

Decision Notice

Decision 072/2018: Mr Z and the Scottish Ministers

Largest charity grants made by the Scottish Government

Reference No: 201800406

Decision Date: 30 May 2018



Scottish Information
Commissioner

Summary

The Ministers were asked for details of the 20 largest charity grants made by the Scottish Government in each of the last five years and about the basis on which the grant funding is reviewed. The Ministers replied that complying with this request would cost in excess of the £600 limit and they were therefore not obliged to comply.

The Commissioner found that complying with the request would exceed the cost limit and so the Ministers were not obliged to comply.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) 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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 18 December 2017, Mr Z made a request for information to the Scottish Ministers (the Ministers). The information requested was: the 20 largest charity grants made by the Scottish Government in each of the last five years, and detail of how much was awarded in each case, and to which charity, and on what basis (annually/three yearly/etc.) the grant funding is reviewed.
2. The Ministers responded on 16 January 2018. They informed Mr Z that it would cost in excess of £600 to respond to his request and so, by virtue of section 12 of FOISA, they were not required to comply with it. The Ministers explained that there is no central register of grants awarded. They suggested that Mr Z might wish to reduce the scope of his request to bring the cost below £600 by specifying the subject matter(s) of the areas in which he was interested, or restrict his request to a specific business area of the Scottish Government, as this might allow them to limit their searches.
3. On 16 January 2018, Mr Z wrote to the Ministers requesting a review of their decision. He was unclear why the top 20 charity grants made each year could not be easily identified from budget lines, and asked the Ministers to make further efforts to identify the information or to provide a more detailed explanation as to why this was not possible.
4. The Ministers notified Mr Z of the outcome of their review on 13 February 2018. The Ministers upheld their original decision that the cost of complying with his request would exceed £600. The Ministers explained that grants to charities or third sector organisations are made by many business areas across the Scottish Government and detailed information on third sector funding is held in individual business areas. To respond to Mr Z's request would require a widespread search across the Scottish Government and this would exceed the cost limit of £600.

5. On 5 March 2018, Mr Z applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Z was dissatisfied with the outcome of the Ministers' review because he believed the top 20 charity grants each year should easily be identifiable from budget lines.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Z made a request for information to a Scottish public authority and asked the authority to review its review to that request before applying to him for a decision.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Ministers were invited to comment on this application and answer specific questions including justifying their reliance on any provisions of FOISA they considered applicable to the information requested.

Commissioner's analysis and findings

8. In coming to a decision on this matter, the Commissioner considered all relevant submissions, or parts of submissions, made to him by both Mr Z and the Ministers. He is satisfied that no matter of relevance has been overlooked.

Section 12(1) - Excessive cost of compliance

9. 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 order a public authority to disclose information should he find that the cost of responding to a request for that information exceeds this sum.
10. 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:
 - locating
 - retrieving, and
 - 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.

11. The public authority may not charge for the cost of determining:
 - whether it actually holds the information requested, or
 - whether or not it should provide the information.
12. The Ministers were asked to explain in detail how they would provide the information requested by Mr Z and why doing so would exceed the cost limit of £600.
13. The Ministers submitted that grants to charities or third sector organisations are made by many business areas across the Scottish Government and detailed information is held in individual business areas and filed according to the subject matter. Reports (lists of

payments) can be generated by the accounting system, but would not contain the level of detail requested by Mr Z. The Ministers said that their financial systems do not distinguish between payments to charities and payments to companies or public sector bodies. Information specifically relating to third sector payments therefore “cannot be readily disaggregated from the list of all payments”.

14. The Ministers submitted that to identify the information requested they would need to search across all areas of the Scottish Government. They had investigated whether they could extract a list of payments made to all organisations by the value of payment and work through the list to find the 20 largest charities. This would have enabled the Ministers to seek any further information directly from the business area to provide information to the level of detail requested. However, their payment system could only provide an automated report showing payments made to all organisations. It could not be manipulated to provide only payments made under a grant or to charitable organisations.
15. The Ministers estimated that they would therefore need to check approximately 17,400 individual payment records over the specified five year period to determine whether each payment would fall within the scope of the request.
16. The Ministers commented that that some organisations, including third sector organisations, could have received multiple payments both over the period of the request and within each financial year. This would mean that within a complete list of payments a single organisation could be separated into multiple entries. These payments would be recorded individually as separate payments and, once identified, would need to be reconciled manually to provide the total paid to that organisation. Having identified all of the relevant information, they would then need to identify the 20 largest charity grants paid within each year.
17. The Ministers estimated that this would take on average one minute per record to extract the relevant information and then, using this information, to determine the total paid to each organisation. This work alone would take in excess of 290 hours and, at £15.00 per hour, it would cost in excess of £4,350 to complete. This estimate would not take account of the need to locate information about the basis on which the grant award was made. This information would be obtained from the business area with responsibility for a relevant payment.
18. The Commissioner sees no reason to doubt that the process specified by the Ministers is the only way for them to obtain to obtain the information. In terms of law or good practice, the Commissioner is unaware of any reason why the Ministers would be required to record separately the highest grants awarded to the charity sector. Similarly, the Commissioner accepts the Ministers’ submission that they would need to search a wide range of business areas for the relevant information.
19. Taking account of all the circumstances, the Commissioner is satisfied that the Ministers have provided a reasonable estimate of the cost of complying with Mr Z’s request for information. Given the nature of the work required, and the fact that the information is not held centrally in one location, or easily available from budget lines, the Commissioner accepts, on the balance of probabilities, that it would cost more than £600 to comply with the request.

Section 15 - Duty to provide advice and assistance

20. Section 15 of FOISA requires a public authority to provide reasonable advice and assistance to someone making an information request. Where the cost of complying with a request is

likely to exceed the £600 limit, the public authority should consider what information could be disclosed free of charge or within the cost limit, in order to comply with the duty to provide advice and assistance.

21. The Ministers were asked to explain how they discharged this duty in respect of Mr Z's request. The Ministers submitted that their responses to Mr Z's initial request and his request for review indicated that, in order to keep costs below the £600 limit, Mr Z could focus his request on particular funds, subject matters or business areas.
22. The Ministers were asked whether there was any way Mr Z could reword his request that would allow him to obtain the information. Because locating the information would substantially exceed the cost limit, the Ministers did not consider it possible to reword the request in a way which would allow them to provide all of the information.
23. The Commissioner accepts that, in the circumstances, the Ministers provided Mr Z with reasonable advice and assistance on how he could make an information request which would not be refused on grounds of excessive cost. Consequently, the Commissioner is satisfied that the Ministers complied with their duties under section 15(1) of FOISA.

Decision

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

Appeal

Should either Mr Z or the Ministers 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

30 May 2018

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.

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