

Decision Notice



Decision 048/2014 Mr J and the Scottish Prison Service

Courses and re-offending

Reference No: 201302350

Decision Date: 26 February 2014

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Rosemary Agnew

Scottish Information Commissioner

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Summary

On 19 August 2013, Mr J asked the Scottish Prison Service (the SPS) for the numbers of prisoners recalled for re-offending who (i) had completed courses within prison and (ii) had not completed courses within prison or the community. The SPS informed Mr J that complying with his request would cost in excess of the £600 cost limit set under section 12 of FOISA. Following an investigation, the Commissioner accepted this and therefore found that the SPS was not obliged to comply with the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 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 19 August 2013, Mr J asked the SPS for information including the numbers of prisoners recalled for re-offending who (i) had completed courses within prison and (ii) had not completed courses within prison or the community.
2. The SPS responded on 16 September 2013, informing Mr J that it would cost in excess of £600 to fulfil his request. Therefore, by virtue of section 12 of FOISA, it was not obliged to comply with the request. The SPS provided Mr J with details of how it reached that conclusion.
3. On 17 September 2013, Mr J wrote to the SPS requesting a review of its decision.
4. The SPS notified Mr J of the outcome of its review on 30 September 2013, upholding its original response without modification.



5. On 2 October 2013, Mr J wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr J made a request for information to a Scottish public authority and 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

7. The investigating officer contacted the SPS, giving it notice of Mr J's application and an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA. Specifically, it was asked to justify its application of section 12(1) of FOISA.
8. During the investigation, further submissions were obtained from the SPS.

Commissioner's analysis and findings

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

Section 12(1) – excessive cost of compliance

10. 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 in terms of 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 exceeds this sum.
11. 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, the authority reasonably estimates it is likely to incur in;
 - (i) locating
 - (ii) retrieving, and
 - (iii) providing

the information requested in accordance with Part 1 of FOISA. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.



12. 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.
13. The SPS explained that it did not collate information centrally on the number of prisoners returned to custody who have previously completed programmes or attained qualifications.
14. The SPS commented that Mr J did not provide a timescale over which he was seeking the information. It explained that the cost analysis provided to Mr J was based on one prison and the number of prisoner files which would need to be reviewed going back over a period of five years (which it considered the minimum period if it was to extract accurate statistics). This amounted to 1,560 files.
15. Reading the request across the whole organisation, the SPS submitted, would incur the provisions of section 12(1). The average daily prison population was around 8,000, with around 35,000 receptions into prison per year. The SPS's database, therefore, held records of more than 130,000 prisoners. Even if half, or a tenth, of the 130,000 prisoners had only been in prison once, the SPS argued that it would still cost in excess of £600 to fulfil Mr J's request.
16. The SPS provided an outline of the exercise that would have to be carried out to locate, retrieve and provide the information. It explained this was not information for which it had a business need: the factors contributing to re-offending and return to prison were complex and varied and it was unlikely that research on this factor alone would be considered worthwhile.
17. The work would involve extracting and collating information from prisoners' files, the SPS explained. These would have to be located from different parts of the prison, and from elsewhere for individuals not in custody. The files were held, either electronically or in paper format, across 17 different sites. For a staff member who understood and was familiar with the relevant information and recording systems, the hourly rate would exceed the maximum of £15 per hour prescribed in the Fees Regulations.
18. During the investigation, the SPS carried out a sampling exercise and examined files for five prisoners, going back to the year 2000. The SPS provided the Commissioner with a breakdown of the tasks involved, the time taken and the costs. It took eight hours, at a total cost of £127.50.
19. The Commissioner accepts this as a reasonable sampling exercise in the circumstances. Having considered the SPS's submissions, she acknowledges that the work would require a member of staff charged at the maximum hourly rate of £15. To meet Mr J's request, he accepts that the SPS would have to review files relating to prisoners for all of its establishments, including individuals no longer in custody. She notes that this would involve records held across 17 sites.



20. In the sampling exercise, the SPS searched records going back to 2000, which is further than it informed Mr J was necessary. Given the potential number of files that would have to be reviewed to fulfil Mr J's request, however, the Commissioner accepts that even if the period was reduced to five years, the cost would still exceed the prescribed sum of £600.
21. The Commissioner is therefore satisfied that the SPS was correct to rely on section 12(1) of FOISA in refusing to comply with Mr Js request.

Section 15 – Duty to advise and assist

22. Section 15(1) requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
23. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004 (the Section 60 code) provides ¹ (at 1.9):
Where the cost of responding to a request made under FOISA will exceed the upper cost limit of £600 ... the authority may again consider what information could be provided below the cost limit, and suggest how the applicant may wish to narrow the scope of their request accordingly.
24. Section 15(2) of FOISA states that a Scottish public authority which, in relation to the provision of advice and assistance in any case, conforms with the section 60 code, is taken to comply with the duty to provide reasonable advice and assistance in section 15(1).
25. The SPS acknowledged that it had provided Mr J with nothing specific in the way of advice or assistance, but considered it difficult to see how he could narrow the scope of his request, given the information concerned. The SPS explained that as the information was held within individual prisoner files, even allowing only five minutes to review each file would permit only around 480 files to be reviewed within the cost limit. It did not believe this could possibly be a meaningful sample, and therefore questioned what advice could be given to Mr J to enable him to narrow his request.
26. The SPS noted that it had provided Mr J with a breakdown of how it concluded that section 12 applied, to demonstrate the breadth of the task.

¹ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



27. In this case, the Commissioner has noted that the SPS did not advise Mr J how it might be possible to bring the cost of complying with his information request within the £600 threshold. Nevertheless, having considered the SPS's submissions, the Commissioner acknowledges that it is difficult, looking at the request reasonably, to see how any useful information could be provided within the cost limit. The Commissioner also acknowledges that the cost breakdown provided to Mr J in response to his request was a reasonable one: in response, and in applying to the Commissioner, Mr J appears to have persisted in his view that the information could be provided in full, without any limit of time.
28. Although the Commissioner has reached this conclusion in this case, she would observe that it is generally good practice, when an information request is received, to seek clarification from the requester as to what timescale they intend the request to cover, where this is not otherwise apparent.

DECISION

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

Appeal

Should either Mr J or the Scottish Prison 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
26 February 2014



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

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.