

Decision Notice



Decision 027/2010 Frank Plowright and Glasgow City Council

Complaints against Council staff

Reference No: 200901950

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Summary

Mr Frank Plowright requested from Glasgow City Council (the Council) information relating to complaints made against Council staff since the start of 2004. The Council responded by stating that the cost of complying with the request would exceed the cost limit for the purposes of section 12(1) of FOISA. Following a review, Mr Plowright remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the cost of complying with the request would exceed the specified cost limit and that the Council was therefore not obliged to comply with the request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance) and 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 21 August 2009, Mr Plowright wrote to Glasgow City Council requesting the following information concerning complaints made against Council office staff:

“Could you please let me know how many official complaints there have been against office staff since the start of 2004. I would also like to know how many of these complaints were entirely resolved in favour of the person/s complaining after their initial complaint, how many of these were entirely resolved in favour of the person/s complaining on appeal to the Head of Department and how many of these were entirely resolved in favour of the person/s complaining to the Chief Executive’s Office.”

2. The Council wrote to Mr Plowright on 25 August 2009 seeking additional information in order to identify and locate the requested information.



3. Mr Plowright responded on 26 August 2009 clarifying that the information he was seeking concerned complaints made by members of the public against Council officials and that he was not interested in internal complaints.
4. The Council responded on 17 September 2009 stating that the cost of responding to Mr Plowright's request would exceed the limit set out in the Fees Regulations and therefore it was not obliged to comply with the request by virtue of section 12(1) of FOISA. The Council estimated that the cost of complying with the request would be £1375.00. This was based on an estimate that it would take one minute to check each record within a database used to log complaints, comments and compliments made by the general public for relevant information. The estimated cost was calculated using an hourly staff rate of £15.
5. The Council also noted that it has a duty to provide advice and assistance to requestors under FOISA. In pursuit of this duty, it directed Mr Plowright to the website where decisions of the Scottish Public Services Ombudsman can be found, and noted that reports had been published there relating to complaints made about the Council.
6. On 29 September 2009, Mr Plowright wrote to the Council requesting a review of its decision. In particular, Mr Plowright queried the indicative timescales cited by the Council in checking the information in question and the pay scale of the member of staff who would be carrying out the work. He maintained that the charge calculated by the Council was not reasonable.
7. The Council notified Mr Plowright of the outcome of its review on 29 October 2009. The Council upheld its original decision without amendment.
8. On 11 November 2009, Mr Plowright wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
9. The application was validated by establishing that Mr Plowright had made a request for information to a Scottish public authority and had 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

10. The investigating officer contacted the Council on 9 December 2009, informing it that an application had been received from Mr Plowright and giving it the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The Council was also asked to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested and to provide detailed calculations showing the estimated costs taken into account for the purposes of section 12(1), and an explanation of how this estimate was reached.



11. The Council responded on 15 January 2010 with calculations of the costs taken into account for the purposes of section 12(1) of FOISA and confirming that it considered the cost of complying with the request to be £1375.
12. In subsequent correspondence with the investigating officer, the Council amended its calculation of the estimated cost of compliance to between £2750 and £3427. This is discussed further in the Commissioner's analysis and findings section below. This amended estimate was reached after the Council re-evaluated its estimate of the time involved in responding to the request.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered all of submissions made to him by both Mr Plowright and the Council and is satisfied that no matter of relevance has been overlooked.

Section 12(1) – Excessive cost of compliance

14. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the amount prescribed in the Fees Regulations. This amount is currently prescribed as £600 in regulation 5 of the Fees Regulations. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to a request for information exceeds this amount.
15. The projected costs that 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 public 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 (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 set at £15 per hour.
16. In his submissions to the Commissioner, Mr Plowright expressed the view that the Council was recording complaints against staff in a cavalier and inaccessible fashion. He also did not believe it was necessary for a member of staff searching the database to be paid the maximum allowable hourly rate. Mr Plowright considered the denial of his request effectively penalised him for the Council's inefficiency in record keeping.



17. In its submissions, the Council initially pointed out that it does not hold a central database dealing specifically with complaints against office staff. The Council explained that, in the event of a complaint being received, Council officers enter details on to a single database called "C4" which was created in February 2006, and which is used for recording all corporate comments, compliments and complaints. The Council provided the Commissioner with a copy of its C4 application user guide.
18. The Council stated it had established that there were around 5500 complaints logged in the C4 system. It went on to explain that the system is not sophisticated enough to allow for general searching requests under specific complaint types. Consequently, to interrogate the contents of these entries would require an individual search of each entry and would entail the different fields within C4 being read along with any attached documents.
19. The Council had initially estimated that it would take one minute to carry out a search of each record. However, having carried out a further search of in excess of 1000 entries since its initial estimate, it had concluded that this initial estimate was overly simplistic, and that officers had found that each interrogation averaged in excess of 2-3 minutes.
20. The Council indicated that the work would be carried out by a member of staff on an hourly rate of £16.87. This had been limited to a rate of £15 per hour for the purposes of calculating the estimated cost (Regulation 3(2)(b) of the Fees Regulations provides that 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). On the basis of an average timescale of 2 minutes per record, the Council now estimated the cost of complying with the request to be £2750.
21. Having considered the Council's submissions on this aspect of its handling of the request and the contents of the user guide supplied by the Council, the Commissioner is satisfied that the estimate of the likely time required in order to fulfil the request is reasonable in the circumstances. He is satisfied that the description of the process that would be required to be followed is accurate in the light of the way in which complaints and comments are recorded by the Council.
22. In further correspondence with the Council, the investigating officer queried why the work required to locate, retrieve and provide the information would have to be carried out by an officer on a salary level of £16.87 per hour. (As noted at paragraph 19 above, this had been limited to a rate of £15 per hour for the purposes of calculating the estimated cost). In response, the Council stated that the duty of dealing with requests under FOISA at corporate level falls between two officers within a specified section of the Council. The Council indicated that, at the time of responding to Mr Plowright's request, there was no other member of the section employed at a lower grade who could carry out the work.
23. Having considered the nature of the work involved in carrying out the required searches, the Commissioner has reservations about the Council's contention that the work could only be carried out by certain officers within a specified section. Whilst it may be the case that there was no individual member of staff on a lower grade within the section responsible for carrying out the work, the nature of the work does not seem to require a particularly high level of expertise. Nor does it appear to carry a particularly high degree of responsibility.



24. However, notwithstanding the Commissioner's view that the work could be carried out by a member of staff on a lower salary scale, he notes that, even if the work were to be carried out by a member of staff on the lowest local government pay grade, the cost of providing the information would still exceed the prescribed amount of £600.
25. The Commissioner also notes that, since the C4 database was only introduced by the Council in February 2006, a full search for the information requested by Mr Plowright would need to consider records, presumably held in other locations, dating from the beginning of 2004. The calculations provided by the Council have not considered any additional work required to address information held relating to complaints prior to February 2006.
26. Having taken due account of the submissions made by Mr Plowright and the Council, together with the terms of section 12(1) of FOISA and the Fees Regulations, the Commissioner is satisfied that the costs of complying with Mr Plowright's information request would exceed the £600 prescribed limit set out in the Fees Regulations. Therefore, the Commissioner concludes that the Council was correct in its application of section 12(1) of FOISA and was under no obligation to comply with the information request made by Mr Plowright.
27. The Commissioner notes that his remit in carrying out this investigation extends to the consideration of the estimated cost to the Council of complying with the request. The Commissioner has noted Mr Plowright's comments and concerns about the method by which the Council records complaints against staff. However, the Commissioner considers that this is essentially a matter for the Council to decide and he cannot comment on how the Council chooses to record such information or whether it ought to record such matters in a different manner or format.

Section 15 of FOISA – duty to provide advice and assistance

28. Section 15 of FOISA requires a Scottish public authority, so far as it is reasonable to expect it 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 given in the Scottish Ministers' Code of Practice on the discharge of functions by public authorities under FOISA include, in cases where section 12(1) applies, "an indication of what information could be provided within the cost ceiling".
29. In response to questions from the investigating officer, the Council stated that, on receipt of Mr Plowright's request, it had contacted him by letter to seek clarification of his request by asking him to be more specific in his request. The terms of his request were discussed further in a subsequent telephone conversation.
30. The Commissioner is aware that, following the correspondence and discussions noted above, Mr Plowright subsequently submitted more limited requests for similar information to the Council within smaller specified timescales.
31. The Commissioner notes also that the Council directed Mr Plowright to decisions of the Scottish Public Services Ombudsman, an alternative source of information regarding complaints against the Council.



32. The Commissioner is therefore satisfied that the Council met the requirements of section 15 of FOISA in this particular case.

DECISION

The Commissioner finds that Glasgow City Council (the Council) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Plowright.

The Commissioner finds that by applying section 12(1) of FOISA in response to Mr Plowright's request, the Council complied with Part 1.

Appeal

Should either Mr Plowright or the Council 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 notice.

Kevin Dunion
Scottish Information Commissioner
24 February 2010



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.

...

- (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.