

Decision Notice



Decision 197/2012 Mr Q and the Scottish Prison Service

Whether requests vexatious

Reference No: 201201456

Decision Date: 30 November 2012

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Rosemary Agnew

Scottish Information Commissioner

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



Summary

Mr Q made requests to the Scottish Prison Service (SPS) for information relating to a diagnosis, the qualifications of individuals and evidence of the SPS's compliance with relevant statutory obligations. The SPS refused to comply with these requests on the basis that it considered them to be vexatious. Following an investigation, the Commissioner accepted that this was correct in the circumstances.

Relevant statutory provisions

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 30 April 2012, Mr Q wrote to the SPS making six requests for information. These encompassed confirmation of a medical diagnosis, résumés of certain professionals (to include details of specialist training, expertise and experience), details of providers of advice, evidence of the SPS's compliance with certain legislation and an explanation of why the SPS did not consider him to be disabled, together with information considered by the SPS in respect of certain specified matters.
2. The SPS responded on 18 May 2012, stating (with reasons) that it considered Mr Q's requests to be vexatious. Accordingly, it concluded that it was not required to comply with the requests in terms of section 14(1) of FOISA.
3. On 23 May 2012, Mr Q wrote to the SPS requesting a review of its decision. He disagreed with the SPS's reasons for considering the requests to be vexatious.
4. On 27 June 2012, the SPS apologised for the delay in responding to his review request and confirmed to Mr Q (having carried out a review) that it considered his requests to be vexatious in terms of section 14(1) of FOISA.



5. On 27 July 2012, Mr Q wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Q 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 response to those requests. The case was then allocated to an investigating officer.

Investigation

7. The SPS is an agency of the Scottish Ministers (the Ministers) and, on 30 August 2012, the Ministers were notified in writing that an application had been received from Mr Q. Subsequent references to contact with or submissions from the SPS are therefore references to contact with or submissions from the Ministers on behalf of the SPS.
8. In the letter of 30 August 2012, the investigating officer also gave the SPS an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA. Specifically, it was asked to justify its reliance on section 14(1) of FOISA
9. The relevant submissions received from both the SPS and Mr Q will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Mr Q and the SPS and is satisfied that no matter of relevance has been overlooked.
11. The SPS, when responding to Mr Q's requests and following its review, relied upon section 14(1) of FOISA.
12. Under 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.
13. FOISA does not define the word "vexatious". However, the Commissioner's *general* approach is that a request (which may be a single request, the latest in a series of requests, or one among a large number of individual requests) may be vexatious where it would impose a significant burden on the public authority and one or more of the following conditions can be met:
 - it has the effect of harassing the public authority; and/or



- 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 would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
14. 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. It may be reasonable, for example, for the authority to conclude that a particular request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.
15. Notwithstanding the Commissioner's general approach is as set out in paragraph 13 above, she recognises that each case must be considered on its merits and in all the circumstances of the case. She does not exclude the possibility that, in any given case, a request may not involve a significant burden, but one or more of the other listed factors may be of such significance that it would be appropriate to consider the request as vexatious in the absence of a significant burden. She also recognises that other factors may result in a request being vexatious.

The SPS's submissions

16. In this instance, the SPS argued that the history of the applicant and the volume of correspondence were relevant in this case. The SPS explained Mr Q's position that he suffered from an Autistic Spectrum Disorder, namely Asperger's Syndrome (AS). It also explained that Mr Q had raised a legal challenge against it, seeking (amongst other matters) to be transferred to an AS specific facility. The SPS refused to do so, maintaining that its current provision was adequate. The SPS advised that there had been extensive communications with Mr Q, involving many individuals throughout the SPS, with this issue at its core. The SPS supplied the Commissioner with extensive evidence of the correspondence on this particular subject.
17. Having considered the evidence supplied, alongside the subject matter of the requests under consideration here, the Commissioner is of the view that the nature and subject matter of Mr Q's requests are such that they can be seen as a continuation of his correspondence with the SPS over a number of years. When assessing these requests, therefore, the Commissioner finds it reasonable to have regard to the wider context of Mr Q's history and pattern of communications with the SPS.

Significant burden

18. The Commissioner's briefing on section 14 of FOISA indicates 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 core operations.



19. The SPS submitted that these requests did not, in themselves, present a significant burden when viewed in isolation, but do so given the volume of communications which had already taken place with Mr Q on this matter.
20. The SPS explained that Mr Q's request followed a review of his ongoing management and attempts to seek his engagement in offence-focused interventions. The SPS advised that these requests were similar to previous requests and complaints, where he had sought to challenge the expertise and opinion of professionals tasked with challenging his offending behaviour.
21. Taking into consideration the cumulative effect of Mr Q's correspondence, the Commissioner accepts that dealing with this correspondence (viewed as a whole) would demand a disproportionate amount of time and the diversion of an unreasonable proportion of the SPS's resources away from its core responsibilities. In this case, the Commissioner accepts that responding to Mr Q's requests would impose a significant burden.

It has the effect of harassing the public authority

22. In considering these requests, the SPS argued that the history of the applicant was very relevant, given the unique focus of these requests. The SPS explained that Mr Q had made more than 65 information requests since 2005. The requests related, either directly or indirectly, to the SPS's management of Mr Q and his assertion that he had AS. The SPS submitted that Mr Q continually sought to undermine and question the professional ability and responsibility of those charged with managing the risks presented by him. It referred to the evidence supplied of Mr Q's correspondence. In the light of this correspondence, the SPS concluded that Mr Q's requests had the effect of harassing the authority.
23. Having taken into account the evidence supplied by the SPS of its history of correspondence with Mr Q, the Commissioner accepts that it was reasonable in the circumstances to conclude that the information requests under consideration here were being used by Mr Q primarily to extend dialogue in relation to his concerns. Given the history of the correspondence, it appears highly unlikely that that resolution of these issues would be brought any closer by the provision of a response to any of these requests.
24. The Commissioner, having considered the terms of these requests, their subject matter, history and context, accepts that Mr Q's requests represented a course of correspondence which (whatever his intention) had the effect of harassing the SPS.
25. The Commissioner finds that the SPS was not obliged to comply with Mr Q's information requests, on the basis that the requests were vexatious and, therefore, that section 14(1) of FOISA applied.



DECISION

The Commissioner finds that the Scottish Prison Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information requests made by Mr Q.

Appeal

Should either Mr Q or the Scottish Prison Service 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.

Rosemary Agnew
Scottish Information Commissioner
30 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

- (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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