

Decision Notice

Decision 217/2014: Mr Peter Cherbi and the Scottish Court Service

Judicial travel and expenses

Reference No: 201401783

Decision Date: 8 October 2014



Scottish Information
Commissioner

Summary

On 7 May 2014, Mr Cherbi asked the Scottish Court Service (the SCS) for information on judicial travel and related expenses. The SCS provided some information, stating that complying with the request in full would cost more the £600 cost limit and so it was not obliged to comply. Following an investigation, the Commissioner accepted this.

She also accepted that the SCS had interpreted Mr Cherbi's request appropriately.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 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 the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 7 May 2014, Mr Cherbi made a request for the following to the SCS:
“... information contained in records of travel inside the UK and overseas (including EU) by members of Scotland's judiciary, how many people travelled per trip, their destinations and costs of these trips & expenses claimed for these trips over the past year to this date.”
2. The SCS responded on 6 June 2014. The SCS informed Mr Cherbi that it would cost in excess of £600 to fulfil his request and so, by virtue of section 12 of FOISA, it was not required to comply with the request. It provided Mr Cherbi with a link to the Judiciary of Scotland website, where judicial expenses are published.
3. On 13 June 2014, Mr Cherbi wrote to the SCS requesting a review of its decision. He noted that the SCS had provided information on judicial travel in response to an earlier request.
4. The SCS notified Mr Cherbi of the outcome of its review on 11 July 2014. It observed that the earlier request referred to by Mr Cherbi was limited to trips outside the United Kingdom. It explained that members of the judiciary travelled within the United Kingdom daily and that this information was not held in a form which would allow the information he required to be produced readily. As a result, the cost of complying with the request would exceed £600 and section 12(1) of FOISA applied.
5. While maintaining that section 12(1) applied, the SCS provided Mr Cherbi with information in respect of overseas travel, including (for each trip) the information specified in Mr Cherbi's request.
6. On 15 July 2014, Mr Cherbi wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Cherbi stated he was dissatisfied with the outcome of the SCS's review because the information provided did not include the names of

the judges. He believed it to be in the public interest for this information to be disclosed. He also believed information pertaining to travel within the United Kingdom should be disclosed.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that Mr Cherbi made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision. The case was then 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. On 13 August 2014, the investigating officer notified the SCS in writing that Mr Cherbi had made a valid application. The SCS was invited to comment on this application and to answer specific questions. These focused on its interpretation of Mr Cherbi's request and its reliance on section 12(1) of FOISA.
9. The SCS responded with submissions. Although it did not believe this fell within the scope of Mr Cherbi's request, it provided him with the names of the judges during the investigation.
10. Mr Cherbi also provided further submissions during the investigation.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Cherbi and the SCS. She is satisfied that no matter of relevance has been overlooked.

Scope of the request

12. Mr Cherbi submitted that the phrase "information contained in" in his request followed the Commissioner's guidelines and was so worded to ensure that the SCS considered his request to be for information and not documents. He believed it reasonable to expect the names of the judges and/or persons travelling with them to be included in this phrase.
13. The SCS explained that it had interpreted Mr Cherbi's request as being a request for:
 - (a) how many people travelled per trip,
 - (b) their destinations and
 - (c) costs of these trips and expenses claimed for these trips over the past year to 7 May 2014.It did not agree with what it described as an "expansive" interpretation placed on the request by Mr Cherbi, considering the most natural reading of the request was to focus on the points a) to c) listed above.
14. The SCS also noted that Mr Cherbi made no reference to staff names in his requirement for review.
15. The Commissioner has given careful consideration to the submissions on this point from both Mr Cherbi and SCS. She acknowledges the value of making it clear that the request is for information and not for documents. However, it does not follow from a reference to "information" on a particular subject that the applicant is seeking all information held by the authority on that subject – that will depend on the context. The applicant should still describe

the information required as clearly as possible – as Mr Cherbi, being an experienced requester, should be aware.

16. In this case, Mr Cherbi states that he is seeking “information contained in records of travel.” He goes on to specify the three elements listed in paragraph 13 above. These appear to be comprehensive – he does not suggest, for example, that the information should “include” these elements. In the circumstances, the Commissioner considers it was reasonable for the SCS to conclude that Mr Cherbi was seeking this information alone. She is therefore satisfied that it interpreted the request appropriately and responded accordingly.

Section 12(1) – excessive cost of compliance

17. Section 12(1) 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 (regulation 5 of the Fees 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.
18. The projected costs the 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 authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested 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.
19. The SCS submitted that section 12(1) applied to Mr Cherbi’s request. It confirmed that it held information falling within the scope of Mr Cherbi’s request, but argued that the cost of locating, retrieving and providing that information would exceed the £600 cost limit.
20. In its submissions to the Commissioner, the SCS drew attention to the review outcome provided to Mr Cherbi on 11 July 2014. There, it explained that members of the judiciary travelled inside the UK on a daily basis, particularly part-time sheriffs who, due to the increasing workloads and pressure of court business, were tasked to work in a variety of courts throughout Scotland.
21. The SCS explained that the information it held on such travel was not available in a format that would allow it to easily produce a report with the level of detail sought. Over the period covering the request, the SCS explained, it had received 1,402 claims which could include judicial office holders travelling to courts, training days and conferences, in the UK and overseas. These could be submitted on a weekly or monthly basis, and were added to its database as total amounts.
22. In order to respond to Mr Cherbi’s request, the SCS stated that it would have to create a new spreadsheet to collate the information. It would then need to examine each of the 1,402 claims to establish costs and destinations. It estimated that to extract this information and add it to the spreadsheet would take an estimated 5 minutes per claim form. This would give a total of approximately 116 hours.
23. The SCS stated that the work required would typically be conducted by an Administrative Officer at an hourly cost of £10.06 per hour. The total cost of this work, therefore, would be approximately £1,175.00.

24. The SCS explained that the estimate did not include the time taken to create the spreadsheet, or include details of staff accompanying the judiciary. The Commissioner has already accepted that the request did not seek details of the staff accompanying the judiciary, so this has no bearing on any costs associated with the request.
25. The SCS further explained that the estimate did not include information held relative to Scotland's lay judiciary (justices of the peace and stipendiary magistrates), which would increase the costs involved. Given that it had already identified that the cost would exceed the £600 limit, it had not estimated the cost of providing this additional information.
26. Taking account of all the circumstances, the Commissioner is satisfied that the SCS has provided a reasonable estimate of the cost of complying with Mr Cherbi's request for information. Given the nature of the work required, the Commissioner accepts that the request could not have been responded to within the £600 limit. In the circumstances, she accepts that a detailed calculation was not required for the costs of lay judiciary, although a reasonable interpretation of the request would have included them.
27. Consequently, the Commissioner is satisfied that the SCS was entitled to rely on section 12(1) of FOISA in relation to Mr Cherbi's information request, and therefore was under no obligation to comply with the request.
28. Having reached this conclusion, which applies to the whole of Mr Cherbi's request, the Commissioner cannot consider Mr Cherbi's dissatisfaction with the information (on travel within the UK) which was provided to him. This was not information the SCS was obliged to provide, although it does appear to have been an attempt to give Mr Cherbi what could be supplied within the £600 limit, in line with the authority's duty to provide advice and assistance under section 15 of FOISA.
29. Mr Cherbi's request was very broad in its scope, encompassing all judicial travel for whatever purpose. The SCS explained this to Mr Cherbi, noting for example that much of the travel in question was routine travel to court by part-time sheriffs. In the circumstances, the Commissioner believes Mr Cherbi could have narrowed the scope of his request, to bring it within the £600 limit, had he wished to do so.

Decision

The Commissioner finds that the Scottish Court Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Cherbi.

Appeal

Should either Mr Cherbi or the Scottish Court Service 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

8 October 2014

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.
- ...
- (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.
- ...
- (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.
- ...

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.

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