



Scottish Information
Commissioner

**Decision 171/2006 – Mr Alexander Plunkett and
Dumfries and Galloway Council**

Complaints to Dumfries and Galloway Council

**Applicant: Mr Alexander Plunkett
Authority: Dumfries and Galloway Council
Case No: 200600912
Decision Date: 19 September 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 171/2006 – Mr Alexander Plunkett and Dumfries and Galloway Council

Request for information relating to complaints made by Mr Plunkett to Dumfries and Galloway Council – section 12(1) of the Freedom of Information (Scotland) Act 2002 – Excessive cost of compliance – refusal upheld

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 section 12(1) (Excessive cost of compliance).

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 regulation 5 (Excessive cost – prescribed amount).

The relevant text of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Plunkett requested from Dumfries and Galloway Council (the Council) various details of the number of complaints it had received from him since 1 January 2004. The Council initially refused to provide the information on the basis that Mr Plunkett already had the information and it was therefore otherwise accessible and exempt from disclosure under section 25 of the Freedom of Information (Scotland) Act 2002 (FOISA).

Mr Plunkett was dissatisfied with this response and requested the Council to review its decision. Upon review, the Council concluded that the information was available and should therefore have been disclosed to Mr Plunkett, subject to the issuing of a fees notice. The Council estimated that the cost of complying with Mr Plunkett's request would be £495, and therefore he was required to pay a fee of £39.50. The Council then issued a fees notice to Mr Plunkett and stated that the information would not be provided until the required payment was received. Mr Plunkett was dissatisfied with the outcome of the review and applied to the Commissioner for a decision.



Following Mr Plunkett's application to the Commissioner, the Council re-estimated the projected cost of providing the information to Mr Plunkett and informed the Commissioner that it believed it was entitled to refuse the request under section 12(1) of FOISA (Excessive cost of compliance). The Commissioner accepted the Council's reliance on this section as appropriate in the circumstances.

Background

1. Mr Plunkett wrote to the Council by e-mail on 30 November 2005. In his e-mail, Mr Plunkett requested details of the number of complaints that had been received by the Council from him since 1 January 2004. This was to include lists of names complained against, the dates on which the complaints were received, the dates the complaints were acknowledged and replied to in full, and a list of names complained against which were not replied to within 20 working days.
2. Mr Plunkett's request for information was received by the Council on 30 November 2005. The Council issued an e-mail to Mr Plunkett on 1 December 2005, in which it acknowledged receipt of his request. In its e-mail, the Council informed Mr Plunkett that a fee might be charged for the retrieval, collation and provision of the information he had requested.
3. In the Council's formal response to Mr Plunkett, dated 23 December 2005, the Council refused to provide the information requested on the basis of section 25(2)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA). The Council stated that the request was refused on the grounds that the information was otherwise accessible and was therefore exempt from release. The Council justified its application of the exemption by explaining to Mr Plunkett that "the information you are asking for originally sourced from yourself and you therefore should have it."
4. Mr Plunkett was dissatisfied with the Council's response and he requested a review in an e-mail to the Council, dated 24 December 2005. In his e-mail, Mr Plunkett argued that the Council had interpreted his request incorrectly. He stated that he did not possess the information that had been requested, such as the number of complaints received, acknowledged and replied to by the Council.
5. The Council acknowledged receipt of Mr Plunkett's request for review on 23 January 2006. In its letter, the Council asked Mr Plunkett to provide his reasons for requesting the review and what aspects he wished the Compliance Review Panel to review. No response appears to have been received from Mr Plunkett by the Council in relation to this letter.



6. In a letter to Mr Plunkett, dated 30 January 2006, the Council stated that its Compliance Review Panel had concluded that the section 25 exemption under FOISA had been incorrectly applied. The Review Panel concluded that Mr Plunkett was entitled to the information requested, subject to a fees notice in line with section 9 of FOISA. On 9 February 2006, the Council sent a fees notice to Mr Plunkett and informed him that the cost of providing the information was £495, meaning Mr Plunkett would have to pay a fee of £39.50.
7. Mr Plunkett was dissatisfied with the outcome of the Council's review and applied to me for a decision on 7 April 2006. The case was assigned to an investigating officer. Mr Plunkett's appeal was validated by establishing that he had made a valid request for information to a Scottish public authority and had appealed to me only after asking the authority to review its response to his request.

The Investigation

8. On 7 August 2006, my investigating officer contacted the Council in terms of section 49(3)(a) of FOISA, seeking its submissions in relation to this case. In particular, the Council was asked to provide details of how the charge for the information requested by Mr Plunkett had been calculated, since Mr Plunkett had stated in his application to me that a fees notice had been issued which was "unwarranted and excessive without explanation".
9. In its response, dated 15 August 2006, the Council provided details of how it had arrived at the projected cost of providing the information to Mr Plunkett. However, in the course of the investigation it emerged that the Council's Compliance Review Panel had underestimated the extent of the correspondence that was held by the Council in relation to Mr Plunkett's complaints as well as the work that would be involved in complying with the request.
10. In a letter to my Office, dated 28 August 2006, the Council stated that it was of the view that the information requested by Mr Plunkett should be considered exempt under section 12(1) of FOISA (Excessive cost of compliance) and provided a revised estimate of the costs that would be involved.



The Commissioner's analysis and findings

11. In this particular case, the Council informed my investigating officer during the course of the investigation that it had recalculated the cost to the Council of complying with Mr Plunkett's request and, as a consequence of this, it considered that section 12 of FOISA applied to the requested information. Taking into account the fact that a Scottish public authority can, at any point (including during the course of an investigation), submit that the cost of supplying information that has been requested would exceed the £600 limit set out in the Fees Regulations, I am obliged to consider such a submission.
12. Section 12(1) of FOISA, read in conjunction with regulation 5 of the Freedom of Information (Fees for Required Disclosure)(Scotland) Regulations 2004 (the Fees Regulations), states that public authorities are under no obligation to comply with requests for information where the cost of compliance (i.e. the authority's reasonable estimate of the costs likely to be incurred in locating, retrieving and providing the information requested) exceeds the figure of £600. Consequently, as Commissioner, I cannot require the release of information should I find that the cost of responding to any single request for information exceeds this amount.
13. The main issue to be considered in this case, therefore, is that of whether the Council was in fact correct in its assertion that the cost of responding to Mr Plunkett's request would exceed the prescribed limit of £600.
14. In its submissions to me, the Council accepted that the appropriate exemption which should have been used in this instance was that set out in section 12(1) of FOISA, where to extract the information requested would exceed the £600 threshold set out in the Fees Regulations.
15. The Council stated that the complete picture of the correspondence which Mr Plunkett had with the Council was not fully available at the time of the Compliance Review Panel. It was only after some robust discussion between several services within the Council that the true picture had emerged. In light of this, the Council's position was that, if that information had been available at the time of the original request, a notice under the terms of section 12(1) of FOISA would have been issued to Mr Plunkett.



16. The Council proceeded to outline the difficulties it had encountered in trying to ascertain the extent of the correspondence it held with regard to Mr Plunkett. It referred in particular to the wide range of issues on which Mr Plunkett had corresponded with the Council and his practice of emailing multiple services in relation to the same matter, adding that the tenor of his e-mails and the manner in which he wrote them made it extremely difficult for the Council to determine what exactly he required in the way of information or what precise complaints he was lodging against Council officers.
17. The Council stated that the number of e-mails that Mr Plunkett had sent and the time lapse between them had further compounded this problem. In one case, Mr Plunkett sent a total of 17 e-mails in a 20 minute period. It was stated that Mr Plunkett also sent e-mails to the Council some considerable time after the original request had been made, in some cases up to a year following the original e-mail.
18. The Council went on to describe the historical nature of the correspondence. It stated that Mr Plunkett had corresponded with the Council over a number of years, and as such there were extensive files held within different services of the Council which related to him. To collate the information requested accurately it would be necessary to look over files spanning several years in order to identify the original request, complaint etc, its subject matter and who it related to. This would be further compounded by the manner in which Mr Plunkett corresponded, as detailed above.
19. The Council has estimated that, in order to extract the required information, it would have to look through 22 lever arch files, 2 manilla files and approximately 2912 electronic files. These files are held in various services within the Council.
20. The Council estimated that it would take approximately 2 hours to search through each of the lever arch files and 1 hour to search through each of the manilla files. This would total 46 hours. The electronic files would take approximately 5 minutes to open, read and extract the information requested, taking into account the difficulties with the correspondence that have been outlined above. Using this assessment as a guide it was estimated that it would take approximately 242 hours to accurately examine all of the electronic files.
21. The Council estimated that, based on using one member of staff to record the information required in a suitable format to satisfy the request, the cost to the Council would be £2613. This figure was arrived at by calculating that the overall number of hours required to carry out such a task would be 288 at an hourly rate of £9.075 (top salary AP1 grade).



22. The Council also emphasised that the figure of £2613 did not include factoring in the salary of a replacement member of staff to enable the daily workload to be kept turning over, nor the research work involved in extracting letters of response to each complaint.
23. Having considered in detail the submissions made by the Council in relation to its application of section 12(1) of FOISA to the requested information, I am satisfied that the cost of complying with Mr Plunkett's request would indeed exceed the upper limit of £600 prescribed by the Fees Regulations.
24. As such, I am satisfied the Council has applied section 12(1) of FOISA correctly to the information withheld.

Decision

I find that Dumfries and Galloway Council was entitled to refuse to comply with Mr Plunkett's request for information under section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) and therefore that its reliance on section 12(1) was an appropriate response to the request in accordance with Part 1 of FOISA.

Appeal

Should either Mr Plunkett or the Council wish to appeal against this decision, there is a right of appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
19 September 2006



APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002:

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.

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

Excessive cost - prescribed amount

5. The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.