



Scottish Information
Commissioner

Decision 152/2006 Mrs W and Inverclyde Council

<i>Request for costs incurred by Council in respect of specified court case</i>

Applicant: Mrs W
Authority: Inverclyde Council
Case No: 200600685
Decision Date: 14 August 2006

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
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KY16 9DS



Decision 152/2006 Mrs W and Inverclyde Council

Request for costs incurred by Council in specified court case – information supplied – whether Council held further information – upheld that all information supplied

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 section 1(1) (General entitlement).

The full text of this provision is reproduced in the Appendix to this decision. The Appendix forms part of the decision.

Facts

Mrs W requested information about the costs incurred by the Council in respect of a specified court case. The Council initially withheld this information on the basis of section 36(1) confidentiality of communications. On review, the Council supplied the information requested to Mrs W. Mrs W was dissatisfied with the information provided and considered that the Council held additional information about the costs incurred.

Following an investigation, the Commissioner found that the Council had supplied Mrs W with all recorded information it held in respect of Mrs W's request.

Background

1. On 19 October 2005 Mrs W wrote to Inverclyde Council (the Council) and asked it to provide her with information about the costs incurred by the Council in respect of the court case *Mrs W v Inverclyde Council*.



2. The Council responded to this request on 31 October 2005. The Council advised that the information was exempt under section 36(1) of FOISA on the basis that it was information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. A formal refusal notice under the terms of section 16(1) was issued.
3. Mrs W was dissatisfied with this response and on 15 November 2005 she asked the Council to review its decision. Mrs W indicated that it would be in the public interest for this information to be disclosed as it concerned a wastage of taxpayer's money.
4. The Council responded to the request for review on 12 December 2005. The Council indicated that in reviewing its decision it had found that section 36(1) did not apply to the information requested and since no other statutory exemption applied the information would be supplied to Mrs W. A breakdown of the costs was subsequently supplied to Mrs W on 19 December 2005.
5. The Council provided a breakdown of the costs to Mrs W which identified the fees payable to the Council's external legal advisers, expenses due to the applicant's Solicitors, court dues and fees for technical reports.
6. The Council advised that in addition to the above breakdown costs would have been incurred by the Council in relation to the time spent by its own Officers from Legal Services, Property Services and Housing Services. The Council advised that it was not possible to give any costs for the time of these Officers as there were no records relating to such costs.
7. Mrs W was dissatisfied with this response and on 5 April 2006 she applied to me for a decision. She indicated that she was seeking an accurate sum of the court costs incurred by the Council following her court action against them. Mrs W indicated that she did not accept the figure that had been supplied by the Council and indicated that the Council was refusing to divulge costs incurred by the Council's legal, property and housing services.
8. The case was allocated to an investigating officer.

The investigation

9. The investigating officer formally contacted the Council on 27 April 2006 in terms of section 49(3)(a) of FOISA asking it to comment on the application as a whole and seeking specific information about the process followed in collating the information requested by Mrs W.



10. The Council advised that a solicitor within legal services had collated the information requested by Mrs W by examining the Legal Services files, by extracting the relevant information and by contacting Housing and Property Services, both of which had a part to play in the court case raised by the applicant against the Council.
11. The Council advised that the figures supplied by the Council to the applicant were not calculated by the Council but were simply a matter of fact derived from documentary evidence such as fee invoices issued to the Council.
12. In her application to me Mrs W had specifically queried the costs incurred by the Legal, Housing and Property services and the fact that this information had not been supplied to her. As a result, the Council was asked to supply information about any time recording system that existed in those departments/services.
13. The Council advised that of the three only Legal Services had a time-recording system. The Council indicated that the time-recording system was an internal management tool designed to enable internal re-charges to be allocated to specific internal customers. As such, solicitors and other relevant staff members charged time against files which were coded to individual Council Departments or Services. The Council advised that the system was time-based and not activity based.
14. The Council advised that in this case the relevant files dealt with a variety of issues relating to the property and were not solely dedicated to the court case to which Mrs W's information request related. As a result, time charged against the file did not necessarily relate to the court case.
15. It was not entirely clear from these submissions whether it would be possible to extract information from the file about the time spent on any given activity. In a telephone conversation between the investigating officer and the Council on 3 August 2006 the Council expanded on the time recording system. The Council explained that each Council solicitor completed time sheets which were submitted on a weekly basis. The timesheet would simply indicate how much time had been spent on a particular file. The timesheet would not indicate the activity undertaken in respect of that file.
16. As a result, time spent on the file could have been spent on matters other than the court case referred to in Mrs W's request for information; the timesheets did not record the specific activity. Because the file dealt with a variety of matters in respect of the property it was not possible to identify the time spent only on the court case and therefore incurred by Legal Services.
17. The Council re-confirmed that the information supplied to Mrs W was an accurate statement of all the recorded information the Council held.



Commissioner's Analysis and Findings

18. Mrs W requested an accurate statement of the costs incurred by the Council in respect of her action against the Council. Mrs W expressed dissatisfaction with the information supplied to her as she considers the figure must be higher than that provided and considers that the Council should supply her with costs incurred by the Legal, Property and Housing Services.
19. It is worth noting that FOISA applies only to recorded information held by an authority at the time of the request. An authority is not obliged to create new information in order to respond to a request for information. In respect of this case, the Council was only obliged to supply information about the costs that was held in a recorded format.
20. Having considered all evidence in this case I am satisfied with the steps taken by the Council to identify the costs incurred by the Council in responding to Mrs W's request for information.
21. In respect of the costs incurred by Legal, Property and Housing Services I accept that a time recording system exists only in Legal Services. This practice appears to be mirrored by other local authorities. I am satisfied that due to the nature of the time recording system in Legal Services it would not be possible to identify the specific costs incurred by the Council in respect of the Mrs W's court case. The relevant timesheets would only reveal time spent on the file. This information would not provide an accurate statement of the time spent by Legal Services on the court case (and therefore incurred by the Council).
22. As I said, the Council is only obliged to provide recorded information that it holds at the time of the request. Although I understand that Mrs W would like a breakdown of the costs incurred by Legal, Property and Housing Services I accept that this information is not in a recorded format and, as such, cannot be provided under FOISA.
23. I am satisfied that the Council has supplied all the information requested by Mrs W.



Decision

I find that the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to Mrs W's request for information.

Appeal

Should either Inverclyde Council or Mrs W wish to appeal against this decision, there is a right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
14 August 2006

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.