



# Decision Notice 025/2023

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## Records relating to a café – information identified in a previous response

**Applicant: the Applicant**

**Authority: Glasgow City Council**

**Case Ref: 202101324**

### Summary

The Applicant asked the Authority for a copy of the information identified as falling within the scope of a previous request. The Authority stated that it considered the request vexatious. The Commissioner investigated and found that the request was vexatious and the Authority was not obliged to comply.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 14(1) (Vexatious or repeated requests); 47(1) and (2) (Application for decision by Commissioner)

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

1. On 13 September 2021, the Applicant made a request for information to the Authority. The request read as follows:

*On 7th October 2020, I made the following Freedom of Information request:-*

*“Please send me the Council records since and including 4th February 2020 related to the premises situated at 291 Byres Road, Glasgow held by Development and Regeneration*

*Services (DRS), Building Standards, Land and Environmental Services (LES) and the Customer Care Team of Glasgow City Council.”*

*The Council refused to supply this information on the grounds of cost.*

*I referred the matter to the Scottish Information Commissioner and in their decision [[Decision 128/2021](#)<sup>1</sup>] contained the following:-*

*“the Council explained that, while full searches were not undertaken, a sample search exercise was carried out at initial request stage, where two staff members (from NS and CCT) searched their emails and electronic files. These searches identified 2,000 pages of results and the time required to locate, retrieve and redact any personal data from this information was estimated, by these staff, to be 3 hours and 40 minutes. The Council confirmed that details of this sample exercise had been provided to the Applicant at initial request and review stages, together with an explanation of why it could not comply within the cost limit.”*

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*“The Council submitted that, since then, a further sample search exercise had been carried out by a staff member in Planning and Building Standards. This identified 104 emails falling within scope, and this officer estimated it would take 5 hours and 18 minutes to locate and retrieve this information, and redact any personal data.”*

*Please supply me with the information in the identified 2,000 pages of results referred to above and in the further 104 emails referred to above as falling within the scope of my Freedom of Information request of 7th October 2020.*

2. The Authority responded on 23 September 2021. It refused to comply with the request on the grounds that it was considered vexatious in terms of section 14(1) of FOISA. The Authority advised that had not taken this decision lightly but, having considered the history of the Applicant’s requests regarding the café in question, dating back to 2015, it noted that the Applicant had made a significant volume of information requests, requests for review and also appeals to the Scottish information Commissioner, for information consisting largely of his own correspondence. The Authority considered the requests were disproportionate, designed to cause disruption to itself, had no serious purpose or value and had the impact of harassing the Authority’s staff.
3. Also on 23 September 2021, the Applicant wrote to the Authority, requesting a review of its decision. The Applicant submitted that the Authority was considering his request vexatious on the basis that he made complaints to the Scottish Public Services Ombudsman (SPSO) and submitted appeals to the Scottish Information Commissioner, which he considered few in number (and noted some had been upheld in his favour). Therefore, he considered his requests had serious and valid reasons and were not vexatious.
4. The Authority notified the Applicant of the outcome of its review on 20 October 2021. It upheld its initial response, that it considered the request vexatious and was therefore not (in terms of section 21(8)(b) of FOISA) obliged to comply with the request for review.
5. On 21 October 2021, 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 Authority’s review for the reasons outlined in his requirement for review. He also noted

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<sup>1</sup> <https://www.itspublicknowledge.info/decision-1282021>

that in relation to a request he had appealed the previous year; [Decision 165/2020](#)<sup>2</sup>, the Authority had decided to overturn its decision to consider that request vexatious.

## Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 8 December 2021, the Authority 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 Authority was invited to comment on this application and to answer specific questions. These related to why it considered the request vexatious.
9. The Authority provided submissions, which are considered below.

## Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

### ***Was the request vexatious?***

11. 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.
12. The Commissioner's general approach is that the following factors are relevant when considering whether a request is vexatious (under 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, and
  - 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. The terms "vexatious" and "manifestly unreasonable" must be

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<sup>2</sup> <https://www.itspublicknowledge.info/decision-1652020>

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*

14. The Applicant referred to the grounds of dissatisfaction, as detailed in his requirement for review, that the Authority considered his request vexatious on the basis that he made complaints to the SPSO and submitted appeals to the Scottish Information Commissioner, which he considered few in number and noted some had been upheld in his favour. Therefore, he submitted that his requests had serious and valid reasons and were not vexatious.

15. He also noted that the Authority had attempted to deny his earlier request in 2020 on the same grounds. He had appealed this matter, and noted that paragraph 18 of [Decision 165/2020](#)<sup>3</sup> states:

“In light of the Council’s change of position, as a result of which it no longer considers section 14(1) of FOISA applicable to the request, the Commissioner must conclude that the Council was not entitled to refuse to comply with the Applicant’s request on the basis that section 14(1) applied. He also finds, therefore, that section 21(8)(b) of FOISA did not apply and that the Council was obliged to comply with the Applicant’s requirement for review.”

#### *The Authority's submissions*

16. The Authority submitted that it did not reach the decision to apply section 14(1) of FOISA lightly and considered all of the relevant circumstances to reach a balanced conclusion that the Applicant’s request was vexatious.

17. The Authority had carefully considered the Commissioner’s briefing “FOISA Guidance Vexatious or repeated requests”, which (it submitted) details that a requester’s identity and the history of their dealings with a public authority may be relevant to consideration that the request is vexatious.

18. The Authority noted that the Commissioner had stated, in paragraph 40 of [Decision 145/2012](#)<sup>4</sup>, that “in some cases, the vexatious nature of a request will only emerge after considering the request in context”. The Authority considered it was appropriate in this case to take into account both the Applicant’s reasons for making the information request and his previous dealings with the Authority.

19. The Authority stated that it had received 38 initial requests and 25 review requests from the Applicant since 2015, each of these concerning the café referred to in this request, above which the Applicant resides. The Applicant had also submitted 12 requests for appeal to the Commissioner, some of which covered multiple initial and review requests. In addition, the Applicant had made numerous complaints to the Authority and the SPSO.

20. The Authority submitted that the Applicant repeatedly sought information on the Authority’s records and correspondence, within different date ranges, regarding the café. The requests covered all information held by the Authority within a specified date range relating to the café. A substantial volume of the information released to the Applicant in response to his previous

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<sup>3</sup> <https://www.itspubliknowledge.info/decision-1652020>

<sup>4</sup> <https://www.itspubliknowledge.info/decision-1452012>

information requests comprised his own correspondence with various departments (Building Standards, Environmental Health, Planning Enforcement and the Customer Care Team).

21. On multiple occasions, the Authority noted, the Applicant had been advised that, whilst acknowledging the importance of the Authority's obligations under FOISA, it was of the view that responding to his numerous information requests on the same issue had diverted an unreasonable proportion of the Authority's financial and human resources away from the core statutory functions. It believed the requests were designed to cause disruption to the Authority about matters that had already been exhaustively investigated. Authority employees had also offered to meet with the Applicant on numerous occasions to discuss his concerns, but the Applicant had not engaged with the officers.
22. The Authority noted that the Applicant was advised in response to previous review requests, issued on 16 May 2019, 31 July 2019 and 31 August 2021, that whilst it would always assess each request for information on its own merits, any future requests for information on the same subject matter within different time frames were likely to be refused on the basis that they were vexatious. The Authority had also asked the Applicant to consider narrowing the scope of future requests, for example to exclude information he already has.

#### Significant burden

23. The Authority considered that compliance with the request would require the diversion of an unreasonable proportion of its financial and human resources away from other statutory functions. It would have to sift through an extensive volume of information, comprising 2,000 pages of results and 104 emails concerning the café, and redact any personal data.
24. The Authority submitted that on the basis of the Applicant's ongoing complaints, communications, requests, and appeals to itself and other organisation about the case, it was considered likely that a significant volume of information falling within the scope of the request would be the Applicant's own correspondence.
25. The Authority provided details of the 38 information requests it had received from the Applicant since 2015, all of which related to the café.
26. Due to the complicated nature of these requests, and the volume of information generated by the Applicant himself, the Authority noted that a significant amount of officer time was spent processing the requests. It noted that the requests were wide-ranging and required searches to be carried out by many of its departments (it provided further details).
27. A search was conducted of one department's document management system (EDRMS) using the search criteria of the Applicant's name. This which generated 3,300 results, most of which it believed were likely to relate to the Applicant's requests about the café. It submitted that dealing with such requests impacts significantly on officers' ability to comply with their statutory functions.

#### Harassing authority

28. The Authority considered the request under consideration was a continuation of numerous previous requests about the café since 2015. It noted that a number of these had led to applications to the Commissioner.
29. The Authority submitted that the Applicant tended to appeal requests on the basis of what he thinks should be held, in order to further the ongoing grievance and complaints concerning the café. It submitted that a reasonable person, taking into account the surrounding

circumstances, would conclude that such an approach had the effect of harassing the Authority.

The request does not have serious purpose or value

30. The Authority also submitted that a substantial amount of the information provided to the Applicant in response to his requests for information comprised his own correspondence with the Authority, the Authority's responses to the Applicant and information concerning the Applicant's complaints about the café.
31. The Authority concluded that the Applicant's purpose in requesting the information was to pursue his argument with the Authority and the café about various grievances in respect of the café, rather than to obtain information.
32. The Authority considered the Applicant was not using his information requests in a responsible manner to exercise his right to information, but rather as a continuation of his complaints about the café (and therefore of a campaign or grievance about issues which had already been extensively explored). Together with the fact that the Applicant had failed to engage with the Authority to resolve his issues outwith the FOI process, the Authority believed this demonstrated that his request lacked serious purpose or value.
33. The request which is the subject of this current appeal refers to an earlier appeal ([Decision 128/2021](#)<sup>5</sup>) where the Applicant was unsuccessful. The Authority noted that as part of this appeal a sample exercise was conducted, and the results of this exercise were the basis of the request under consideration. It submitted that neither itself, nor the Applicant, knew what specific information the sample contained, so there did not seem to be any purpose or value to this request.

Other factors taken into account by the Authority

34. The history of the Applicant's dealings with the Authority was considered by the Authority, which took the view (as explained above) that the request of 13 September 2021 was a continuation of a pattern of behaviour exhibited by the Applicant in respect of his on-going grievances against various departments within the Authority in respect of the café.
35. The request of 13 September 2021 was a continuation of the Applicant's requests for information held by the Authority concerning the café over a specified period of time. In response to previous requests, the Authority had offered to meet with the Applicant to discuss his concerns and had explained the significant burden imposed on the Authority by his information requests.
36. The Authority considered it had provided the Applicant with advice and assistance in line with section 15 of FOISA and had suggested that the scope of future requests could be narrowed, for example, to exclude information the Applicant already had or to specify a particular issue in relation to the café on which he wanted information, in order to reduce the burden on the Authority in processing his requests.
37. As part of the response to two requests in 2019 and one in 2021, the Authority noted that it had explained to the Applicant the significant burden placed on its resources and the difficulties in dealing with his requests for documentation and correspondence held in respect

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<sup>5</sup> <https://www.itspubliknowledge.info/decision-1282021>

of the café: on these occasions, it detailed that it had given serious consideration as to whether his requests could be refused under section 14(1).

38. The Authority concluded that the Applicant had an ongoing grievance against it in respect of his concerns regarding the café and that his repeated requests for information requiring Authority-wide searches would not provide a resolution to his grievance.
39. In the Authority's view, it was unlikely that providing the information requested by the Applicant on 13 September 2021 would in any way alter or resolve his situation, as his concerns and grievances regarding the café and the Authority's response to his complaints had already been thoroughly addressed through the relevant procedures with the Authority and the SPSO.
40. For the reasons outlined above, the Authority was satisfied that it correctly dealt with the Applicant's request as vexatious in terms of section 14(1) of FOISA.

#### *The Commissioner's findings on section 14(1) of FOISA*

41. The Commissioner has taken account of all the relevant submissions and supporting evidence from the Applicant and the Authority. Taken in isolation, the Applicant's request might not appear to be vexatious (although the Commissioner would observe that it relates to a request he has already found to be covered by section 12(1) of FOISA, not really narrowed down in any meaningful way). However, the vexatious nature of a request may only emerge after considering it in the context created by previous ongoing correspondence. The Commissioner is satisfied, having reviewed the details of the requests made to date, that it was reasonable for the Authority to consider previous correspondence, including that relating to relevant requests from the Applicant, when deciding whether this request should be treated as vexatious.
42. Considering the request in detail, the Commissioner notes that it does not specify a particular subject about the café, only requesting the information identified in a previous search. As noted in paragraph 41, that a search was carried out with the sole purpose of determining whether the Authority could comply with the request in question within the £600 cost limit set for the purposes of section 12(1) of FOISA: its purpose was not to identify and locate specific information.
43. The Commissioner is satisfied that, whether intentionally or not (and it is difficult to imagine that the Applicant did not understand the nature of the sampling exercise), the Applicant has made a request framed so generically that responding to it would inevitably place a significant burden on the Authority.
44. 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.
45. As identified by both parties, the Applicant's requests about the café have resulted in appeals to the Commissioner, and consequent decisions. In many of these decisions, it is noted that the Applicant's requests encompass a substantial volume of his own personal data (i.e. information about complaints he has made, relating to his own personal circumstances), but that the Applicant has not modified his requests to exclude such information.

46. In addition, as the Commissioner has noted in the previous related decision, [Decision 128/2021](#)<sup>6</sup>, the Applicant has not engaged with the Authority to narrow the scope of his requests and the Authority has found it difficult to know exactly what the Applicant has been seeking to obtain. As concluded in Decision 128/2021, if an applicant is not prepared to engage in that way, the Commissioner recognises that there will be limits as to how far the authority can reasonably be expected to take matters forward on its own.
47. As the Applicant's request in this case follows on from the previous request it refers to, simply using the basis of the search results to instigate another request, without any modification, focus on specific matters or other refinement, the Commissioner has no option but to conclude that the request would appear to have no serious merit or purpose, but was made simply to continue the previous grievances about the café and thus (by its inevitable impact, even if not intended to) harass the Authority.
48. 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 Authority was entitled to refuse to comply with the request by virtue of section 14(1) of FOISA.
49. Whatever the Applicant's intention may have been, the Commissioner considers this request, taken with the Applicant's other requests, and in light of the advice provided by the Authority and ignored by the Applicant, could only have the effect of harassing the Authority and its staff. Whatever legitimate issues the Applicant may have in relation to the café, the Commissioner fails to see how they could have any reasonable prospect of being advanced by the pattern of requests the Applicant has been making.

## **Decision**

The Commissioner finds that the Authority 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 Authority 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**

**23 March 2023**

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<sup>6</sup> <https://www.itspublicknowledge.info/decision-1282021>



## **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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”

...

- (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.

...

#### **47 Application for decision by Commissioner**

- (1) A person who is dissatisfied with -
  - (a) a notice under section 21(5) or (9); or
  - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
  - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
  - (b) state the name of the applicant and an address for correspondence; and
  - (c) specify –
    - (i) the request for information to which the requirement for review relates;
    - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
    - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...