



Scottish Information
Commissioner

**Decision 227/2007 Mr Joseph Millbank and the Scottish Social
Services Council**

*Criminal convictions of employees of Dundee City Council's Criminal Justice
Services*

**Applicant: Mr Joseph Millbank
Authority: Scottish Social Services Council
Case No: 200701169
Decision Date: 6 December 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
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Decision 227/2007 Mr Joseph Millbank and Scottish Social Services Council

Information relating to criminal convictions of employees of Dundee City Council's Criminal Justice Services - request refused on the basis of section 12(1) – excessive cost of compliance – Commissioner upheld authority's decision

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) (General entitlement) and 12(1) (Excessive cost of compliance)

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations): regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Joseph Millbank (Mr Millbank) requested information relating to the criminal convictions of those employed in Dundee City Council's Criminal Justice Services from the Scottish Social Services Council (SSSC). The SSSC responded by giving Mr Millbank notice that it was not obliged to respond to his request for information, as to respond to the request would cost over £600. Mr Millbank was not satisfied with this response and asked the SSSC to review its decision. The SSSC carried out a review and, as a result, notified Mr Millbank that it maintained its original decision without amendment. Mr Millbank remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SSSC had dealt with Mr Millbank's request for information in accordance with Part 1 of FOISA. He did not require the SSSC to take any action.



Background

1. On 18 June 2007, Mr Millbank wrote to the SSSC requesting specific information held by the SSSC concerning criminal convictions of those employed by Dundee City Council's Criminal Justice Services in two particular time frames.
2. On 17 July 2007, the SSSC wrote to Mr Millbank in response to his request for information, stating that the cost of compliance with this request would exceed the prescribed amount of £600 specified in the Fee Regulations. The SSSC issued a refusal notice stating in terms of section 12(1) of FOSIA that it was therefore not obliged to comply with the request. The SSSC informed Mr Millbank that it had no other means of providing the information he had requested which would fall within the cost ceiling. The SSSC invited Mr Millbank to refine his request and re-submit it.
3. On 19 July 2007, Mr Millbank wrote to the SSSC requesting a review of its decision. In particular, Mr Millbank requested further details of the costs associated with retrieving the information.
4. The SSSC wrote to notify Mr Millbank of the outcome of its review on 17 August 2007. It upheld its original decision without amendment but provided Mr Millbank with further detail as to the way in which the material he sought was held and why it would exceed the cost threshold to provide him with the information.
5. Mr Millbank wrote to my Office on 27 August 2007 stating that he was dissatisfied with the outcome of the SSSC's review and applying to me for a decision in terms of section 47(1) of FOISA. Mr Millbank raised particular concerns about the manner in which the information requested was held by the SSSC, its projected costs and its consideration of other methods by which the information could be provided under the cost threshold.
6. The application was validated by establishing that Mr Millbank had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.



The Investigation

7. My Office subsequently wrote to the SSSC, notifying it of Mr Millbank's application and inviting its comments on the application. The SSSC was also asked to respond to specific questions on the application.
8. The SSSC was asked to provide a detailed estimate of costs that would be incurred in dealing with Mr Millbank's request along with evidence that the SSSC had taken reasonable steps to try and assist Mr Millbank in identifying ways of reducing the cost of complying with the request.
9. The SSSC responded 2 October 2007 providing the evidence sought and a detailed estimate of the costs that would be incurred in responding to Mr Millbank's request.

The Commissioner's Analysis and Findings

10. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Millbank and the SSSC and am satisfied that no matter of relevance has been overlooked.
11. In refusing Mr Millbank's request, the SSSC cited section 12(1) of FOISA (Excessive cost of compliance). Section 12(1) provides that public authorities are not obliged to comply with requests for information where the cost of complying with that request would exceed the amount prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations). This amount is currently set at £600.
12. Consequently, I have no power to force the release of information should I find that the cost of responding to a request for information exceeds this amount.

Submissions from the Council

13. The SSSC argued that it would incur a cost of £1270.75 in providing the information requested by Mr Millbank.



14. The SSSC submitted that it maintains an electronic database of registrants registered with it in terms of section 44 of the Regulation of Care (Scotland) Act 2001. The SSSC explain that there is no statutory duty to register social workers other than as generic social workers, i.e. no distinction is made between those registered as criminal justice social workers/child care social workers/ mental health officers.
15. The SSSC explained that the database records an applicant's employment details at the time of registration and that the registrant is under a duty to advise the SSSC if they change any of their details by means of a change of circumstance form. As a result of the absence of a statutory duty to register by section or team within social work, workers are not required to advise the SSSC of what section within a Social Work Department they work.
16. The database is amended in respect of any notified changes in employment but not in respect of the details of any criminal convictions. The SSSC explained that minor road traffic convictions are dealt with by the Registration Team, but the details are entered on the manual rather than the electronic database. More serious convictions are dealt with by the SSSC's Conduct Team and the Registration Team are advised of any decision of the SSSC or its sub-committees if that impacts on the registration details held. The SSSC submitted that the Conduct Team do not hold details of their investigations on an electronic database.
17. Consequently, the SSSC would be required to search the registration database to discover all those social workers who have at any time been employed by Dundee City Council and then peruse those workers' manual files to see if a) they had at any time worked within Criminal Justice Services and b) they were employed in the dates specified by Mr Millbank in his request.
18. The SSSC noted that there are currently in excess of 10,000 social workers registered on the SSSC's register. Of these, the SSSC identified 391 that have been at some time employed by Dundee City Council. The SSSC explained that it was not possible to narrow this group down to include only those employed within the time periods specified in Mr Millbank's request as this functionality is not available within the register.
19. The SSSC further identified that 61 of the 391 workers identified as having ever worked at Dundee City Council were recorded as employed with its Criminal Justice Services, whilst others may have been at one time, but may now have moved onto other duties. The SSSC submitted that a check of the employment history details of the manual application forms relative to all 391 workers would be required to ensure the correct group of workers matching the terms of Mr Millbank's request for information (on those working in Dundee City Council's Criminal Justice Services and their position on the dates specified) was identified.



20. The SSSC further explained that once the workers covered by the request had been identified, it would be necessary to collate by hand details of any criminal convictions as these are not recorded on the registration database, and the SSSC's Conduct Team maintain records by name of worker in both Word documents and manual files. The SSSC explain that this system has been established to ensure the security of the sensitive personal data that is stored as part of the investigative process.
21. The SSSC provided my Office with a worked example, detailing the costs that would be incurred in dealing with Mr Millbank's request:
 - a) to search the database to discover the names of all the social workers employed at any time by Dundee City Council would require 10 minutes
 - b) to pull an individual file from filing system would require 3 minutes per case
 - c) perusal of each manual file identified to determine if the individual worked within Criminal Justice Services would require 4 minutes per case
 - d) to check manually whether an individual was employed by Dundee City Council as of 1 November 2006 would require 2 minutes per case
 - e) similarly, to check whether an individual was employed by Dundee City Council as of 18 June 2006 would also require 2 minutes per case
 - f) to collate by hand details of any criminal conviction would require 2 minutes per case
 - g) to compile a table of the information sought by Mr Millbank would take an additional 1 hour and 20 minutes
22. The SSSC submitted that it would require a Conduct Case Officer to undertake the work with a salary of £30,171, at the bottom of the scale with the hourly rate, including overheads being £20. However, the SSSC recognised that this exceeds the £15 per hour limit set out in the Fee Regulations and therefore restricted the rate to £15 per hour for the purposes of the calculation.
23. The SSSC submitted that, disregarding points (a) and (g), the inspection of each case would take 13 minutes. However, I consider that points (d) and (e) reflect a duplication of work that could be carried out simultaneously. I have therefore reduced the time taken per case to 11 minutes.
24. To inspect each case, the SSSC would incur a cost of £2.75. Consequently, the cost of inspecting all 391 records would be £1075.25.
25. The SSSC also submitted that it would take an additional £22.50 (taking into account points (a) and (g)) in providing Mr Millbank with the information sought.



26. I am satisfied that the SSSC would incur a total cost of £1097.75 in dealing with Mr Millbank's request. It is clear from the estimations provided by the SSSC that the cost of providing the information to Mr Millbank would exceed the £600 prescribed limit as defined by the Fees Regulations. I am satisfied that the SSSC's estimate is a reasonable one in the circumstances.
27. I therefore conclude that, under the terms of section 12(1) of FOISA, the SSSC was not obliged to comply with the request as the cost of doing so would have exceeded the prescribed limit of £600.
28. The SSSC submitted that it had given consideration to the provision of the information in a manner which would take it below the cost threshold. However, it was unable to do so due to the nature of the request and the way in which the information is held. The SSSC explained that Mr Millbank requested very specific information and it has explained to him how the information is stored and what would be required to retrieve it. In its letter of 17 July 2007 to Mr Millbank the SSSC suggested that he redefine his request and resubmit it, Mr Millbank did not do so.
29. In response to Mr Millbank's dissatisfaction with the manner that the SSSC store this information, the SSSC explained that there is no statutory duty to record information about its registrants in a way that would answer Mr Millbank's request by a search of the electronic database.
30. On this final point, I would comment that FOISA does not prescribe what information should be held and the manner in which it should be stored and recorded by public authorities.

Decision

I find that the Scottish Social Services Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Millbank. It was not obliged to comply with the request on the basis that the cost of complying with the request would exceed £600.



Appeal

Should either Mr Millbank or the SSSC 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 of the date of intimation of this decision notice.

Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

Margaret Keyse
Head of Investigations
6 December 2007



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.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

[...]

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or



- (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
- (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.