



Scottish Information
Commissioner

**Decision 228/2006 MacRoberts and the Scottish
Executive**

Information relating to the provision of parking at Scottish airports

Applicant: MacRoberts

Authority: Scottish Executive

Case No: 200501344, 200501345, 200501346 & 200501347

Decision Date: 06 December 2006

**Kevin Dunion
Scottish Information Commissioner**

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Decision 228/2006 MacRoberts and the Scottish Executive

Four requests for information concerning airport byelaws and airport policy insofar as it relates to parking and park and ride facilities – excessive cost of compliance – section 12 of FOISA – Commissioner found that the cost of compliance in each case exceeded the £600 prescribed limit set out in the Fees Regulations

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement), 12(1) (Excessive cost of compliance).

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 regulations 2, 3 and 5.

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

Facts

MacRoberts (a firm of solicitors) made a number of requests for information concerning airport byelaws and Scottish airport policy insofar as it relates to parking and park and ride facilities for travellers. The Scottish Executive (the Executive) responded to these requests by providing some of the requested information but withholding other relevant items on the grounds that they were exempt from disclosure. After seeking an internal review, MacRoberts asked the Commissioner to consider the Executive's handling of each of these requests.

However, during the investigation the Executive advised that the cost of providing this information would, in relation to each request under consideration in this decision, exceed the limit of £600 prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) and therefore that it was not required to comply with the requests by virtue of section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner found that the Executive had provided sufficient evidence to support its estimate of the cost of providing the information requested in each case. Accordingly, section 12(1) of FOISA constituted appropriate grounds for refusal to



provide the information requested by MacRoberts in each of the requests under consideration in this decision. This being so, the Commissioner did not consider the application of the exemptions cited by the Executive.

Background

1. On 1 January 2005, MacRoberts solicitors made a series of 10 separate requests for information to the Scottish Executive. This decision is concerned with four of these requests, which sought the following:
 - a) All correspondence, memoranda and other records pertaining to the issue, amendment or repeal of any airport byelaws for any Scottish airport (200501344).
 - b) All minutes of meetings, notes, briefing papers etc in relation to Scottish airport policy insofar as it relates parking (200501345).
 - c) All minutes of meetings, notes, briefing papers etc in relation to Scottish airport policy insofar as it relates to park and ride facilities for air travellers (200501346).
 - d) All minutes of meetings, notes, briefing papers etc in relation to Scottish airport policy insofar as it relates to airport byelaws (200501347).

I will refer to these requests as request (a) – (d) respectively in this decision. The numbers above refer to the case reference assigned by my Office to each request.

2. At the same time, MacRoberts made six further information requests. Although these requests also ultimately led to applications for decision by me, only the four requests above are the subject of this decision.
3. In subsequent communications with the Executive, MacRoberts confirmed that these requests for information should not be considered as relating to the airports owned and operated by Highlands and Islands Airports Ltd. Instead, MacRoberts confirmed that the requests should be interpreted as relating only to Edinburgh, Glasgow, Aberdeen and Prestwick airports.
4. The Executive responded to each of requests (a)-(d) in separate letters, each dated 2 February 2005. In each case, the Executive confirmed that it held relevant information, and provided some items along with a list of published documents. However, the Executive refused to supply other information on the grounds that the exemptions in sections 29(1), 30(b)(i), 30(b)(ii), 36(1) and 38(1)(b) of FOISA applied. The Executive concluded that the public interest in maintaining the relevant exemptions outweighed the public interest in the disclosure of the information withheld.



5. On 28 February 2005, MacRoberts sent a series of emails requesting reviews of the Executive's responses to each of the requests (a)-(d). In each case, MacRoberts asked the Executive to expand on the process by which the refusal was reached, and to explain why, in relation to each piece of information withheld, such withholding was in the public interest.
6. The Executive notified MacRoberts of the outcome of its reviews in relation to (a)-(d) in a series of letters dated 26 March 2005. In each case, the Executive's original decision was upheld in full.
7. MacRoberts then made a series of applications for decision by me concerning the Executive's handling of requests (a)-(d). MacRoberts' applications questioned the Executive's application of the various exemptions relied upon. MacRoberts also indicated that they considered the public interest to favour disclosure in each case, as it would enhance public scrutiny of the Executive's decision making process.
8. MacRoberts' four applications for decision were received by the Commissioner on 8 April 2005 and allocated to an investigating officer. Each case was then and then validated by establishing that MacRoberts had made a valid information request to a Scottish public authority under FOISA (i.e. the Executive) and had appealed to me only after asking the Executive to review its response to the request.

Investigation

9. The four cases to which this decision relates were investigated together, along with six further related cases. Two of these six cases were resolved informally, and the other four will be the subject of a separate decision.
10. The investigating officer formally contacted the Executive on 28 April 2005 in terms of section 49(3)(a) of FOISA. The Executive was asked to comment on the 10 applications from MacRoberts that were being investigated together. The Executive was asked to provide copies of information withheld in response to each of the requests under consideration, and to provide details of its reasoning when judging that the various exemptions applied.
11. In communications with my Office, the Executive explained that a large number of documents had been identified in response to these requests and that there would be practical difficulties in providing these. A schedule detailing relevant documents was provided.



12. The investigating officer visited the Executive in June 2005 in order to view relevant files and documents on site and to discuss the cases with staff in the Executive's FOI Unit and Aviation Policy Branch. In the course of this visit, it became clear that in order to respond to requests (a)-(d), the task undertaken by the Executive had involved reviewing a large number of files and had identified a large number of relevant documents.
13. In the first instance the investigation into the cases concerned with requests (a)-(d) focussed on the consideration of exemptions.
14. Given the volume of information concerned, the investigating officer sought to achieve a partial settlement between the two parties. Through the narrowing of the scope of the requests for information by MacRoberts and the disclosure of further relevant information by the Executive, it was possible to resolve two related cases informally. However, no informal resolution was reached in relation to the cases concerned with requests (a)-(d).
15. On 21 June 2006, the investigating officer wrote to the Executive asking it to confirm whether or not it believed the cost of responding to MacRoberts' information requests would exceed the £600 prescribed limit set out in the Fees Regulations. This request was prompted by my understanding of the provisions of section 12 of FOISA.
16. Section 12 relates to excessive cost of compliance, and states under section 12(1):

“Section 1(1) [of FOISA] 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...”
17. The Scottish Ministers have, under regulation 5 of the Fees Regulations, set this prescribed amount at £600.
18. Section 12(1) of FOISA, read in conjunction with regulation 5 of the Fees Regulations, therefore states that public authorities are under no obligation to comply with requests for information where the cost of doing so would exceed this figure of £600. Consequently, as Commissioner, I have no power to force the release of information should I find that the cost of responding to any single request for information exceeds this amount.
19. In this series of cases, where wide ranging requests for information had prompted a search of a large number of files to identify a large number of documents, it appeared that there was a significant possibility that the cost of compliance would exceed the prescribed limit.



20. Following a series of exchanges with the investigating officer, the Executive confirmed that it believed that the costs of complying with each of requests (a)-(d) would exceed the £600 prescribed limit. (The Executive did not consider this to be the case for the other four related cases that were still under investigation at that point, and so these cases will be considered separately in another decision notice).
21. 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 whether section 12(1) of FOISA would prevent me from ordering disclosure of the information in these cases.
22. The Executive was asked to make a further submission to demonstrate how it had reached the view that the cost of compliance with each of requests (a)-(d) would exceed the £600 prescribed limit. The Executive's submission was received on 10 November 2006.

The Commissioner's analysis and findings

23. The Executive undertook a significant amount of work in order to respond to the series of requests under consideration in this decision. This involved reviewing the contents of more than 100 files or part files to identify relevant information relating to 10 separate (but partly overlapping) requests. Although some information was disclosed in response to MacRoberts' information requests, the Executive withhold a considerable number of the documents identified through this process.
24. MacRoberts have asked me to consider whether the Executive correctly applied exemptions when refusing to provide this information, and whether information previously withheld should be disclosed. However, the Executive confirmed in the course of my investigation that it believed that the cost of compliance with requests (a)-(d), in relation to each separate request, exceeded (or would exceed) the prescribed limit of £600.
25. For any request for which I accept that this is the case, under section 12(1) of FOISA, I would be unable to require the Executive to comply with the request, even if I were to judge that the exemptions relied upon by the Executive had been wrongly applied. Therefore, I must consider the costs of compliance before going onto any consideration of exemptions.



26. When addressing this matter, each of the requests (a)-(d) must be considered separately. The Executive was asked to provide estimates of the projected costs that it believed would be incurred in complying separately with each request.
27. The Executive's submission estimated that the following costs would be incurred in locating, retrieving and providing relevant information for each of requests (a)-(d);

Request	Number of file to search	Search cost estimate	Other cost estimate	Total Projected Cost
(a)	73	£1095	£127.50	£1222.50
(b)	110	£1650	£352.50	£2002.50
(c)	109	£1635	£187.50	£1822.50
(d)	73	£1095	£180	£1275.00

28. As requested by my office, these cost estimates were based in part on the Executive's knowledge of the process followed when the requests were first considered. However, they also took into consideration the hypothetical question of what would be involved had each case been considered separately.
29. I am satisfied , based on the exercise actually undertaken in response to MacRoberts' requests for information (as verified by my investigating officer in the course of her visit to the Executive in June 2005), that the number of files to be searched used in the calculation of projected costs is reasonable. In reaching this view, I note that requests (a)-(d) are very broad in that they cover very wide subject areas without any specification of time period. I am satisfied that in order to identify relevant documents a search of a wide range of files would be (and was) required.
30. The Executive's projected costs above are based on the assumption that one hour would be spent searching each file and, for each file containing relevant information, a further half an hour of staff time would be used in preparing and copying information for release.
31. I am satisfied that, for each of these cases, the Executive has provided a reasonable estimate that suggests that the cost of compliance with the request would (or did) exceed the £600 prescribed limit set out in the Fees Regulations.



32. I am satisfied that the cost estimates provided are supported by both the evidence of the actual exercise undertaken by the Executive when these requests were first received, and by the calculations of costs based on consideration of each request in isolation.
33. In these circumstances, I accept that section 12(1) of FOISA applies to each of MacRoberts' information requests (a)-(d) and therefore am not required to, and will not, consider in this decision notice whether the exemptions cited by the Executive in response to these requests should be upheld.

Decision

I find that section 12(1) of FOISA constitutes appropriate grounds for refusal of MacRoberts' four information requests set out in paragraph 1 (a)-(d) above in the circumstances of this case. As I am not required to do so, I have not gone onto consider the application of exemptions by the Executive in relation to the information requested by MacRoberts.

I have therefore found no breach of Part 1 of FOISA in the Executive's handling of these requests for information. I do not require the Executive take any steps as a consequence of this decision notice.

Appeal

Should either the Executive or MacRoberts wish to appeal against this decision, there is a right to 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
06 December 2006



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.

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

Interpretation

2. - In these Regulations-

"the Act" means the Freedom of Information (Scotland) Act 2002;

"prescribed amount" means the amount prescribed in regulation 5; and

"projected costs" has the meaning set out in regulation 3.

Projected costs

3. - (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.

Excessive cost – prescribed amount

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