

Decision Notice

Decision 081/2017: Mr Robert Wilson and Scottish Enterprise

Support grant Information

Reference No: 201700448

Decision Date: 19 May 2017



Scottish Information
Commissioner

Summary

Scottish Enterprise was asked for the total sum of money paid by it and its subsidiaries directly to micro businesses in support grants in 2014/2015 and the number of micro businesses this had been distributed among. Scottish Enterprise stated that complying with the request in full would cost more than £600 and so it was not obliged to comply.

Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance)

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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 3 August 2016, Mr Wilson made a request for information to Scottish Enterprise. The information requested was the total sum of money paid by Scottish Enterprise and its subsidiaries directly to micro businesses in support grants, and the number of businesses this had been distributed among, in 2014/2015. He explained that he was classifying a "micro business" as one with under 10 employees and less than €2m turnover, in line with the European Commission's definition.
2. Scottish Enterprise responded on 24 August 2016, giving Mr Wilson notice in terms of section 17(1) of FOISA that it did not hold the information he sought. It explained that it did not undertake any reporting, financial or performance related, on the basis of company size at either organisation or group level, and so could not provide the information.
3. On 1 September 2016, Mr Wilson wrote to Scottish Enterprise requesting a review of its decision. He provided reasons why he did not agree with the decision, based on his own experience of the grant process.
4. Scottish Enterprise notified Mr Wilson of the outcome of its review on 3 October 2016. It explained that while it did collect some relevant data, it did not have the full set of data required to identify how many of the companies it supported were micro businesses. It therefore upheld its response under section 17(1) of FOISA.
5. On 11 October 2016, Mr Wilson applied to the Commissioner, stating he believed Scottish Enterprise held the information requested. This resulted in the Commissioner issuing

*Decision Notice 007/2017 Mr Robert Wilson and Scottish Enterprise*¹, which required Scottish Enterprise to issue a further review on the basis that the requested information was held.

6. Scottish Enterprise notified Mr Wilson of the outcome of its further review on 6 March 2017. It explained that it could provide information on micro businesses that were account managed by Scottish Enterprise, and provided that information. Other than the information provided, Scottish Enterprise stated that it would have to check around 4,000 grant applications to identify the information requested. It stated that it had carried out an exercise of some 25 companies, following which it estimated that it would take 640 hours to provide him with the information requested. Having arrived at this estimate, Scottish Enterprise stated that it was responding in terms of section 12(1) of FOISA.
7. On 6 March 2017, Wilson wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Wilson stated he was dissatisfied with the outcome of Scottish Enterprise's review because he considered that Scottish Enterprise should be in a position to obtain the information requested from its case management systems.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Mr Wilson made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 10 April 2017, the investigating officer notified Scottish Enterprise in writing that Mr Wilson had made an application. Scottish Enterprise was invited to comment on this application and to answer specific questions. These focused on the application of section 12(1) of FOISA.
10. Scottish Enterprise responded with submissions. Mr Wilson also provided further submissions during the investigation.

Commissioner's analysis and findings

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

Section 12(1) – excessive cost of compliance

12. 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 she find that the cost of responding to a request for that information would exceed this sum.
13. The projected costs the 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

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2017/201601862.aspx>

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 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 £15 per hour.

14. Scottish Enterprise submitted that section 12(1) applied to Mr Wilson's request. It confirmed that it held information falling within the scope of Mr Wilson's request, but argued that the cost of locating, retrieving and providing that information would exceed the £600 cost limit.
15. Mr Wilson provided submissions to the effect that Scottish Enterprise should be able to extract the information requested from its case management systems and questioned how Scottish Enterprise could publish figures relative to micro businesses if the information requested was not collated.
16. Scottish Enterprise stated that companies were classified as either large or SMEs (Small to Medium Enterprises) and recorded accordingly. It explained that micro businesses were a sub category of SMEs and were not systematically recorded as such (other than companies classified as "account managed" – see below). It also confirmed that it did not produce reports that related to micro businesses, as suggested by Mr Wilson.
17. Scottish Enterprise acknowledged that the information requested by Mr Wilson was held within grant application forms (as confirmed by the Commissioner in *Decision 007/2017*). It explained that the forms were uploaded in pdf format onto its systems and that, other than for companies which were "account managed", the number of employees and company turnover (as per the request) was not input into any of its records management systems. It further confirmed that the "account managed" information was provided to Mr Wilson in its review outcome of 6 March 2017.
18. Scottish Enterprise further explained that the scanned copies of the application forms were not held in any searchable format. It explained that it had established that the 4,000 grants awarded, as referred to in its review outcome, had been distributed to 2,240 different companies.
19. Scottish Enterprise stated that to determine whether a company fell within the description of a micro business (to determine if they were of relevance to the request) would require a manual search of the records held. It explained it had carried out a sample exercise of 25 companies. This had taken approximately 9 minutes per company, which would give a total of approximately 337 hours (allowing one hour for a final check against the total spend) for the 2,240 companies identified. It stated that the work required would typically be conducted by a senior staff member earning in excess of the £15 per hour maximum allowed. The total cost of this work, therefore, would be approximately £5,055.
20. Scottish Enterprise further submitted that even by reducing the time taken to analyse the information held and restricting the hourly rate to £10 per hour, the cost applied still exceeded the £600 limit by a considerable margin. If the basic premise of a manual search of the 2,240 companies is accepted, the Commissioner acknowledges that even if it only took two minutes to check each company's record, and the cost was limited to £10 per hour, this would still give an estimate in excess of £740.
21. The Commissioner has considered these submissions carefully. Taking account of all the circumstances, she is satisfied that Scottish Enterprise has provided a reasonable estimate of the cost of complying with Mr Wilson's request for information. Given the nature and

content of the work required, the Commissioner accepts that the request could not have been responded to within the £600 limit.

22. Consequently, the Commissioner is satisfied that Scottish Enterprise was entitled to rely on section 12(1) of FOISA in relation to Mr Wilson's information request, and therefore was under no obligation to comply with the request.

Decision

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

Appeal

Should either Mr Wilson or Scottish Enterprise 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
Acting Scottish Information Commissioner

19 May 2017

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.

...

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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