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx)

### *Submissions from Mr Milligan*

15. In his application to the Commissioner Mr Milligan stated that the reason he had requested the information was to inform his course of action in relation to a penalty charge notice, issued to him for contravention of parking restrictions. He stated that the information would be very useful to him in deciding if he could challenge the notice. Mr Milligan stated that he had been unable to locate any signs in the area informing drivers of parking restrictions. He submitted that he failed to understand in what way his request to be informed of the location of the advisory signage would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the Council.

### *Submissions from the Council*

#### Background context

16. The Council provided submissions to the Commissioner, explaining that there was a long history of correspondence from Mr Milligan dating back over nine years, with much of it relating to the parking restriction signs in the area that is the subject of this request. Given its volume and frequency, the Council submitted that this correspondence took up an unreasonable amount of officer time across various departments. The Council stated that it placed an unacceptable strain on its resources. It considered the cumulative effect of his correspondence to be vexatious.
17. The Council was of the view that the purpose behind Mr Milligan's information requests was to cause as much disruption to the Council as possible, in the hope that the Council would cancel his fines and remove the parking restrictions.
18. The Council provided the Commissioner with voluminous information evidencing previous correspondence between itself and Mr Milligan, explaining that this provided context to its decision to deem his request vexatious. The previous correspondence showed that Mr Milligan had on several past occasions made requests to the Council concerning parking restriction signs in the specified area.
19. In order that it can continue to deliver its other statutory functions, the Council submitted, it must be able to take a practical approach in addressing Mr Milligan's extreme persistence on parking matters. It had adopted the policy that where Mr Milligan's request related to parking signage, enforcement, fines or the collection of fines, it would be treated as vexatious. The Council believed the issues had already been addressed and it could add nothing more. The Council felt it did not have the resources to deal with his parking related queries otherwise.
20. The Council stated that it had become apparent over the years that Mr Milligan's parking issues would not be resolved through continuing to deal with him under FOI on the same issues again and again.

#### The request under consideration

21. The Council submitted that, in considering whether the specific piece of correspondence that was the subject of Mr Milligan's appeal was vexatious in terms of section 14(1) of FOISA, it was not possible to look at the correspondence as a stand-alone letter. The context was much broader than that, encompassing all of his correspondence on parking matters to give a full picture of the burden created and the effect on the Council and its officers.
22. The Council disputed Mr Milligan's claim that he required the information requested in order to challenge a parking notice. He did not need to gather evidence himself to lodge a parking

appeal, or (if he considered the parking restrictions to be unlawful) to raise proceedings against the Council.

23. The Commissioner asked the Council for further submissions on 14 September 2016. While acknowledging that the Council had provided a lot of contextual information, the Commissioner was concerned that it had not provided details as to why, in this context this particular request should be considered vexatious, or evidence to support its assertions about Mr Milligan's motives.

#### *The Commissioner's conclusions*

24. Although given the opportunity to do so, the Council provided no further submissions explaining how and why the factors outlined in paragraph 13 above, or any others which might be relevant, related to this specific request of Mr Milligan's. While the Commissioner can take into account the context of a requester's history of correspondence with an authority, she must still be satisfied that the specific request under consideration was (in that context) vexatious.
25. The Council stated that it did not believe Mr Milligan's request could be considered on a stand-alone basis. It went on to argue that the request was vexatious because of the volume and frequency of Mr Milligan's correspondence, the sustained nature of that campaign and the cumulative effect of that correspondence on the Council's ability to carry out its functions. Its arguments appear to focus entirely on its strategy and "policy" for handling Mr Milligan's correspondence and FOI requests, rather than why this particular item of correspondence should fit into that strategy and (crucially for the Commissioner's purposes) be regarded as vexatious under section 14(1) of FOISA. That strategy appears to be focused entirely on broad categories of correspondence, rather than the scrutiny of the content of that correspondence required when responding under FOISA.
26. In all the circumstances of this this particular case, the Commissioner is not persuaded by the Council's arguments. They relate entirely to the context, rather than why, in that context, the request should be considered vexatious. Indeed, the Council appears to have decided that it will be enough for a particular item of correspondence to fall into one of a number of categories related to parking: as long as it does, it will be vexatious for the reasons set out in paragraph 25.
27. The Commissioner cannot accept this approach. The behaviour represented by much of Mr Milligan's correspondence may be challenging and may, in places, demonstrate factors which would allow it to be considered vexatious. That is a legitimate context within which to consider individual requests. It does not follow that the individual requests need not be considered, within that context. The Council has not demonstrated that it is considering Mr Milligan's requests individually: in fact, it appears be acknowledging that it does not.
28. On the basis of the arguments put forward by the Council, the Commissioner is not satisfied, that it was entitled to treat Mr Milligan's request of 11 January 2016 as vexatious.
29. The Commissioner finds that the Council was not entitled to refuse to comply with Mr Milligan's request on the basis that section 14(1) of FOISA applied. She therefore requires the Council to carry out a review in respect of this request, and to respond to Mr Milligan otherwise than in terms of section 14(1). In other words, the outcome of the review should be that the Council substitutes a different decision, in accordance with section 21(4)(b) of FOISA.

## **Decision**

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The Commissioner finds that Glasgow City Council (the Council) failed to comply 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 not entitled to refuse to comply with the request on the basis that it was vexatious in terms of section 14(1) of FOISA and that, in doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner therefore requires the Council to respond to Mr Milligan's requirement for review, in terms of section 21(4)(b) of FOISA by 19 December 2016.

## **Appeal**

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Should either Mr Milligan or Glasgow City Council (the Council) 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**

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

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

**4 November 2016**

### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish the Council 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 the Council to comply with a request for information if the request is vexatious.

...

#### 21 Review by Scottish public authority

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- (4) The authority may, as respects the request for information to which the requirement relates-

...

- (b) substitute for any such decision a different decision; or

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-

...

- (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.

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