

Decision Notice



Decision 067/2011 Ms Karen Wylie and Glasgow City Council

Calculation of community care charges

Reference No: 201001816

Decision Date: 25 March 2011

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Ms Wylie requested from Glasgow City Council (the Council) information regarding the calculation of community care charges. The Council responded by providing information to Ms Wylie which it considered addressed her request. Following a review, during which further information was disclosed to her, Ms Wylie remained dissatisfied and applied to the Commissioner for a decision.

During an investigation, the Council indicated to the Commissioner that the cost of complying with Ms Wylie's request would exceed £600.

The Commissioner found that the Council was entitled to refuse Ms Wylie's request on the grounds that the cost of compliance with that request would exceed £600 and so section 12(1) of FOISA was applicable. The Commissioner also found that the Council had fulfilled its duty to provide advice and assistance to Ms Wylie (under section 15 of FOISA) by supplying some relevant information to Ms Wylie, and offering to discuss with her what particular information the Council would be in a position to provide.

The Commissioner also concluded, however, that the Council breached Part 1 and section 16(4) of FOISA in not providing an adequate refusal notice to Ms Wylie explaining that section 12(1) of FOISA was applicable to her request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance) and 16(4) (Refusal of request)

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.



Background

1. On 24 December 2009, Ms Wylie wrote to the Council requesting the following information:
 - i. a copy of method, used by staff, to calculate community care charges
 - ii. a copy of the guidance issued to staff on how to calculate community care charges
 - iii. a copy of the formula used by staff to calculate community care charges
 - iv. a copy of the standard charges used by Glasgow City Council, to determine individual contributions to their community care package
2. The Council emailed Ms Wylie on 7 January 2010, asking that she contact it to discuss her request. It noted that Ms Wylie's request was general in nature, and its aim was to provide her with specific and meaningful information rather than volumes of information which might be difficult to interpret or relate to the specific scenarios she had in mind.
3. Ms Wylie responded to the Council on 21 January 2010, indicating that she considered her request to be sufficiently clear and asking that the Council put any questions it wanted her to answer in writing to her. She asked if the Council's reference to "volumes of information" meant that her request would exceed the £600 cost threshold (for the purposes of section 12(1) of FOISA), and noted that if it did, she looked forward to receiving a detailed breakdown of the cost of providing her with the information.
4. The Council provided a response to Ms Wylie's request on 25 January 2010. The Council disclosed three reports made to the Council's Executive Committee regarding charging policies for non-residential services. The Council also provided Ms Wylie with revised guidance on charging for residential accommodation.
5. On 4 March 2010, Ms Wylie wrote to the Council requesting a review of its decision on the basis that she did not accept that it had provided the information she had requested.
6. Ms Wylie drew the Council's attention to a letter issued by the Scottish Government on 23 March 2009, which required the Council to replace its existing Charging for Residential Accommodation Guidance with updated Guidance. Ms Wylie also advised that she would have expected all paperwork relating to the day to day practical interpretation of this revised guidance to be sent to her, as well as any training materials regarding the Council's interpretation of the new guidance.
7. Ms Wylie also reiterated the terms of the four parts of her request, and commented that she would have expected to receive all documentation requested (including, for example, copies of documents that confirmed the charges agreed by the Committee, all related memos, emails, staff meeting minutes and cross departmental guidance) rather than just Committee reports.



8. The Council notified Ms Wylie of the outcome of its review on 1 April 2010. It noted that Ms Wylie's request had not specified whether she wanted information regarding residential or non residential care charges, and so it had been interpreted as referring to both. With respect to non-residential care, it identified and supplied further guidance for staff which was held on its internal intranet site.
9. With respect to residential care, the Council supplied a weblink to enable Ms Wylie to access the published National Care Charging Guidelines, which, it indicated, it uses as a method, guidance and formula when undertaking and assessment of a person in residential care.
10. The Council also provided a copy of a further committee report which was created after the receipt of Ms Wylie's request, and a copy of a note which had been created in response to Ms Wylie's information request to summarise the non-residential care charge process.
11. On 21 September 2010, Ms Wylie wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. She indicated that she did not consider that the Council had supplied all relevant information that it held and which fell within the scope of her request.
12. The application was validated by establishing that Ms Wylie 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

13. On 7 October 2010, the Council was notified in writing that an application had been received from Ms Wylie, and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The Council was also asked to respond to specific questions. In particular, the Council was asked to explain why it believed that the information supplied to Ms Wylie was sufficient to satisfy the terms of her request, and what searches were carried out to locate any relevant information which fell within the scope of Ms Wylie's request.
14. The Council's response (received on 9 November 2010) explained its handling of Ms Wylie's information request. It noted that it had supplied documentation which explained the method, guidance, formula and charges regarding Community Care Charges. It noted that this included information that was created as a response to her request by way of advice and assistance.
15. The Council also noted that it had sought clarification of Ms Wylie's information request. It indicated that if such clarification, for example in terms of the method for day care or home care, were received, it would be happy to endeavour to provide further relevant information to her.



16. However, the Council submitted that if it were to carry out a comprehensive search for the information Ms Wylie had indicated she wished to access, this would cost in excess of the £600 prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations), and so it considered that section 12(1) of FOISA was applicable to all parts of Ms Wylie's request.
17. The Council also extended an offer to Ms Wylie to meet with a representative from the Council to discuss how Council systems operate, the method by which calculations for care charges are made and discuss some case studies with her.
18. Ms Wylie was advised of the Council's offer of a meeting, but declined this as she wanted to receive information from the Council in writing.
19. Ms Wylie was also asked during the investigation whether she wished to provide clarification on her requests to facilitate the Council in undertaking focussed searches for the information most relevant to her. Ms Wylie did not provide a response to this request.
20. Following the investigating officer's scrutiny of the information released to Ms Wylie, further information was identified as being held by the Council and relevant to Ms Wylie's request. The Council released this information (relating to COSLA charging guidance for non-residential social care services and up-to-date income thresholds for community care) charges, during the course of the investigation.
21. All submissions received from the Council and Ms Wylie, in so far as relevant, are considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

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

Section 12(1) – Excessive cost of compliance

23. In parts i-iv of Ms Wylie's requests, she asked for a copy of the method used by staff, the guidance issued to staff, the formula used by staff and the standard charges used by the Council regarding calculating community care charges. The Council responded to these parts of Ms Wylie's request by disclosing four reports from Executive Committee Meetings which covered charging for non residential care charges, revised guidance for charging for residential accommodation, screen shots from the Councils careFirst system which performs calculations for community care charges and the national charging guidelines for residential care charges.



24. In her application, Ms Wylie expressed dissatisfaction on the grounds that she did not consider all relevant information had been provided to her. In particular, she highlighted that the information provided in relation to the careFirst system did not allow her to understand how the calculations were made. She indicated that the rules used to programme the system would assist her in understanding how the charging policy was put into effect.
25. She also indicated that all memos, emails, staff meeting minutes and cross departmental guidance on charging policies should have been made available to her.
26. When invited to comment on Ms Wylie's application, the Council confirmed that it did not have a list of the calculations that were built into the careFirst system, or access to the programming code which govern its operation. It noted that these were held and owned by the company which created and runs the system.
27. With respect to the other types of information that Ms Wylie wished to access, the Council informed the Commissioner that if it were to carry out a comprehensive search of each Social Worker's manual and electronic files, the time and cost involved in these searches, or asking Social Workers to go through all emails to determine whether they contain any relevant reference and of restoring all archived files and emails, would be over the £600 cost limit.
28. The Council also explained that the potential costs of recovering email files from active and deactivated employees' accounts and from back up tapes and discs, together with carrying out searches to search for emails would cost a minimum of £1000.
29. It noted that there were inherent difficulties in searching for emails that are not printed or placed in a file, or being specifically referenced in terms of date sent, sender or recipient. It highlighted that searching under terms such as "community care charges" would elicit large numbers of emails.
30. Therefore, the Council considered that the cost to it would be more than the upper limit allowed under section 12(1) of FOISA and the Fees Regulations.
31. In response to a request for further information about the costs that would be incurred in searching for relevant information, the Council indicated it could not provide a full breakdown of costs of the electronic searches as the Council would have to raise a Business Enquiry Form (BEF) with its outsourced IT provider as it cannot undertake this work in-house. The Council explained that the cost of the work to raise the BEF and for the external IT provider to draft an outline proposal setting out the work and costs required to complete the searches would be £280 a day. Since the Council estimated that it would be likely to take several days for such a complex BEF and outline proposal to be prepared, it maintained the cost would be over the £600 limit. The Council explained that even if it did not proceed with the searches, the cost of raising the BEF and preparation of the outline proposal to establish the cost of doing so would still be chargeable to it.



32. Section 12(1) of FOISA 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. The amount is currently set at £600 in terms of regulation 5 of the Fees Regulations.
33. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to the request for information exceeds this amount.
34. 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 £15 per hour.
35. The Commissioner, having considered the submissions from the Council, accepts that the cost of locating and retrieving all information that Ms Wylie has indicated that she intended her request to capture would exceed the £600 prescribed limit. He recognises that a thorough search for this information would not be simple, as discussion of and guidance on the Council's Community Care charges could arise in a range of day to day activities, and within the context of the consideration both of particular cases and more general communications. He therefore accepts that locating all relevant information would require consideration of records held both electronically and in paper form, by a wide range of social work staff.
36. The Council's submissions indicated that it has 3800 staff in its Social Care Services at over 180 sites. While the Commissioner does not consider that all of these staff would be likely to hold any relevant information, it is clear that information sought by Ms Wylie could be held by a large number of Council staff. Given that Ms Wylie has not specified any date limit on her request, the information could be held by the Council in the records of staff who no longer work for the Council.
37. The Council's comments have suggested that a complete search could only be done with the assistance of its external IT provider to be able to review archives and backup data, and a BEF and outline proposal would have to be prepared, at a cost of £280 per day for a number of days work to enable the external IT provider to establish what the cost of the search would be. The Commissioner accepts that the costs of its outsourced IT provider carrying out searches, where these could not be conducted in house are a direct cost associated with locating, retrieving and providing any relevant information, which can be included when determining whether section 12(1) is applicable.



38. However, since the Council has not been able to provide any breakdown or explanation of the costs that would be incurred via the work of its external IT provider, other than to state that the BEF and outline proposal would require several days' work, the Commissioner does not consider the Council has provided sufficient evidence to suggest that the cost of IT searches conducted by the outsourced IT supplier alone would be sufficient to exceed the £600 limit. Nonetheless, the Commissioner accepts that the need to draw upon this assistance would incur some cost.
39. Bearing in mind this cost, and that associated with staff in the Council's Social Work Services checking their own paper and electronic records, and reviewing content to identify whether this relates to the matters raised in Ms Wylie's request, the Commissioner accepts, on the basis of the submissions from the Council, that searches through emails to locate, retrieve and provide relevant information would incur costs in excess of the £600 prescribed limit specified in the Fees Regulations. The Commissioner is therefore satisfied that the Council was entitled to apply section 12(1) of FOISA to Ms Wylie's information request.
40. However, where a public authority judges section 12(1) of FOISA to be applicable to an information request, section 16(4) requires it to notify the applicant that this is the case. In this case, the Council did not do so and therefore the Commissioner finds that the Council breached Part 1 and in particular the requirements of section 16(4) of FOISA in this case.

Section 1(1) General entitlement

41. Section 1(1) of FOISA creates a general entitlement to access to information held by a Scottish public authority. However, this right does not apply where section 12(1) is applicable to a request.
42. Since the Commissioner has concluded that the cost of complying with Ms Wylie's information request would exceed the prescribed limit of £600, and so section 12(1) of FOISA was applicable in this case, the right in section 1(1) of FOISA was disapplied in this case.
43. While it is clear from reading the submissions from the Council that more relevant information is likely to be held (and was held at the time of Ms Wylie's request) by it, the fact that the cost of, locating, retrieving and providing this information would exceed the £600 threshold in the Fees Regulations, means that the Council was under no obligation to supply that information to Ms Wylie. The Commissioner therefore finds that the Council did not breach the requirements of section 1(1) of FOISA in its response to Ms Wylie.

Section 15 Duty to provide advice and assistance

44. Having established that the Council was correct to rely on section 12(1) of FOISA in relation to further searches that would need to be conducted to locate, retrieve and provide information falling within the scope of Ms Wylie's request, the Commissioner has also considered whether the Council complied with its duty to advise and assist Ms Wylie as required by section 15 of FOISA.



45. The Commissioner notes that the Council has followed good practice as recommended in 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 Code¹) in providing Ms Wylie with some information, in response to her request, which it considered was sufficient to fulfil her request, which could be supplied within the cost limit of £600.
46. This information included various reports which set out the basis upon which the Council calculates Community Care charges, and information which was generated after the date of Ms Wylie's request (and which, given the terms of section 1(4) of FOISA technically fell out with the scope of her request). During the investigation, further relevant information was identified and supplied to Ms Wylie.
47. The Commissioner also recognises that the Council sought to enter into discussion with Ms Wylie to identify what particular information it could provide to assist her in understanding its systems for charging for Community Care. It continued in these efforts during the investigation by offering to meet with Ms Wylie and explain its systems and the operation of these, and to discuss what particular types of information might be of interest to her.
48. The Commissioner recognises that by supplying the information that it did in response to Ms Wylie's information request, and by taking steps to discuss what information might be of particular interest to her, the Council fulfilled its duty to provide advice and assistance to Ms Wylie in terms of section 15 of FOISA.

DECISION

The Commissioner finds that Glasgow City Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Wylie.

The Commissioner finds that the Council was entitled to refuse Ms Wylie's requests on the grounds that section 12(1) of FOISA was applicable. As a result, he finds that the Council did not breach section 1(1) of FOISA in this case. The Commissioner also finds that the Council fulfilled its duty to provide advice and assistance under section 15 of FOISA. In these respects, the Council complied with Part 1.

However, the Commissioner finds that the Council breached Part 1 and section 16(4) of FOISA in not providing an adequate refusal notice to Ms Wylie explaining that section 12(1) of FOISA was applicable in this instance.

The Commissioner does not require the Council to take any action in relation to the breaches in this case.

¹ This Code of Practice was in force at the time when the Council responded to Ms Wylie's information request, but it has since been superseded.

Decision 067/2011
Ms Karen Wylie
and Glasgow City Council



Appeal

Should either Ms Wylie or the Council 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
25 March 2011



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.
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- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
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- (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.
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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).



16 Refusal of request

....

- (4) A Scottish public authority which, in relation to a request for information, claims that section 12(1) applies must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice which states that it so claims.

....

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.