

Decision Notice

Decision 100/2015: Mr Alexander Codona and Glasgow City Council

Procedures Manual

Reference No: 201500782
Decision Date: 1 July 2015



Scottish Information
Commissioner

Summary

On 28 February 2015, Mr Codona asked Glasgow City Council (the Council) for information from its procedures manual or similar documents relating to the Council's implementation of its obligations under specified parts and sections of the Local Government Finance Act 1992. The Council informed Mr Codona that it was not obliged to comply with his request as the cost of doing so would be more than £600.

Following an investigation, the Commissioner was not persuaded that the Council's submissions were sufficiently robust for her to accept that the request could be refused on grounds of excessive cost. She required the Council to give a further, different, response to Mr Codona's request.

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 28 February 2015, Mr Codona made a request for information to the Council. The information requested was:
Copies from the procedures manual (or manuals) or documents of a similar nature in use by Glasgow City Council from September 2012 until the present of any pages which pertain to the implementation by Glasgow City Council of their obligations in respect of the Local Government Finance Act 1992, Part II and Part IV sections 107 to 112.
2. The Council responded on 25 March 2015. The Council informed Mr Codona that it was unable to provide the information as to do so would require it to undertake a complete review of the procedures manual and redact information from it. It stated that the estimated cost of doing this was more than the sum of £600 prescribed for the purposes of section 12(1) of FOISA. It asked him to consider refining his request.
3. On 26 March 2015, Mr Codona wrote to the Council, requesting a review of its decision. He did not believe the review and redaction described by the Council to be necessary to comply with his request.
4. The Council notified Mr Codona of the outcome of its review on 24 April 2015. The Council informed Mr Codona that there were two procedures manuals, containing in excess of 450 documents in total. It explained that the manuals contained screenshots from its systems,

which might contain personal data that would require to be redacted. It estimated that this task would cost a minimum of £1,050.00. It therefore upheld the original response.

5. On 29 April 2015, Mr Codona wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Codona stated he was dissatisfied with the outcome of the Council's review because he believed it would take comparatively little time to respond to his request.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Codona 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. The case was then allocated to an investigating officer.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 20 May 2015, the Council was notified in writing that an application had been received from Mr Codona and was invited to comment on this application. It was asked to provide submissions and evidence to justify its application of section 12(1) of FOISA.
8. The Council responded to the investigating officer with comments. It continued to apply section 12(1) of FOISA.

Commissioner's analysis and findings

9. 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 Codona and the Council. She is satisfied that no matter of relevance has been overlooked.

Section 12(1) – Excessive cost of compliance

10. 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 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 Commissioner accepts that an authority can take into account the time taken to redact information in order that a response can be provided when calculating the costs involved.
13. A Scottish public authority may not take account of the cost of determining:
 - (i) whether it actually holds the information requested, or
 - (ii) whether or not it should provide the information.
14. In its response to Mr Codona's requirement for review, the Council stated that it held a Revenues/Tax Procedures Manual, which contained 20 folders with more than 200 documents, and a Benefits Procedures Manual, which contained 15 folders with more than 250 documents. It explained it would take a grade 5 member of staff in excess of 70 hours to carry out the task, at a minimum cost of £1,050.
15. Within this review response the Council informed Mr Codona that the procedures manuals held by the Council contained screenshots from its IT systems, and it was these screenshots that "may" (Commissioner's emphasis) contain personal data that would require to be redacted.
16. The investigating officer asked the Council to confirm whether the entire contents of the two procedures manuals referred to in the review outcome fell within the scope of Mr Codona's request. It was also drawn to the Council's attention that, as mentioned in previous cases, an authority should first of all ascertain what information it holds falling within the scope of a request, before considering whether an exemption or other provision in FOISA applies.
17. An authority cannot take account of the cost of determining whether or not it should provide the information.
18. The investigating officer put it to the Council that if the screenshots fell within the scope of the request, the Council should determine that they actually contained personal data, before a costing can be applied to any redaction which might have to be made. If the screen shots fell within the scope of the request but did not (or, on the basis of robust sampling, were unlikely to) contain personal data, the investigating officer suggested, then they would not need redacted.
19. The Council was asked:
 - (i) To provide detailed calculations supporting its estimates. In particular, the Council was asked to confirm that each document within the manuals contained a screenshot and whether each screenshot contained personal data that would require to be redacted.
 - (ii) Whether the screenshots which did contain personal data could be removed in their entirety under section 38(1)(b) of FOISA, which might allow the remaining information to be disclosed, or considered under another exemption, without breaching the cost limit.
 - (iii) Other questions on the details of its cost estimates.
20. It was also suggested to the Council that it might be appropriate to carry out a sampling exercise to back up its cost estimates.
21. In its submissions to the Commissioner, the Council maintained that the cost of complying with Mr Codona's request would exceed the cost limit of £600.00.

22. The Council explained that it only held one procedures manual and not two as stated in the review outcome. It apologised for any inconvenience this error might have caused. It stated that the majority of the information within the manual fell within the scope of Mr Codona's request, and that this amounted to 589 documents.
23. The Council submitted that it would take 10 minutes to consider and redact each document which equated to 98.16 hours. It stated that staff costs would be £13.37 per hour, giving a total cost of £1,312.39.
24. The Council further explained that it would have to check each document individually to see if it held a previous version and that the cost of doing so had not been included in its estimated cost of responding. It provided a further calculation, stating that assuming (Commissioner's emphasis) there was at least one previous copy of each document, then to provide this information would cost a further £1,312.39.
25. The Council stated that it could not confirm whether each of the 589 documents contained a screenshot, without first of all examining the document. As the documents were operational manuals created to assist staff to carry out their duties, it considered it highly likely that they would contain screenshots.
26. The Council also understood that some of the documents would contain staff names which would require to be redacted. It was unable to confirm which of the documents contained staff names without examining each document individually.
27. The Council informed the Commissioner that, due to staff absence, it was unable to carry out a sample exercise to provide evidence of the time it would take to respond to Mr Codona's request. It stated that an employee who used to undertake similar tasks had estimated it would take 10 minutes per document. The Council stated that it was confident this was a reasonable estimate, and that the time spent on longer and shorter documents would even out, although it provided no further explanation or evidence in support of this line of argument.
28. Having been asked by the investigating officer to provide examples of the documents held, the Council provided the Commissioner with two documents. The first contained one screenshot, which contained personal data. The second contained two screenshots, one of which contained personal data.
29. The investigating officer carried out an exercise to redact the personal data from both documents: this took less than two minutes in total. If it took one minute to redact each of the 589 documents (assuming all of the documents actually contained personal data and required to be redacted – something the Council has failed to establish), then the time taken to redact the information would be less than 10 hours.
30. That said, based on all of the submissions made by the Council, it is unknown how many of the documents within the manual contain (or, on the balance of probability deduced from sampling, would be likely to contain) screenshots and whether these screenshots contain personal data that would require to be redacted. Similarly, it has not been established how many, if any, previous versions of the documents are actually held or, if held, whether redaction of these would be necessary. In the absence of any evidence of this kind, even for a reasonable sample of the information, it is difficult to accept that the Council's submissions amount to anything more than broadly estimated assertions.
31. In relation to previous versions of the manual, potentially covered by Mr Codona's request, it is apparent that the Council has not established what relevant information it holds. Nor did

the Council attempt to explain how it manages version control of documents and their retention, and why it was necessary to check each one individually. It is also apparent that the Council has not established what information would require to be redacted from the screenshots, either in the current version or any previous ones. Neither of these tasks can be taken into account by the Council in estimating the cost of complying with the request, but they are essential preliminaries to applying section 12(1), if part of the argument is that information would require to be redacted under exemptions. In addition, the fact that no attempt has been made to carry them out (even on a sampling basis) reinforces the impression that the estimated cost of 10 minutes to redact a document is one arrived at arbitrarily.

32. Given the submissions summarised above, the Commissioner does not believe she has the evidence (or indeed the underlying arguments) required to accept that the cost of complying with the request would exceed £600. In particular, the Commissioner has considered that:
- (i) it is unknown, and no attempt has been made to establish, how many previous versions of any of the 589 documents are actually held,
 - (ii) it is unknown, and no attempt has been made to establish, whether each document referred to contains, or is for clearly justified reasons likely to contain, a screenshot,
 - (iii) it is unknown, and no attempt has been made to establish, the number (or properly estimated likely number) of screenshots that contain personal data and therefore would require to be redacted,
 - (iv) there would appear to be no substance to support the assertion that it would take 10 minutes to redact any documents that actually required to be redacted.
33. From the examples provided to the Commissioner during the investigation, it is apparent that some, but not all, of the screenshots will contain personal data. The cost of compliance, for the purposes of section 12(1), may only require to be a reasonable estimate, but to be reasonable that estimate must have some substance to support it. The lack of substance in the Council's assertions is highlighted above, while the limited evidence the Commissioner has been able to consider fails to bear out a cost as high as the Council has claimed. The Commissioner is not saying the cost will not be that high, but that, despite being given opportunities to do so, the Council has failed to provide submissions which would enable her to accept that they would.
34. Taking all of the circumstances into consideration, the Commissioner finds that the Council has failed to justify its application of section 12(1) of FOISA in this case. As a result, the Commissioner cannot accept that section 12(1) applies to the information requested by Mr Codona. She therefore requires the Council to respond to respond to Mr Codona's requirement for review in accordance with Part 1 of FOISA (but other than in terms of section 12(1)).

General comment

35. The right to information is a right bestowed by statute. Any decision that has the effect of denying that right should not be taken lightly and without due and proportionate consideration. Applying section 12 of FOISA has the effect of denying the right to ask for information.

36. The Commissioner is mindful that the Fees Regulations are there to ensure that individual information requests do not pose an unreasonable burden on authorities, but they must be applied properly and fairly. The Commissioner sees a correlation between this specific case, applying costs to carry out redaction before it has been established whether such redactions are necessary, and *Decision 040/2015 Mrs L and Glasgow City Council*¹, where the Council wrongly issued a fees notice under the Environmental Information (Scotland) Regulations 2004 (the EIRs) to Mrs L, before considering whether an exception in the EIRs applied to the information requested.
37. In that case the Commissioner commented that Mrs L was not only incorrectly charged a fee, but the Council failed to pick this up when it carried out its review and the error was only corrected following an application to the Commissioner.
38. In this case, it is apparent that the Council was not really in a position to determine with any certainty what work would be required to comply with the request. Nevertheless, it proceeded to calculate costs and apply the cost limit. The Commissioner would advise the Council to reflect on the adequacy its submissions in this case. They are largely conjectural, and based on what the Council believes, or assumes, may be likely to be held, rather than providing compelling explanations about what actions had been taken to establish estimated costs with any degree of certainty.
39. The Commissioner reiterates that before considering whether a request should be refused under the cost limit provisions, the authority must identify what information is actually held, and the actual work that would be required to be undertaken in order to respond to a request. In particular the Commissioner draws the Council's attention to paragraph 5.6 of the Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the EIRs (the Code of Practice)²:

5.6 Where a fee is payable and content of fees notices

5.6.1 Under FOISA, authorities are entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information. Full details of what can and cannot be charged for are contained in the Fees Regulations. However, authorities are not entitled to charge for:

- any costs incurred in determining whether it actually holds the information;
- any costs incurred in determining whether information should or should not be disclosed; or
- the time spent deciding what parts of a document/report should be redacted (although the actual process of redacting can be charged).

40. In acting as it did, the Council has also denied itself the opportunity to provide reasonable advice and assistance under section 15 of FOISA. Had it established more accurately what information it held and what the costs of providing it were likely to be, the Council could potentially have engaged with Mr Codona to advise him about what could be provided within the cost limit or how he might amend his request to bring it within the cost limit.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2015/201500009.aspx>

² <http://www.gov.scot/Resource/0046/00465757.pdf>

Decision

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

The Commissioner is not satisfied that the Council was entitled to refuse to comply with the request under section 12(1) of FOISA.

The Commissioner requires the Council to provide a new response to Mr Codona's requirement for review, other than in terms of section 12(1) of FOISA, by 17 August 2015.

Appeal

Should either Mr Codona or the Council 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.

Enforcement

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Rosemary Agnew
Scottish Information Commissioner

1 July 2015

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 and 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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