

Decision Notice



Decision 012/2010 Mr M W Williams and the Scottish Ministers

Vexatious request

Reference No: 200901913
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Scottish Information Commissioner

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Summary

Mr Williams requested from the Scottish Ministers (the Ministers) certain information relating to records of bullying incidents within Scottish Government departments. The Ministers refused to comply with Mr Williams' request on the grounds that it was vexatious, in terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mr Williams remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Ministers were justified in treating Mr Williams' request as vexatious, and were not obliged to comply with his request.

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 1 March 2009, Mr Williams wrote to the Scottish Government (part of, and referred to in this Decision Notice as, "the Ministers") to request a personal statement from eight named Heads of Department, to include each Department's bullying record over the past 12 years, the number of reported incidents, and the number and degree of disciplinary actions taken.
2. On 1 April 2009, Mr Williams wrote to the Ministers to complain that he had not received a response, and asked for a review of the way in which the Ministers had dealt with his request.
3. On 23 April 2009, Mr Williams again wrote to request a review of the failure to respond to his request of 1 March 2009. He sent a further letter on 1 May 2009, again complaining that his request for a personal statement on departmental bullying records had received no response.



4. On 2 June 2009, the Ministers wrote to Mr Williams to advise that a response to his request of 1 March 2009 had been sent to him on 18 March 2009. A copy of that letter was enclosed. It gave Mr Williams notice that his request for personal statements on departmental bullying records was deemed to be vexatious, and that under section 14(1) of FOISA the Ministers were not obliged to comply with his request. The Ministers advised that his request was considered vexatious because it was the latest in a series of requests which had imposed a significant burden on the Scottish Government and because, on the evidence of previous correspondence, the request seemed designed to cause disruption or annoyance to the Scottish Government. It also, in the Ministers' view, had the effect of harassing the Government.
5. The Ministers' letter of 2 June 2009 also advised Mr Williams that a review of the response to his request of 1 March 2009 (i.e. the Ministers' letter of 18 March 2009) was ongoing.
6. On 10 July 2009, Mr Williams wrote to the Commissioner, stating that he was dissatisfied with the way in which the Ministers had dealt with his request, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. This application was found to be valid and was the subject of *Decision 113/2009 Mr M W Williams and the Scottish Ministers*.
7. The Ministers provided Mr Williams with a response to his request for review on 24 August 2009. They upheld the decision to treat his request of 1 March 2009 as vexatious under section 14(1) of FOISA.
8. On 30 October 2009, Mr Williams wrote again to the Commissioner, expressing dissatisfaction with the way in which the Ministers had dealt with his request, and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Williams questioned the Ministers' decision that his request of 1 March 2009 should be regarded as vexatious in terms of section 14(1) of FOISA.
9. The application was validated by establishing that Mr Williams had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

10. On 16 November 2009, the Ministers were notified in writing that an application had been received from Mr Williams and were invited to provide comments on the application (as required by section 49(3)(a) of FOISA) and to provide any evidence or arguments to support the view that Mr Williams' request of 1 March 2009 was vexatious, in terms of section 14(1) of FOISA.



11. On 16 November 2009, Mr Williams was advised that the Commissioner's decision would consider only whether the Ministers were correct to treat his request as "vexatious" and on those grounds to refuse to comply with it. It was explained that the tests which the Commissioner would consider are described in his published briefing note on section 14 of FOISA¹.
12. On 14 December 2009, the Ministers provided background information about the extended correspondence between Mr Williams and the Scottish Government, dating back to 1999, and about the attempts that had been made to bring matters to a conclusion during that time. They advised that on several occasions Mr Williams had been given information on the Scottish Government's policies and handling of bullying complaints, and that a senior official from the Scottish Government's Human Resources department had met Mr Williams several times in an attempt to resolve his concerns.
13. In relation to the Ministers' view that Mr Williams' request was vexatious in terms of section 14(1) of FOISA, the Ministers stated that their argument was based on 10 years of cumulative correspondence (predominantly on the same issue) which, over time, had imposed a significant burden on the Scottish Government. Further details of this correspondence were provided. The Ministers considered that Mr Williams' request was designed to cause annoyance if not disruption. The Ministers suggested that in requesting personal statements in respect of departmental bullying records there was a strong element of harassment attached to the request. They also noted that several of the named officials had long since moved post or were no longer employed by the Scottish Government.
14. The Ministers also considered the request to be manifestly unreasonable, and questioned whether there was any serious purpose or value in the request. They considered the request to be part of an on-going pattern of behaviour which has had the effect of harassing the Scottish Government and individual officials. The Ministers did not believe that resolution of these matters would be brought any closer by any substantive response to his request, and would instead lead to further correspondence with the Scottish Government, Ministers and officials.
15. On 17 November 2009, Mr Williams wrote to the Commissioner setting out his reasons for seeking the information he had requested. He stated that he earnestly believed that the information would enable not only him, but other parties, including the Scottish Government, to identify bullying "hotspots" and correct and eradicate these practices. He stressed his commitment to the objective of eradicating all bullying practices, citing as evidence of his commitment the fact that for well over ten years the Scottish Government had deemed him to be a "Persistent Correspondent" on this matter.

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



Commissioner's analysis and findings

16. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Williams and the Ministers and is satisfied that no matter of relevance has been overlooked.
17. Section 14(1) of FOISA states that the general right of access to information “does not oblige a Scottish public authority to comply with a request for information if the request is vexatious”.
18. As previously noted, the Commissioner has published guidance on the application of section 14(1) of FOISA. 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.
- The Scottish Information Commissioner’s general approach is that a request (which may be the latest in a series of requests) is vexatious where it would impose a significant burden on the public authority and:
- it does not have a serious purpose or value; and/or
 - it is designed to cause disruption or annoyance to the public authority; and/or
 - it has the effect of harassing the public authority; and/or
 - it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.”
19. The Commissioner considers that, viewed dispassionately and in isolation from the ongoing correspondence between Mr Williams and the Scottish Government, it would not be manifestly unreasonable or disproportionate to request information about departmental bullying records over the past 12 years, including the number of reported incidents, and the number and degree of disciplinary actions taken. The Commissioner accepts that there may be occasions when disclosure of such information may prove to be in the public interest.
20. However, in assessing whether Mr Williams’ request should be regarded as vexatious, it is reasonable and relevant to consider the wider context in which the request was made, which may show whether the request was without serious purpose, was designed to disrupt or cause annoyance to the Scottish Government, or otherwise had the effect of harassing the Scottish Government.
21. The Ministers have provided evidence to show that Mr Williams’ correspondence with the Scottish Government has been long-standing, voluminous and persistent. A senior manager from the Scottish Government’s Human Resources Division has met with Mr Williams on three occasions (2003, 2006 and 2009) to try to resolve his complaint, which dates back to events in 1999. The Scottish Government is clear that its policies and procedures relating to bullying and harassment complaints have been fully explained to Mr Williams.



22. The Ministers have also provided evidence to show that although Mr Williams has made only nine information requests in the last two years, his general correspondence with the Scottish Government (much of it arising from his dissatisfaction with responses received to his requests) is voluminous and shows no signs of decreasing. The Ministers advised that Mr Williams' correspondence takes up 10 folders, three of which have been created in the last year. The folders do not include the many emails sent by Mr Williams. Between March and December 2009, 161 letters were received. The Ministers advised that other letters might have been sent but not received, as most of the correspondence was sent unstamped, forcing the Scottish Government to pay a postal charge each time.
23. The Ministers believe Mr Williams' correspondence is now a burden on the Scottish Government and, from past experience, do not consider that resolution of his complaints would be brought any closer by providing a substantive response to his request of 1 March 2009.
24. The Commissioner has given consideration to Mr Williams' argument that he is seeking information about bullying within the Scottish Government in order to identify bullying "hotspots" and correct and eradicate these practices. The Commissioner accepts that Mr Williams has genuine concerns about bullying within the Scottish Government, but takes the view that Mr Williams' correspondence with the Scottish Government has become disproportionate and unreasonable and is unlikely to achieve his aims, however reasonable they may seem to be.
25. The Ministers also argued that the way in which Mr Williams' request was worded indicated a strong element of harassment in connection with the request. Mr Williams asked specifically for a personal statement from eight named officials.
26. The Commissioner does not accept that the wording of Mr Williams' request should be regarded as harassment. FOISA only covers recorded information held at the time of the request, and Scottish public authorities are not required to create information (e.g. personal statements) in response to an information request. The Scottish Government would have been aware that the officials in question were under no obligation, in terms of FOISA, to provide personal statements unless such statements were already in existence.
27. However, the Commissioner accepts that Mr Williams' request of 1 March 2009 should be viewed in the context of his ongoing correspondence with the Scottish Government, and that the Ministers have shown that this correspondence has become unduly burdensome and unreasonably voluminous, and that further correspondence is unlikely to resolve Mr Williams' concerns and complaints. The Commissioner therefore accepts that the Ministers were justified in refusing to respond to Mr Williams' request of 1 March 2009 on the grounds that it was vexatious, in terms of section 14(1) of FOISA.



DECISION

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to respond to Mr Williams' information request under section 14(1) of FOISA.

Appeal

Should either Mr Williams or the Scottish Ministers 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.

Margaret Keyse
Head of Enforcement
26 January 2010



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.

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