

Decision Notice 036/2021

Is a request vexatious?

The Applicant

Public authority: East Renfrewshire Culture and Leisure Trust

Case Ref: 202000282



Scottish Information
Commissioner

Summary

The Trust was asked for a range of information on subjects considered at its Board Meetings. The Trust considered the request vexatious and refused to comply.

The Commissioner agreed that the request was vexatious and that the Trust was not obliged to comply.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(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. Both Appendices form part of this decision.

Background

1. On 12 December 2019, the Applicant made a request for information to East Renfrewshire Culture and Leisure Trust (the Trust). He asked for information on a list of 21 subjects referred to in the Minute of a Meeting of the Trust's Board of Trustees held on 19 November 2019. The full request is reproduced in Appendix 2 to this decision.
2. The Trust responded on 9 January 2020, refusing to provide the information sought and citing section 14(1) of FOISA. The Council believed the request was intended to cause it unjustified irritation and disruption and so it deemed it vexatious.
3. On 10 January 2020, the Applicant wrote to the Trust, requesting a review of its refusal to comply with his request. He stated that the request was not intended to cause disruption or unjustified irritation, but only to obtain the information described in the interests of openness and transparency.
4. The Trust notified the Applicant of the outcome of its review on 10 February 2020, upholding its original decision with a more detailed explanation on its reasoning for doing so. The Trust commented that, while there are certain elements of the request which, in their own right appear reasonable, it took the view that the overall nature of the request suggested that it was designed to cause disruption or annoyance.
5. On 23 February 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Trust's review, and explained why.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 3 March 2020, the Trust was notified in writing that the Applicant 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 Trust was invited to comment on this application and to answer specific questions. These related to its reasoning for finding the request to be vexatious.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the submissions, or parts of submissions, made to him by both the Applicant and the Trust. He is satisfied that no matter of relevance has been overlooked.

Was the request vexatious?

10. Section 14(1) of FOISA states that section 1(1) (which confers the general entitlement to information held by such authorities) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious. Section 14(1) does not create an exemption, but its effect is to render inapplicable the general right of access to information contained in section 1(1). Accordingly, section 14(1) is not subject to the public interest test in section 2(1)(b) of FOISA.
11. The Commissioner's general approach¹ is that the following factors are relevant when considering whether a request is vexatious (applying section 14 of FOISA). These are that the request:
- Would impose a significant burden on the public body
 - Does not have a serious purpose or value
 - Is designed to cause disruption or annoyance to the public authority
 - Has the effect of harassing the public authority
 - 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. The term "vexatious" must be applied to the request and not the requester, but an applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of the request and surrounding circumstances.

The Applicant's submissions

13. The Applicant submitted that it was not his intention to disrupt or annoy the Trust, noting that the request was polite and not intimidating (and did not include profanity). The Applicant believed it would not require a great deal of time to process this request and, in any case, the information should be open to scrutiny (he noted that meetings of the Trust were not held in public). The Applicant felt that the Trust had not given due consideration to making the information accessible to the public.

¹ https://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Vexatious_or_repeated_requests.aspx

14. The Applicant also stated that the request was compiled in a form which would be helpful and minimise the amount of information involved. The Applicant disagreed with Trust's view that there was no purpose to obtaining the information described in this request and noted that the Trust accepted some elements were entirely reasonable.
15. The Applicant also questioned whether the review decision was an attempt at avoiding adverse publicity for the Trust regarding "away days".
16. During the investigation, the Applicant commented further (15 January 2021) on concerns about the scope of this appeal, whether other requests were being taken into account by the Trust and what the Trust's motives might be in deeming this particular request vexatious, particularly if the Applicant wished to submit future requests to the Trust.

The Trust's submissions

17. The Trust disagreed with the Applicant's view that his request was straightforward to respond to. Given the terms of the request, it submitted that it went well beyond the papers for the relevant Board Meeting papers and stretched into information held about the specified topics more generally, even if not discussed at or before the Board at that time. The Trust noted that this was a style replicated in other requests from the Applicant and represented a "fishing exercise" designed to uncover all and anything relative to any matter the Trust might wish to discuss at its meetings. It suggested, given the volume of requests from the Applicant over the past three years and their similar nature, that the numbers of requests and their scale and scope appeared to represent attempts to inundate the organisation.
18. With regard to this particular request, the Trust asserted that points 17, 18 and 19 were so wide as to make interpretation of what was being sought virtually impossible. If the list was assessed closely, the Trust argued, it also contained elements which appeared nonsensical (e.g. point 10, asking for information on something that clearly had not yet occurred), calling into question whether the Applicant had given real thought to what he was seeking and in turn whether he had any real interest in the information sought.

The Commissioner's findings

Significant burden on the authority

19. The Commissioner's briefings on section 14(1) of FOISA indicate 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 other statutory or core operations. The Trust has provided details of the numbers of requests (and requests for review) received from this Applicant over the last three years and in this way given an indication of how much resource has been taken up with responding to him.
20. Looking solely at this particular request, the Commissioner notes how broadly it is framed and therefore how onerous it would be to fulfil. It is asking for information on subjects referred to in the relevant Board minutes, not simply for information on the specific matters considered in those minutes (although even the latter could go well beyond just the relevant papers considered at that meeting). As framed, a number of the listed points can be interpreted as covering substantial areas of the Trust's activities (and the Commissioner notes in particular the issues of interpretation highlighted by the Trust). Whether or not the Applicant is really interested in particular information, it is apparent that considerably more thought could have gone into framing the request, if the Trust was to be enabled to respond to it without undue challenge.

21. The Commissioner is satisfied that, whether intentionally or not, the Applicant has made a request framed so broadly that responding to it would inevitably place a significant burden on the Trust. FOISA does not require those making requests to be experts in whatever field is covered by the public authority in question, but it is not inappropriate to expect a reasonable degree of thought and care in setting out what the applicant is looking for, if there is to be a reasonable expectation of the authority being able to respond without an undue burden being placed on its time and resources. In this case, having considered all relevant submissions, the Commissioner accepts that a reasonable person would consider the request to be manifestly unreasonable and disproportionate, given the inevitable burden it would impose, and so is satisfied the Trust was entitled to refuse to comply with the request by virtue of section 14(1) of FOISA.

Decision

The Commissioner finds that East Renfrewshire Culture and Leisure Trust complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Trust 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.

Margaret Keyse
Head of Enforcement

15 March 2021

Appendix 1: 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.

...

Appendix 2: Full Text of Request

Freedom of Information Request – submitted online 12 December 2019

This Freedom of Information request is in regard to all Documents/reports/papers/notes etc held and mentioned/referred to in the Minute of a Meeting of the Board of Trustees of East Renfrewshire Culture and Leisure Trust (ERCLT) on 19 November 2019 at St John's Conference Room, Barrhead, at 3.30pm.

These meetings are held in secret and members of the public/East Renfrewshire Residents/Council Tax payers cannot attend.

No documents/reports/papers/notes etc referred to in the minutes are attached to and/or published with the agenda/minutes.

Publication of documents/reports/papers/notes etc referred to in the minutes will add to the understanding of the minutes and will address the secrecy of these meetings and enhance the openness and transparency of the Trust.

Please provide all documents/reports/papers/notes etc held by ERCLT regarding these subjects referred to in the above mentioned minutes –

1. *Meetings held between the Chair and the Leader of the East Renfrewshire Council.*
 - *regular meetings with the Leader of the Council.*
Additional Information required – Dates/venues/names of attendees letters/emails/notes/minutes subjects discussed etc.
 - *scope of possible opportunities, identified risks, and the budget scenario.*
2. Chief Executive's Q2 Scorecard and Business Performance Update.
 - Q2 performance results.
 - the performance in the period until 30 September 2019.
3. current vacancy levels, and steps being taken to fill vacancies.
4. staff turnover rates.
5. *Summary of the activities which took place at the FAR meeting held on 6th August.*
6. *Overview of the Quarter 1 financials*
7. *Report by the Chair of the FAR.*
8. *summary of the activities which took place at the FAR meeting held on 5th November.*
9. overview of the Q2 financials, including the forecast surplus for 2019/20.
10. reforecast be undertaken early in the New Year.
11. the 2020/21 Draft Budget
12. proposed reduction to the management fee received from ERC and the level of required savings equating to £411k (8%).

13. The Capital Programme Allocation (CPA) Bids.
14. The Redundancy Modification Order.
15. The Whistle Blowing Policy for ERCLT
16. ERCLT 2020/21 Draft Business Plan
17. The challenge of maintaining the facilities and Property and Technical Services teams' performance in relation to this.
18. Rationalising the property portfolio
19. The role of Community Asset Transfer in relation to ERC-owned / ERCL-operated facilities.
20. Board progress with the SiB Action Plan.
22. Update on follow up to the Away Day.

This should also include information

- Date/Venue of the Away Day
- Numbers attending
- Cost
- Payment requests/Invoices

Please provide all documents/reports/papers/notes etc held by ERCLT regarding the above subjects referred to and addressed in the above mentioned minutes of 19 November 2019.

Electronic copies are acceptable to me.

Scottish Information Commissioner

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