

Decision Notice



Decision 074/2009 Ms T and Culture and Sport Glasgow

Copies of correspondence

Reference No: 200900420
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Kevin Dunion
Scottish Information Commissioner

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



Summary

Ms T requested copies of the Chief Executive of Culture and Sport Glasgow (CSG)'s correspondence between two dates from CSG. CSG responded by stating that the cost of complying with this request would exceed the cost limit set for the purposes of section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) and that it would not therefore comply with the request. Following a review, Ms T remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the cost of complying with the request would exceed the specified cost limit and that CSG was therefore not obliged to comply with the request. In addition, the Commissioner found that CSG had not fully met its obligations under section 15 of FOISA by not providing Ms T with a list of the files it held. He also found that CSG had failed to respond to Ms T's request for review within the required timescale. However, since CSG had subsequently responded to Ms T's request for review, the Commissioner did not require CSG to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance) and 21(1) (Review by Scottish public authority)

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 the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code)



Background

1. On 23 April 2008, Ms T emailed CSG requesting “copies of all internal and external correspondence undertaken by CSG’s Chief Executive between 1 September 2006 and 31 February 2007”. She indicated that this should include all letters, emails (including attachments) and voicemail.
2. CSG responded on 21 May 2008, stated that the cost of complying with her request would exceed the limit allowed by section 12(1) of FOISA and set out in the Fees Regulations, and so it was not required to comply with Ms T’s request.
3. On 9 June 2008, Ms T emailed CSG requesting a review of its decision. Ms T noted in particular that her request of 23 April had specified a limited timescale after a previous request for *all* of the Chief Executive’s correspondence had been refused on the grounds that compliance would exceed the £600 threshold. CSG’s response to that request had estimated that the cost of compliance would be £967.80.
4. As a result of an Information Notice issued by the Commissioner, CSG notified Ms T of the outcome of its review on 24 February 2009. CSG upheld its original decision without amendment, while also providing an explanation of the number of files to be searched and the hourly cost of a staff member to do so. At this stage, CSG estimated the cost of complying with the request under consideration at £2,632.50.
5. On 4 March 2009, Ms T wrote to the Commissioner, stating that she was dissatisfied with the outcome of CSG’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 Ms T 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

7. The investigating officer contacted CSG on 18 March 2009, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, CSG was asked to explain the process that it had indicated would be required to identify the information requested, to provide an explanation of the calculations of the costs taken into account for the purposes of section 12(1) and to supply copies of two of files in which the requested information was held. A response was received from CSG on 9 April 2009.



8. On 15 April 2009, the investigating officer emailed CSG to request additional information on the structure/content of the files of information held. CSG responded to this email on 22 April 2009.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Ms T and CSG and is satisfied that no matter of relevance has been overlooked.

Section 12(1) – Excessive cost of compliance

10. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).
11. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to a request for information exceeds this amount.
12. The projected costs that the public authority can take into account in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the public authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The public authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is set at £15 per hour.
13. CSG submitted that the information in question was held in 340 thematically organised paper files and 5 box files arranged in chronological order. CSG explained that all of the Chief Executive's correspondence was held within these files which included hard-copy correspondence and print outs of all electronic correspondence which are deleted once filed.

Calculation of costs

14. CSG submitted that the search for the correspondence requested by Ms T would be undertaken by a particular individual who was familiar with the Chief Executive's correspondence and filing. It noted that the information was held in paper form, with electronic versions having been deleted after filing.
15. CSG estimated that it would take the individual 30 minutes to identify any relevant correspondence within each of the 340 files. This estimation did not include any photocopying costs or the time taken to redact any information prior to disclosure. Based on the number of files to be searched (345 in total) CSG estimated that the search would take 175.5 hours.



16. The cost per hour for the individual to search the files was calculated by CSG as £15 per hour. Consequently, CSG submitted that the estimated total cost of responding to Ms T's request would equate to £2,632.50.
17. The Commissioner has considered the terms of Ms T's request, her submissions and the submissions made by CSG.
18. Having been provided with details of the individuals' salary, he is satisfied that the CSG was entitled to use an hourly charge of £15 for the staff costs associated with the search for the requested information. He accepts that the individual identified by CSG had the necessary skills for this task that other members of staff would lack. He notes that the hourly rate for this individuals' work exceeds the £15 maximum staff costs specified within the Fees Regulations.
19. Having reviewed two samples of the files that would need to be searched, the Commissioner has reservations about CSG's estimate that it would take 30 minutes to search each. The investigating officer was able to review each of these in a shorter period than 30 minutes.
20. However, notwithstanding the Commissioner's view that an estimate of 30 minutes may be higher than required, he notes that were the estimate to be reduced to 10 minutes per file (which the Commissioner is satisfied would be reasonable), the cost of undertaking the search for the information under consideration would still exceed the prescribed amount of £600.
21. The Commissioner therefore accepts that the cost of complying with Ms T's information request would exceed the £600 prescribed limit set out in the Fees Regulations. Therefore, the Commissioner concludes that CSG was correct in its application of section 12(1) of FOISA and was under no obligation to comply with the information request made by Ms T.

Section 15 – Duty to provide advice and assistance

22. Having established that CSG was correct to rely upon section 12(1) in FOISA to justify its refusal to comply with Ms T's request, the Commissioner must go on to consider whether CSG complied with its duty to advise and assist the requestor as required by section 15 of FOISA, read in conjunction with the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code).
23. In her application to the Commissioner, Ms T expressed dissatisfaction that her time-bound request had incurred a more substantial cost than when she had made an earlier request for all of the Chief Executive's correspondence. This earlier request had also resulted in CSG's reliance on section 12(1) of FOISA.



24. Under section 15 of FOISA, a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Where the authority has complied with the Section 60 Code in providing advice and assistance in any particular case, it is taken to have complied with this duty. In paragraph 20 of the Section 60 Code, one example given of appropriate assistance for this purpose is "providing access to detailed catalogues and indexes, where these are available, to help the applicant to see the nature and extent of the information held by the authority".
25. Similarly, Annex 3, paragraph 14 of the Section 60 Code recommends that although a public authority is under no obligation to comply with a request for information which would exceed £600, it should consider what information could be released free of charge or below the prescribed amount.
26. In this case, the fact that most of the files holding the Chief Executive's correspondence were organised thematically rather than chronologically meant that a request limited by time would not necessarily have the effect of reducing significantly the cost of compliance. The best way of reducing the cost of Ms T's request would be to identify the files that covered topics that were of greatest interest to her.
27. The investigating officer enquired whether CSG had tried to assist Ms T to reduce her request so that it fell below the prescribed amount. CSG stated that it had asked Ms T to provide further information about what particular aspect of the Chief Executive's correspondence she was interested in, but no response was received on this point.
28. The investigating officer requested and received a copy of the subject list for the 340 files and was also advised that there was no subject list for the box files but each one contained approximately 500 pages. CSG advised the investigating officer that this list of files was not up to date.
29. Although the Commissioner notes that CSG enquired what type of correspondence Ms T was interested in, he considers that this advice fell short of what is recommended by the Section 60 Code. In his view, it would have been reasonable for CSG to provide a copy of the file list held of the Chief Executive's correspondence and for Ms T to identify which subjects she was interested in, rather than requesting that Ms T identify the relevant subjects, when she was unaware of the breadth of the information held by CSG.
30. It would also have been reasonable for CSG to provide an explanation of the way in which its records were held to assist her in identifying the most effective way of restricting her request. He considers this particularly to be the case since Ms T has twice made requests for access to CSG's Chief Executive's correspondence, and on both occasion these requests have been refused on the grounds of excessive cost.



31. The Commissioner has concluded that CSG did not comply fully with the requirements of section 15 of FOISA, read in conjunction with the Section 60 Code. To assist Ms T in making any future request for information of this type, the Commissioner requires CSG to send her a copy of the file list to assist her in understanding the organisation of its files. (The Commissioner accepts that CSG may wish to redact some of the contents of the file list in line with exemptions in Part 2 of FOISA.)

Technical breaches of FOISA

32. Within her application to the Commissioner, Ms T raised concerns about the length of time taken by CSG to respond to her request for review.
33. Ms T requested a review on 9 June 2008, which was responded to by CSG on 24 February 2009, following its receipt Information Notice issued by the Commissioner on 28 January 2009.
34. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant here.
35. CSG explained that it did not respond to Ms T's request for review as this email had been quarantined and deleted by its service provider consequently, the request for review was never delivered.
36. The Commissioner recognises that the email did not reach its intended recipient. However, the Commissioner must find that CSG failed to respond within the timescale set out in section 21(1) of FOISA. As CSG did provide a review response to Ms T, the Commissioner does not require any action to be taken in respect of this breach.



DECISION

The Commissioner finds that Culture and Sport Glasgow (CSG) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms T.

The Commissioner finds that by applying section 12(1) of FOISA in response to Ms T's request, CSG complied with Part 1.

However, the Commissioner has found that CSG failed to comply fully 15 of FOISA in dealing with Ms T's request and requires CSG to take the steps set out in paragraph 31 above by 17 August 2009.

The Commissioner also finds that CSG failed to comply with section 21(1) of FOISA in responding to her request for review. Given that, subsequently, CSG responded to Ms T's request for review, the Commissioner does not require CSG to take any action in relation to this failure in response to this decision.

Appeal

Should either Ms T or Culture and Sport Glasgow 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
30 June 2009



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.

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.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.



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.