

Decision Notice 176/2019

Payments to Health and Social Care Suppliers 1 April 2017- 31 December 2018

The Applicant

Public authority: City of Edinburgh Council

Case Ref: 201900980



Scottish Information
Commissioner

Summary

The Council was asked for details of its payments to Health and Social Care suppliers between specified dates. It refused the request, estimating that the costs far exceeded the £600 limit, but disclosed some data during the investigation.

The Commissioner agreed that the £600 limit was exceeded (and so it was not required to comply with the request), but found that the Council had failed to give suitable advice and assistance at the time of asking, or to comply with statutory timescales.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 10(1) (Time for compliance); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance); 21(1) (Review by a 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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 4 February 2019, the Applicant made a request for information to the City of Edinburgh Council (the Council) involving payments to suppliers (over £500) from 1 April 2017 to 31 December 2018. His interest was suppliers who provide a service in Health and Social Care and he asked for the following information, referring back to a breakdown specified in a previous request:
 - (1) Payments to suppliers who provide fostering and adoption services to the Council
 - (2) Payments to suppliers who provide care services to the Council. This would include suppliers providing care under each of the categories below:
 - a. Children's Residential/Nursing Care providers
 - b. Adult Residential/Nursing Care Providers
 - c. Elderly Residential/Nursing Care Providers
 - d. Domiciliary Care Home Providers
 - e. Supported Living Care Home Providers
 - f. Care at Home Providers
 - g. Providers who carry out Homeless Services
 - h. Payments to suppliers who provide Special Education Services

2. The Council did not respond within twenty working days, so the Applicant wrote to the Council on 26 April 2019, seeking a review on the grounds that no response was received.
3. The Council issued its review outcome on 30 May 2019, refusing the request and citing section 12(1) of FOISA. It estimated that to fulfil this request, the cost would exceed the £600 limit set under section 12(1).
4. On 13 June 2019 the Applicant wrote to the Commissioner's office. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant did not agree with the Council's application of the cost limit. He noted that this request was a "narrowed" version of a previous request to the Council. He also complained of the time taken by the Council in responding and issuing a review outcome.

Investigation

5. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
6. On 19 July 2019, the Council was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and to answer specific questions as to which systems held the data in question and what methods had been costed for the data extraction, whether electronic or manual processes.

Commissioner's analysis and findings

8. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

Section 12(1) – Excessive cost of compliance

9. 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 disclosure of information should he find that the cost of responding to a request for information exceeds this sum.
10. The projected costs 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 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 whether it actually holds the information requested, or whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

Searches and methodology

11. In its review outcome, the Council explained why it could not compile all the data stipulated for under £600. The Council identified 29,730 transactions pertaining to relevant payments across the authority as a whole. The three relevant service areas of Safer & Stronger Communities, Children's Services and the Edinburgh Health and Social Care Partnership accounted for 34.9% of the Council's overall revenue spend in 2018/9: applying this percentage would give 11,743 payments falling within the scope of the request.
12. On the basis of a 30-second check per record (to extract and produce the correct data for each payment), the Council calculated that checking these payment records would take 97 hours. The work could be done by a Grade 4 level officer (Business Support Assistant), at a rate of £10.50 per hour, giving a total estimated cost of £1,018.50.
13. In his application, the Applicant did not accept these estimates were appropriate, particularly since this request was sent to other Scottish local authorities and there had been no difficulty obtaining the same data from those authorities.
14. During the investigation, it became clear that the Applicant expected the Council's information systems to be capable of running computer queries in an automated fashion for all the data requested and that doing so would not exceed £600 in total.
15. The Council explained that its "Oracle" system did not hold all the data requested. It would need to rely on data extraction and extensive manual sifting processes involving a number of feeder systems with specific interfaces. The Council explained that payments to be made through the Oracle system were generated in one of approximately 40 systems which act as feeder systems to Oracle. These systems were linked to Oracle via a range of system-specific interfaces. The Council did not believe it could fulfil this request by automated means alone, but did indicate which systems existed and which data was captured in each, with explanations confirming where the use of SQL queries or equivalent query tools such as "Discovery" would be possible.
16. For example, the Health and Social Care payments were on the "Swift" system, the Council's care management database in which all case recording was undertaken. Records included client and demographic information, as well as details of the professionals involved in cases. This system also held on-going support details such as the cost of care packages provided.
17. The Council confirmed it did have the facility to produce management reports using a third-party system connecting to Oracle (Discover), but the issue it highlighted was how limited the data set in the Oracle system was in the first place. The Council's new Enterprise Resource Planning (ERP) system package was being rolled out, with a view to providing more streamlined systems and easier methods of reporting, but was not due to go live until 2021. For the moment, the functionality to compile all of the data specified in this request electronically did not exist.
18. The Council further clarified that, although the Swift system was the main feeder system for Health and Social Care payments, other feeder systems (which it described) would be needed. This was because the Oracle system only stored accounts payable details (names and addresses, payment details and amounts). It did not currently have the functionality to produce dates, amounts and category of all individual payments in particular service areas or by financial code. Instead, it was searchable by payee name. These factors impacted on the extent to which electronic searches could be conducted, given the terms of this request.

19. The Council also checked whether the Council's ICT services supplier could design reports using existing system functionality, to extract all the data requested for less than £600. They could not identify a means to do this, clarifying that solutions to enable this type of query were still being considered as part of the ongoing ERP replacement programme.
20. The Council outlined how it proposed to collate the data requested, given the limitations of electronic searches. It would be able to identify electronically all suppliers in receipt of payments for parts of Health and Social Care Services throughout the relevant period, where Swift was the relevant feeder system: such reporting would not be possible for other systems. In any case, it would then have to manually sift the results to identify those payments over the value of £500, as there was no reporting tool which allows the total number of invoices over any specific sum to be identified electronically. It would then have to complete its searches for those payments identified as being over £500 in a cross-matching process with the electronic systems, using the results of the manual sift. In other words, it was a three step process, the middle step being a manual one.
21. The Council stated that it had allowed 30 seconds per record for extracting the requested information from the feeder system records and checking whether any personal data was included therein. It anticipated that extensive personal data was held about clients of Health and Social Care Services, noting inconsistencies in the volume of personal data drawn into the payment record and hence the need to do this check of each invoice. This was to ensure it did not breach its data protection obligations. The Commissioner notes that the Applicant was not seeking personal data in any case, so it would not be in scope.
22. The Applicant did make a proposal during this investigation for a reduced set of data, most of which was disclosed on 8 November 2019. The Council explained that it was unable, on cost grounds, to provide the relevant information in respect of Fostering, Adoption and Residential Care for Children.
23. The Council explained that this component remained too costly: because of the way in which the information was stored, it would need to manually check all the client records of all children accommodated in foster care, with adopters and in residential care. It noted that, after a manual check, it would be possible to use the Discovery reporting tool to an extent but, for some data, each individual invoice would still need to be checked manually. To evidence this process (and quantify the estimated costs) the Council conducted a sampling exercise as follows:

Step 1 - in 15 minutes, two members of staff extracted supplier details for 12 children.

Step 2 - In 15 minutes, two members of staff extracted procurement category information for 16 children, done using payments being made weekly and so a further check to extract other weekly payments for the month would be needed to address what was required.

The time allowed was rounded down to the nearest 15 seconds. Extrapolation of these findings enabled the Council to estimate the following costs for this particular data-set:

	No of Placements as of 01.04.2017	Time to extract supplier names from feeder system	Time to extract invoice details/Procurement categories from Oracle
Fostering	604	604 x 2.5mins = 1,510 minutes (i.e. 25 hours)	604 x 1.75 mins = 1,057 mins (i.e. 17.5 hours)

Residential Care	107	107 x 1.5 mins = 160 minutes (2.75 hours)	107 x 1.75 mins = 187.25 minutes (3 hours)
Adoption	71	71 x 1.5 mins = 106 minute (1.75 hours)	71 x 1.75 mins = 124 minutes (2 hours)
TOTAL	782	29.5hours @£10.48	22.5hours @£12.49

24. Further to this work, the Council indicated that it would need to check all the extracted information and redact all third party personal data, the estimated time for which was 391 minutes, or 6.5 hours. This work came out at £97.50, based on an hourly rate of £15 per hour. The Commissioner notes that the hourly rates for the work in the table above were lower, as the rate of £10.48 was charged for a Grade 4 Transactions Administrator and the rate of £12.49 for a Grade 5 Transactions Officer.
25. The Council also indicated that, as the Applicant's request covered 21 months in his original request, the total cost, based on this sampling work, would actually be £14,441.91 (i.e. £687.71 x 21).

Conclusions

26. The Commissioner is satisfied that the Council's estimates above reflect the actual cost to the Council of responding to the Applicant's request. It is clear that the degree of manual work "sifting" payments is costly but unavoidable, given how these disparate systems are designed. The search functionality is problematic for a request of this nature, in addition to which the personal data captured in these systems has to be pinpointed and redacted. The Commissioner accepts that these factors resulted in the costs exceeding the £600 cost limit in this case.
27. In all the circumstances, the Commissioner is satisfied that the request could not have been complied with within the £600 cost limit. Consequently, he finds that the Council was entitled to rely on section 12(1) of FOISA and was under no obligation to comply with the request.

Section 15 of FOISA – Duty to provide advice and assistance

28. Section 15 of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
29. Where section 12(1) is engaged, the need for advice and assistance is paramount to the process of refining requests: a requester will not know how the data is structured or the volume of information held in systems when framing a "narrowed" request, unless the authority advises them accordingly. The section 15 duty goes hand in hand, therefore, with section 12(1).
30. In its review (30 May 2019), the Council suggested to the Applicant that he either reduce his time frame to one year, or revise upwards the lower spend limit, set at £500, to a higher figure (which it did not specify).
31. The Council gave consideration during this investigation to the advice and assistance it had already provided to the Applicant on 30 May 2019, but considered that it was not possible to specify a value of transaction which would bring this request under £600 (which, on the face of it, renders this element of the advice rather meaningless).

32. In terms of advice on the timeframe, the Commissioner notes that, during this investigation, the Council noted that a more recent identical request involved 20,938 invoices over a six-month period at an estimated cost of £3,936.72. The Council even highlighted in its submissions that just a single month was now likely to be above the threshold, at between £656.12 and £722.54.
33. The Council's statements on monthly estimates now make its original advice to this Applicant (in its review outcome of 30 May) appear completely unrealistic and misleading. The Commissioner is at a loss to understand why the Council's advice was so far off the mark, particularly given its own statements in its submissions on costs and in light of the sampling exercise undertaken during this investigation. More realistic and properly considered advice at the time of asking may also have saved both parties some considerable time and effort from the outset.
34. The Commissioner finds that the Council failed to give the Applicant reasonable advice and assistance in re-framing his request to bring it within the £600 cost limit and therefore failed to comply with section 15(1) of FOISA.

Timescales

35. The Applicant expressed dissatisfaction in his application that the Council failed to respond timeously to both his information request and his requirement for review.
36. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to qualifications which are not relevant in this case.
37. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, again subject to qualifications which are not relevant in this case.
38. It is a matter of fact that the Council did not provide a response to the Applicant's request for information (4 February 2019) and requirement for review (26 April 2019) until 30 May 2019, thereby missing the twenty working day deadline for each one. No attempt was made to address these failures in the review outcome and the Commissioner must find that the Council failed to comply with section 10(1) and 21(1) in this case.

Decision

The Commissioner finds that the City of Edinburgh 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 the Applicant.

The Commissioner finds that the Council failed to comply with the statutory timescales for responding to both the request and the requirement for review, as set out in sections 10(1) and 21(1) of FOISA respectively.

The Commissioner accepts that the Council was entitled to rely on section 12(1) of FOISA to refuse to comply with this request, but identified a failure, at the time of responding, to give adequate advice and assistance in terms of section 15(1) of FOISA. Given the terms of this decision on the Council's failures to comply, no further action is required in relation to this decision.

Appeal

Should either the Applicant or the Council 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

11 December 2019

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.

...

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

(a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

(b) in a case where section 1(3) applies, the receipt by it of the further information.

...

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.

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