



Decision Notice 046/2023

Communications with former President of Paisley Art Institute

Authority: Renfrewshire Leisure Ltd

Case Ref: 202201014

Summary

The Applicant asked the Authority for various communications that it had with, and involving, the former President of Paisley Art Institute. The Authority told the Applicant that it would cost more than £600 to provide the information requested and therefore it was not obliged to provide a response. The Commissioner investigated and agreed with the Authority.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15(1) (Duty to provide advice and assistance); 47(1) and (2) (Application for decision by Commissioner)

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 20 May 2022, the Applicant made a request for information to the Authority for communications, letters, emails and minutes from meetings with a named person - a former President of Paisley Art Institute (PAI). The Applicant advised the Authority that the information was required for its Archive.
2. The Authority responded on 23 May 2022, seeking clarification from the Applicant on the scope of its request, including whether the information sought was restricted to a specific timeframe. The Authority did not receive a response from the Applicant to its request for clarification.

3. On 10 June 2022, the Authority wrote to the Applicant informing it that the Authority was applying section 12 (Excessive cost of compliance) of FOISA to the request. The Authority explained that its initial searches had, so far, identified around 11,000 emails which may fall within the scope of the request, and these emails would need to be read and have any personal data removed before being disclosed under FOISA. The Authority advised that if the scope of the Applicant's request could be clarified or reduced then a more focussed search could be carried out.
4. The Applicant wrote to the Authority on 17 June 2022, requesting a review of its decision. The Applicant disagreed with the estimated cost and questioned the need for any redaction of personal data because, as it understood, the information requested belonged to the Applicant. The Applicant asked why redaction was being charged to protect identities "when the only two named persons are the individuals producing the requested documentation".
5. The Authority notified the Applicant of the outcome of its review on 15 July 2022, upholding its original decision. It explained that it had sought clarification from the Applicant on 23 May 2022 and asked if it could reduce the scope of its request and thus the scale of work required to provide the information. The Authority acknowledged that some aspects of its response could have provided clearer explanation about redaction and the need to remove personal data. The Authority also explained that restricting the scope of the request to include correspondence with one named employee would still result in searches covering several years.
6. On 13 September 2022 the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that it was dissatisfied with the outcome of the Authority's review because it considered that the scope of its request should have been obvious to the Authority. The Applicant explained in its application to the Commissioner that the period during which the named employee would have communicated with the former President of the PAI would have been six months and would have been at a time when the named employee was contracted to a particular post.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 14 October 2022, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
9. The Authority provided its comments to the Commissioner on 21 November 2022.
10. The case was subsequently allocated to an investigating officer. The Applicant has also provided comments to the Commissioner.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 12(1) – Excessive Cost of compliance

12. Under section 12(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently £600

(regulation 5). 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 would exceed that sum.

13. The projected costs an authority can consider 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.
14. An authority may not charge for the cost of determining whether it:
 - (i) holds the information requested or
 - (ii) should provide the information.
15. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

Submissions from the Authority

16. The Authority explained that it did not consider it appropriate to interpret the request in the narrowest sense without any basis for doing so. In the Authority's view, the Applicant's arguments on the scope of its original request (in its application to the Commissioner) included information that was not provided to the Authority in the original request. The Authority had asked the Applicant for clarification of the scope of the request and did not receive a response from the Applicant.
17. The investigating officer asked the Authority for more details on its searches, including details of the email accounts searched, the search terms used and details of any other non-email searches that would be required. The investigating officer also asked for an explanation of the estimated costs, and suggested that the Authority conduct a sample search and provide a worked example of the costing exercise.
18. The Authority responded with full details of the searches carried out and provided a detailed estimate of likely costs of responding to the Applicant's request given the results arising from those searches. The Authority explained that it had carried out two searches
 - (i) searching for the name of the former President of the PAI within email addresses, email messages and attachments, and
 - (ii) searching only for emails containing the email address of the former President of the PAI.

Both searches were carried out from the date in which the former President became a member of the PAI management committee. The first search returned 11,000 emails that potentially fell within the scope of the original request (although this search could have included other employees with the same name as the former President of the PAI.). The Authority estimated it would take 917 hours to process the information held in those emails. In the second search, 3,200 emails were returned, with an estimated 267 hours to process the information held within those emails. The Authority submitted that even allowing for the maximum £15 per hour employment cost limit applied by FOISA, the cost of responding to the original request would exceed the £600 cost limit by quite some margin. The Authority commented that it had provided the Applicant with details of the costs associated with that search.

19. The Authority advised that the Applicant has since submitted a new information request, reduced in scope and that there has been disclosure of information in response to the new request.

Submissions from the Applicant

20. The investigating officer wrote to the Applicant on 27 March 2023 to provide an opportunity for the Applicant to submit additional comments in support of its application, if it wished to do so.
21. The Applicant provided, on 4 April 2023, detailed submissions in support of its application.
22. In its submissions, the Applicant presented useful background information which gave context to its application and reiterated its view that the Authority should have been aware of the Applicant's intended scope for the request and therefore should not have applied such significant costs.
23. The Applicant also confirmed that a new information request, with reduced scope, has since been made to the Authority.

The Commissioner's Findings

24. The Commissioner will consider how the Authority interpreted the request. The Commissioner's view is that the words used in an information request should generally be given their plain, ordinary meaning and that requests should be interpreted in an objective manner.
25. The Applicant explained that it sought documents relating to the communications between one named employee (to whom the request was sent) and the former President of the PAI. The Authority interpreted the request as seeking communications between any employee and the former President of the PAI. The Authority noted that the Applicant had provided further detail about what the request intended to the Commissioner in the context of its application, but that this information was not provided to the Authority at the time of the request or requirement for review and the Authority did not consider it appropriate to interpret the Applicant's request in the narrowest sense, without any basis for doing so (or reason for believing that the request was, in fact, narrower than presented).
26. Information requests are regarded as being made to a Scottish public authority, rather than directly to a specific individual or individuals within the authority. The Commissioner does not accept that it is reasonable in this instance to read into the text of the request an assumption or qualification that, because the request was sent to a specific employee of the Authority, the request was therefore only seeking recorded information involving that addressed employee – to whom the information request was sent - and the other named person (in this instance, the former President of the PAI).
27. In this instance, there is only one aspect of the request's text that would limit the requested information to communications involving the employee to whom the request was sent: that is, the use of the word "your" in "your communications, letters, etc". The Applicant's requirement for review could also be seen as suggesting that the request was intended only to relate to two persons: it said "Why is redaction being paid for, in order to protect identities, when the only two named persons are the individuals producing the requested documentation?"
28. The Commissioner accepts, however, that in all the circumstances the Authority did reasonably interpret the Applicant's request, i.e. the request sought information which included all communications, letters, emails and minutes from meetings with a former

President of the PAI. No timescale or other named employee was quoted in the actual text of the request. The Commissioner can understand how the request could easily have been interpreted by the Authority as it did and in a way that was not intended by the Applicant.

29. Section 15 of FOISA provides that 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. Three days following receipt of the original request, the Authority sought clarification from the Applicant on the scope of the request. The Authority's review describes this as

An email was sent to you on 23 May 2022 seeking clarification about the scope of the request, in relation to the timeframe and/or correspondence with specific staff. This was with the intention of trying to narrow the scale of the information being sought and the work that would be required to provide this information.

30. The Authority did approach the Applicant with a view to clarify the request. The Commissioner's [published advice](#)¹ on how to make an information request is clear:

Ask for the information you want. Describe the information as clearly and as briefly as you can. The clearer you can be, the more likely the authority will respond quickly and accurately. Focus on the information you really want to see - if your request is too broad, it may be refused because of the cost of responding to it.

31. Having accepted that the Authority took a reasonable interpretation of the request, the Commissioner must now consider whether the Authority was correct to refuse the request on the ground that the request could not have been dealt with within the £600 cost limit, so the Authority was entitled to rely on section 12(1) of FOISA and was under no obligation to comply with the request.
32. Given the explanations provided by the Authority regarding the volume of information arising from its searches, the work involved to determine what information was within the scope of the original request, and the work that would be necessary for the protection of personal data (given that disclosure of information under FOISA has the technical effect of putting that information into the public domain), the Commissioner is satisfied in all the circumstances that the Authority could not have complied with the Applicant's request within the £600 cost limit.
33. The Authority did also comment that, even if it had interpreted the request as the Applicant said was intended, the relevant timeframe would not have been as short as that suggested by the Applicant. Therefore, even if it had been evident from the request that the Applicant was seeking emails sent or received personally by the one employee the relevant timeframe for search purposes would still have been almost five years, not six months. The Authority also stated that no information was provided as to when the former President left the PAI.
34. The Commissioner finds that in all the circumstances of this case the Authority was entitled to rely on section 12(1) of FOISA and was under no obligation to comply with the Applicant's request.
35. The Commissioner notes the submissions provided by the Authority and the Applicant, and that there has been some disclosure of information following a new request with reduced scope.

¹ <https://www.itspublicknowledge.info/how-do-i-ask>

Decision

The Commissioner finds that the Authority complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Authority 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

17 May 2023

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –

- (i) the request for information to which the requirement for review relates;
- (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
- (iii) the matter which gives rise to the dissatisfaction mentioned in 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.