

# Decision Notice

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**Decision 028/2018: Ms X and Highlands and Islands Enterprise**

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**Whether request was vexatious**

Reference No: 201701595

Decision Date: 8 March 2018



Scottish Information  
Commissioner

## Summary

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HIE was asked for minutes of meetings of discussions and agreements about the Achiltibuie Hydroponicum HIE grant obligation. HIE refused to comply with the request as it considered it to be vexatious.

Given the history of the correspondence on this matter between the requester and the HIE, the Commissioner agreed that the request was vexatious.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14 (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 2 August 2017, Ms X made a request for information to Highlands and Islands Enterprise (HIE). The information requested was:  
  
*“HIE minutes of meetings of the discussions & agreements which took place between HIE [first named person] & others & [second named person] of Barwells re Achiltibuie Hydroponicum: HIE grant obligation...”*
2. HIE responded on 8 August 2017, notifying Ms X that her request was vexatious. HIE stated that it had fully investigated her complaints and that, over the many years she had corresponded with HIE on these matters, HIE had provided “extensive information” to her under FOISA.
3. HIE stated that it had previously written to her (24 December 2014) to set out certain types of request which it would consider vexatious. It believed her request of 2 August 2017 fell within these categories and therefore concluded that her request was vexatious.
4. On 9 August 2017, Ms X wrote to HIE requesting a review of its decision.
5. HIE notified Ms X of the outcome of its review on 29 August 2017, which confirmed its original decision that her request was vexatious. According to the reviewer, Ms X had submitted voluminous and persistent requests on the same matter over the past nine years, to which HIE had responded and, where appropriate, provided information. HIE referred again to the letter it had sent Ms X on 24 December 2014, which warned her that certain types of request might be considered vexatious in future, in terms of section 14(1) of FOISA. HIE told Ms X that, in its view, the volume, nature and content of her requests demonstrated that they lacked serious purpose. HIE also believed that the continuing information requests on the same issue (Achiltibuie Hydroponicum) were designed to cause disruption and additional work to HIE staff. HIE stated that consideration of Ms X’s information requests was causing a significant burden on its resources.
6. On 5 October 2017, Ms X applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Ms X was dissatisfied with the outcome of HIE’s review.

## Investigation

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7. The application was accepted as valid. The Commissioner confirmed that Ms X 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.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. HIE was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
9. HIE provided comments on the application. Ms X also supplied her views to the Commissioner.

## Commissioner's analysis and findings

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

### Section 14(1) - vexatious requests

11. 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.
12. FOISA does not define the word "vexatious". The Commissioner's general interpretation, as set out in his guidance<sup>1</sup> on section 14(1), 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.
13. 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.
14. While the Commissioner's view is that "vexatious" must be applied to the request and not the requester, he 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

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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)

that a request represents a continuation of a pattern of behaviour it has deemed vexatious in another context.

*HIE's submission*

15. HIE submitted that it had correctly applied section 14(1) of FOISA to Ms X's request, arguing that the request was:
  - without serious purpose;
  - unduly burdensome; and
  - disproportionate and unreasonable.
16. HIE explained that Ms X's correspondence with it began in 2008. HIE set out the reasons for the correspondence: in essence, Ms X maintained that an HIE advisor had acted in an underhand, dishonest and unprofessional way. HIE said that Ms X's complaint had been fully investigated and no evidence was found to support this allegation. A further complaint from Ms X was investigated in 2012; again, no evidence was found to substantiate her complaint. HIE explained that Ms X had referred matters to the police, who also found no basis to take action, and to the Scottish Legal Complaints Commission (SLCC). None of her complaints had been upheld.
17. HIE said that, following the dismissal of her complaints, Ms X began requesting information from HIE under FOISA. Since 2012, it had dealt with 120 requests from Ms X, all concerning the Achiltibuie Hydroponicum in one way or another. HIE submitted that every request from Ms X had been considered and responded to appropriately. HIE supplied the Commissioner with a schedule showing the requests and responses.
18. HIE explained that, in November 2014, it had assessed that Ms X's requests were on the same topic. HIE regarded these requests as vexatious, in terms of section 14(1) of FOISA, on the basis that Ms X persisted in requesting the same (or substantially the same) information, and at times the requests were made in abusive and defamatory terms. In its letter to Ms X of 24 December 2014, HIE had explained that dealing with her requests was placing an unnecessary burden on its limited resources and that resources were being diverted to deal with "the vast number of FOISA requests" she was making. HIE concluded that there was no serious purpose or value to the requests and warned Ms X that further requests for similar information would be considered vexatious.
19. HIE submitted that, having exhausted all avenues open for complaint, Ms X was now "abusing her rights under FOISA to cause unnecessary diversion of HIE's limited resources as this remains the only avenue available to her in her continued claims of malpractice on the part of HIE". HIE stated that, over the past five years, it had deployed significant time and resources in responding to Ms X's repeated information requests on the same or similar topics. As many of the requests from Ms X were repeat requests, HIE regarded these as lacking serious purpose or value, given that it had already provided all relevant information. It had met Ms X to discuss her concerns and believed that nothing further could be done to resolve matters to her satisfaction.
20. In relation to her previous requests, HIE submitted that Ms X has received the information which it holds. Where she asked for information which it did not hold, HIE advised Ms X of this. In this context, HIE drew the Commissioner's attention to its responses to previous information requests from Ms X, including those dated 6 and 13 December 2012 and 18 January 2016.

### *Ms X's submission*

21. Ms X strongly disagreed with HIE's use of section 14(1) in respect of her request. She stated that she was not vexatious. The majority of Ms X's comments to the Commissioner, and the copied correspondence which she supplied to the Commissioner, relate to her dissatisfaction with HIE and others in respect of the Achiltibuie Hydroponicum, rather than directly challenging HIE's decision to treat her request as vexatious.
22. Ms X provided a detailed account of why, in general terms, she is dissatisfied with the answers she has received from HIE over the years. She outlined many specific concerns and explained why she believes that matters with the Achiltibuie Hydroponicum and her subsequent complaints have not been progressed as they should have been. Ms X listed a wide range of questions she feels are still unanswered, but which she believes should be answered (by HIE and other persons) to allow understanding of the situation.

### *The Commissioner's findings*

23. Taken in isolation, Ms X's request of 2 August 2017 might not appear to be vexatious: it is politely worded, though it expresses her ongoing concerns and frustrations in respect of the Achiltibuie Hydroponicum. The Commissioner is aware, however, that the vexatious nature of a request may only emerge after considering it in the context created by previous or ongoing correspondence.
24. HIE submitted that the history of its correspondence with Ms X was relevant when deciding whether the request at issue was vexatious.
25. HIE has supplied the Commissioner with Ms X's history of FOISA requests and other correspondence about the Achiltibuie Hydroponicum. Ms X too has referred to her previous requests, to evidence her dissatisfaction with HIE.
26. The Commissioner accepts that the request under consideration has a clear link to Ms X's previous requests: it relates to her concerns about HIE and the Achiltibuie Hydroponicum and it specifically refers to a person about whom Ms X has previously asked for information from HIE. The Commissioner accepts that it is appropriate, in the circumstances, to consider this request in the context created by Ms X's previous correspondence, and that it was reasonable for HIE to take her previous correspondence into account when deciding whether this request should be treated as vexatious.
27. It is in the context created by Ms X's previous correspondence that the Commissioner has considered the factors raised by HIE to justify its reliance on section 14(1) of FOISA.
28. The first factor identified by HIE was that the request was without serious purpose (for the reasons given above). As stated in his published guidance on vexatious requests, the Commissioner's view is that a public authority should not reach this conclusion lightly.
29. Having viewed the list of requests made by Ms X, it is clear to the Commissioner that she has previously asked HIE for very similar information. She has made requests for all correspondence between the first person named in her request of 2 August 2017 and Barwells, and many other requests for information relating to the first named person. Ms X has obtained information from HIE relating to both persons referred to in her request, and information about the grant obligation, including minutes and correspondence.
30. The Commissioner has no doubt that the subject matter of Ms X's request is personally important to her, and that she is sincere in her belief that there were improper actions by certain persons and is seeking information to allow her to obtain redress. From her

correspondence, it is clear that Ms X also believes there is an important public interest in transparency about the whole issue. However, in considering whether her request lacked serious purpose, it is appropriate for the Commissioner to take into account the whole correspondence between Ms X and HIE, and to consider whether, in that context, her request of 2 August 2017 had a serious purpose.

31. Taken on its own, Ms X's request does not obviously lack serious purpose: she asks for minutes recording the agreements which HIE entered into. However, considered in the light of her previous correspondence, the Commissioner agrees that Ms X's request can reasonably be regarded as lacking serious purpose. His reasons for reaching this conclusion are as follows.
32. First, the request is for information that is substantially similar to information covered by previous requests from Ms X. The information potentially covered by her request is unlikely to have changed since HIE responded to her previous requests. The Commissioner's guidance recognises this as relevant in the context of section 14(1):

"The request may also be vexatious if (i) there is no additional information that can be provided because all relevant information has already been disclosed."
33. Second, the request appears to be an attempt to extend correspondence on a matter which has been fully considered. Taking account of the history between the parties, it is the Commissioner's view that this request was designed to further Ms X's aim of revealing alleged wrongdoing on the part of certain person or persons in respect of the Achiltibue Hydroponicum. However, there have been two investigations of her complaints by HIE: one in 2008 and the other in 2012. HIE has submitted that Police Scotland and the SLCC have also investigated related complaints from Ms X.
34. As Ms X's request therefore relates to a matter which would appear to have been fully considered, the Commissioner agrees with HIE that it therefore lacks serious purpose or value. It also appears unlikely that resolution of Ms X's concerns would be brought any closer by HIE providing a response to her current request, given the history of her correspondence and dealings with HIE. The Commissioner accepts that responding to her request would have the effect of prolonging correspondence on matters which seem to have been fully addressed through the processes established for dealing with such complaints.
35. The Commissioner accepts that it was reasonable for HIE to conclude that Ms X's request represents the continuation of a pattern of behaviour which, it has already warned her, it deemed to be vexatious (HIE's letter of 24 December 2014).
36. HIE also submitted that Ms X's request imposed a significant burden on it, when viewed in the context of her previous correspondence. After consideration, the Commissioner does not accept this. While HIE has responded to over 70 requests (all more or less on the subject of the Achiltibue Hydroponicum) from Ms X in the period from August 2012 until November 2014, the request at issue would not seem to add significantly to the burden created by her requests. The request is for information about agreements or meetings between two named persons; information which would relate to a limited time period. However, even taking that into account, the Commissioner would not conclude that responding to the request would create a significant burden. HIE has shown that it is aware of the information which it holds on the subject of the Hydroponicum, and could establish without difficulty whether it holds any information covered by Ms X's request.

37. HIE suggested that the request was disproportionate and unreasonable. The Commissioner's Guidance<sup>2</sup> on vexatious requests recognises that it may be relevant to consider this factor:
- “Regardless of the apparent purpose or value of a request, or the intention of the requester, a request may be deemed vexatious if, in the opinion of a reasonable person, it would appear to be manifestly unreasonable or disproportionate.”
38. It continues:
- “The effect on a public authority of dealing with the request will be relevant in determining whether this is the case. Relevant factors to consider include the complexity of the request, the volume of information requested, the time and resources that would be required to process it, and the impact on the authority's statutory and/or core operations... Balanced against these factors should be the wider value and (where known) purpose of the request, bearing in mind that FOISA is designed to give access to information and to promote transparency in public authorities.”
39. Proportionality is a common theme that underlies section 14(1) of FOISA and there is an inevitable overlap between what is proportionate and reasonable and other relevant factors, such as the value and purpose of a request. As stated above, the Commissioner does not regard Ms X's request as complex or requiring extensive resources to process, but accepts that it must be seen in the context created by her previous correspondence with HIE in order to assess whether it was disproportionate and unreasonable.
40. Ms X's aim is to achieve transparency in respect of alleged wrongdoing. The Commissioner accepts that public authorities should be held accountable for their actions and decisions, and that meeting their underlying commitment to transparency and openness may involve absorbing a certain level of disruption and annoyance. Nonetheless, HIE had already responded many times to requests for information on same issue. It appears to the Commissioner that the intention behind Ms X's request was to require HIE to revisit her concerns.
41. Seeking to reopen a complaint about an issue which is of genuine concern to a complainant is not necessarily an action designed to cause disruption and annoyance. However, taking into account all the circumstances of the case – i.e. that it relates to information that is substantially similar to that which Ms X has requested before and in respect of complaints which have already been investigated – the Commissioner is satisfied that the request can reasonably be considered disproportionate.
42. In summary, having considered all the relevant circumstances, the Commissioner accepts HIE's view that Ms X's request was vexatious, in terms of section 14(1) of FOISA. He agrees that the request can be regarded as without serious purpose, and that this factor is a strong factor. He has not been provided with sufficient evidence or reasoning to accept that the request was unduly burdensome, but he does agree with HIE that, in the full circumstances of the case, the request was unreasonable and disproportionate.
43. The Commissioner is therefore satisfied that Ms X's request is vexatious and that, in line with section 14(1) of FOISA, HIE was not obliged to comply with the request

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<sup>2</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)

44. Having decided that section 14(1) was correctly applied, the Commissioner is not required to consider whether the request was repeated, in terms of section 14(2) of FOISA.

## **Decision**

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The Commissioner finds that Highlands and Islands Enterprise complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms X.

## **Appeal**

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Should either Ms X or HIE 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.

**Daren Fitzhenry**  
**Scottish Information Commissioner**

**8 March 2018**



### 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.

(2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

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