

Decision Notice



Decision 115/2013 Mr Phil Attridge and Lothian Health Board

Invoices over the sum of £500

Reference No: 201202315
Decision Date: 24 June 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 14 October 2012, Mr Attridge asked Lothian Health Board (NHS Lothian) for a list of individual invoices over the sum of £500. NHS Lothian explained that some of this information was already available on its website and that providing a more detailed breakdown would cost in excess of £600, so it was not obliged to comply with the request. Following an investigation, the Commissioner accepted that NHS Lothian was entitled to refuse to comply with the request on the grounds that the cost of responding would exceed £600.

However, the Commissioner also concluded that NHS Lothian failed to provide reasonable advice and assistance in responding to Mr Attridge's request. She required NHS Lothian to provide Mr Attridge with advice and assistance as to what relevant information might be available within the cost limit.

Relevant statutory provisions

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)

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 14 October 2012, Mr Attridge made a request to NHS Lothian through the "WhatDoTheyKnow" (WDTK) website¹, asking for (in Excel spreadsheet format) a list of all individual invoices over the sum of £500, listed by company or organisation name, invoice date, transaction amount, transaction description and the date paid by NHS Lothian, for the financial years 2009/10, 2010/11 and 2011/12.

¹ <http://www.whatdotheyknow.com/>



2. Mr Attridge provided what he felt was an example of a similar spreadsheet response which had been provided to another FOI requester by another public authority.
3. NHS Lothian responded the following day, advising Mr Attridge that details of all invoices over £25,000 were published on its website and that data on the time taken to pay could be found in its annual accounts. NHS Lothian provided Mr Attridge with a link to its website. However, NHS Lothian also advised Mr Attridge that to break the data down further and extract the level of information he was requesting would cost in excess of £600. It therefore refused to comply with the request, in line with section 12(1) of FOISA.
4. On 23 October 2012, via the WDTK website, Mr Attridge asked NHS Lothian for a review of its decision, stating that he did not accept that it would cost in excess of £600 to provide him with the breakdown he had asked for.
5. NHS Lothian notified Mr Attridge of the outcome of its review on 31 October 2012, upholding its original decision. It explained the work involved, concluding that the estimated cost of providing the breakdown would be at least £810 per financial year.
6. On 7 November 2012, Mr Attridge wrote to the Commissioner, stating that he was dissatisfied with the outcome of NHS Lothian's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Attridge made a request for information to a Scottish public authority and 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

8. On 28 November 2012, NHS Lothian was notified in writing that an application had been received from Mr Attridge and was given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). NHS Lothian was asked to respond to specific questions, which focused on the cost of compliance with the request and the provision of advice and assistance to Mr Attridge.
9. Further questions were put to NHS Lothian in order to clarify the investigating officer's understanding of the processes to be carried out in locating, retrieving and providing the relevant information.
10. All relevant submissions received will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered the submissions made to her by both Mr Attridge and NHS Lothian. She is satisfied that no matter of relevance has been overlooked.

Section 12(1) of FOISA

12. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Fee Regulations. Consequently, the Commissioner has no power to require the release of information should she find that the cost of responding to a request for that information would exceed this sum.
13. The projected costs the authority can take into account in relation to this request for information are, according to regulation 3 of the Fee Regulations, the total costs (whether direct or indirect) which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information in accordance with Part 1 of FOISA. The 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.
14. NHS Lothian explained that the number of invoices it dealt with over £25,000 was approximately 200 per month, whereas the number of invoices under £500 was approximately 5,000 to 6,000 per month.
15. NHS Lothian submitted (for comparison purposes) that each monthly report for the annual compilation of all payments over £25,000 (the £25K+ reports) took 4.5 hours to run and filter for the information required: at a rate of £15 per hour for the required member of staff, this would result in a cost of £810 for each year for which the invoices were required.
16. NHS Lothian submitted that the process needed to be carried out by a relatively senior member of staff in the relevant part of the authority, in order to ensure that its process for information governance met the requirements of legislation (in relation to the Data Protection Act 1998, in particular).
17. NHS Lothian explained that the filtering process removed extraneous data: the report automatically run off the system would contain a number of fields containing data such as cheque number, cost centre number, account code, etc, which were not relevant to the request.



18. The information would also require to be reviewed, NHS Lothian explained, with a view to subsequent correction and/or clarification (particularly when the database had restricted record field sizes which limited the understanding of the reader as to the nature and recipient of payments). The authority also explained that review and redaction would be required to meet data protection requirements (for example information relating to medical personal injury claims and out of court settlements).
19. NHS Lothian submitted that the number of lines in each monthly report for the £25K+ payments was approximately 250, and it estimated that a similar review for payments over £500 would require the checking of approximately 5,500 lines per month.
20. NHS Lothian stated that the routinely published £25K+ invoices covered 80% by value of its total revenue costs, so a lot of the information which would fall within the scope of Mr Attridge's request was already publicly available. Given the work involved, it did not believe it could make significantly more information available within the £600 limit
21. Addressing the example of a similar information request being resolved for under £600 (as raised by Mr Attridge in his initial request), NHS Lothian noted that the public authority in the example appeared to receive fewer invoices in a year than NHS Lothian received in two months.
22. The Commissioner has considered carefully the terms of the request made by Mr Attridge and the submissions received from NHS Lothian. In this instance, even allowing for elements of the work identified not being strictly required, the Commissioner is satisfied that the cost of complying with the request would exceed the cost limit of £600. In reaching this conclusion, the Commissioner accepts that a relatively senior member of staff would be required to check for and redact any personal data which might be included. She also accepts that the example of another authority provided by Mr Attridge does not appear to be a true comparator.
23. Consequently, the Commissioner is satisfied that NHS Lothian was entitled to rely on section 12(1) of FOISA in refusing to comply with this request.

Section 15 of FOISA – Duty to provide advice and assistance

24. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. Examples of such advice and assistance are given in the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004. They include, in cases where section 12(1) applies, "*consider what information could be provided below the cost limit, and suggest how the applicant may wish to narrow the scope of their request accordingly*" (see paragraph 1.9 in Part 2)².

² <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



25. NHS Lothian did not advise Mr Attridge how it would be possible to bring the cost of complying with his information request within the £600 limit. It did not, for example, suggest to Mr Attridge that he might wish to reduce the scope of his request to a period of months rather than years.
26. The Commissioner notes NHS Lothian's position (in respect of its £25K+ reports), that each monthly report takes around 4.5 hours to run and filter at a cost of £15 per hour in staff time. This would suggest that one monthly report would cost approximately £67.50 to provide, so approximately eight or nine £25K+ monthly reports could be provided within the £600 limit.
27. Even allowing for the cost of producing the £500+ reports being higher (due to the additional amount of text to be checked), the Commissioner considers it possible that at least a small sample of the information requested by Mr Attridge could be provided to him within the £600 cost threshold.
28. Consequently, the Commissioner concludes that NHS Lothian failed to comply fully with its duty under section 15(1) of FOISA in dealing with Mr Attridge's request. In the circumstances, the Commissioner requires NHS Lothian to go back to Mr Attridge and advise him what information could be located, retrieved and provided (subject to such exemptions under FOISA as might apply) within the cost limit of £600 prescribed for the purposes of section 12(1) of FOISA.

DECISION

The Commissioner finds that Lothian NHS Board (NHS Lothian) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Attridge, to the extent that it was not obliged to comply with the request by virtue of section 12(1) of FOISA.

However, the Commissioner also finds that NHS Lothian failed to deal with Mr Attridge's request in accordance with Part 1 of FOISA, in failing to provide him with reasonable advice and assistance (under section 15(1) of FOISA) as to what information falling within the scope of his request could be provided within the cost limit prescribed for the purposes of section 12(1).

Therefore, the Commissioner requires NHS Lothian to advise Mr Attridge as to what information could be located, retrieved and provided (subject to such exemptions under FOISA as might be applicable) within the cost limit, by 8 August 2013.



Appeal

Should either Mr Attridge or Lothian Health Board 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.

Margaret Keyse
Head of Enforcement
24 June 2013



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).



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.