



Scottish Information
Commissioner

**Decision 012/2008 Councillor Paul Welsh and North Lanarkshire
Council**

Details of advertised vacancies and status of successful applicants

Applicant: Councillor Paul Welsh
Authority: North Lanarkshire Council
Case No: 200701301
Decision Date: 24 January 2008

Kevin Dunion
Scottish Information Commissioner

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Decision 012/2008 Councillor Paul Welsh and North Lanarkshire Council

Numbers of internal and external candidates appointed to permanent and temporary vacancies advertised by North Lanarkshire Council – section 12 of the Freedom of Information (Scotland) Act 2002 (Excessive cost of compliance) applied – upheld by the Commissioner

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement) and 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 these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Councillor Welsh requested from North Lanarkshire Council (the Council) the number of vacancies advertised by the Council, whether permanent or temporary, broken down according to whether internal or external candidates were successful in each case. The Council responded by refusing his request citing section 12 of FOISA, as the cost to the Council in providing the information would be in excess of the £600 maximum set out in the Fees Regulations. Following a review, as a result of which the Council upheld its initial refusal, Councillor Welsh remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had applied section 12(1) of FOISA appropriately and therefore had dealt with Councillor Welsh's request for information in accordance with Part 1 of FOISA.



Background

1. On 15 May 2007, Councillor Welsh wrote to North Lanarkshire Council with a request for information in the following terms:

I wish to know how many advertised vacancies across all departmental functions of North Lanarkshire Council, have internal or external candidates been successful for the vacancies under the Council's payroll.

Information should include all vacancies under a temporary appointment basis also to the Council. Grateful if the information is split into the following years 2005 and 2006.

2. The Council wrote to Councillor Welsh in response to his request for information on 13 June 2007, advising him that the cost of complying with the request would exceed the amount prescribed in the Regulations made by the Scottish Ministers and as such was exempt in terms of section 12 of FOISA.
3. On 18 June 2007, Councillor Welsh wrote to the Council requesting a review of its decision.
4. The Council wrote to notify Councillor Welsh of the outcome of its review on 12 July 2007. It upheld the original decision, informing Councillor Welsh that for one department alone the estimated cost would be £1,841.00.
5. On 1 October 2007, Councillor Welsh wrote to my Office, stating that he was dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. After further correspondence, the application was validated by establishing that Councillor Welsh had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



The Investigation

7. On 7 November 2007, the investigating officer wrote to the Council giving it notice of the application and requesting its comments in terms of section 49(3)(a) of FOISA. In particular, the Council was asked to provide a detailed breakdown of the costs that it would incur in responding to Councillor Welsh's request, in order to substantiate its reliance on section 12 of FOISA.
8. The Council responded with its comments on the application and provided evidence to support its application of section 12 of FOISA. This was clarified in the course of further correspondence.

Submissions from the Council

9. From the Council's responses to Councillor Welsh and to me, I understand that Councillor Welsh has been interpreted as seeking, for the two years specified, a breakdown of the overall number of vacancies according to whether internal or external candidates were successful in each case. Having considered Councillor Welsh's request and all other relevant communications, I would conclude that this was the only reasonable interpretation of the request. In particular, I am satisfied that the request could not be broken down to allow a meaningful partial response.
10. In its submissions, the Council provided a breakdown of the estimated cost of providing the information requested in relation to one department only. The Council explained that in 2005 and 2006, this one department alone had recruited 747 members of staff and advised that its records management system would have to be checked to establish if the individuals were still employed, in order to ascertain whether their files would be active or archived.
11. The Council further explained that having established where each file was located, it would have to be accessed and checked manually to establish whether the successful individual was an internal or external candidate.
12. The Council also provided estimated timescales to locate, retrieve and provide the information requested, based on actual times required to provide the requested information per record derived from actual *ad hoc* enquiries.

Submissions from Councillor Welsh

13. In his application to me, Councillor Welsh advised that he was dissatisfied as no information regarding his request had been provided and he believed the Council to be using section 12 as a general "catch all" so as not to comply with the FOI request.



The Commissioner's Analysis and Findings

14. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both parties and I am satisfied that no matter of relevance has been overlooked.

Section 12(1) – Excessive cost of compliance

15. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request will exceed the amount prescribed for that purpose in the Fees Regulations (currently £600, set by regulation 5). If I am satisfied that the cost of compliance, on a reasonable estimate, will exceed that figure, I cannot require disclosure of the information requested.
16. The projected costs that a Scottish public authority can take into account in relation to compliance with a request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the public authority reasonably estimates it will incur in locating, retrieving and providing the information requested. The public authority may not charge for the cost of ascertaining whether it actually holds the information or whether or not it should provide the information. The maximum hourly rate a public authority can charge for staff time is £15 an hour.
17. The Council has advised me that the cost of providing the information Councillor Welsh has requested for 2005 and 2006, for one department alone, would be £1,485.75.
18. The Council intimated that the £1,485.75 estimated cost was based on the need to examine individual records held in relation to the 747 persons appointed during the period requested. The examination of these records and the identification, extraction and collation of the relevant information, would require a total of approximately 116 hours work.
19. The Council provided me with some information as to the breakdown of the hourly rates that it was applying for staff time. In the case of the staff members involved in identifying and extracting the relevant information the Council claimed £12.75, while for collating the relevant information the Council claimed the maximum hourly rate of £15 for three of the 116 hours.



20. On my investigating officer seeking clarification, the Council stated that the above hourly rate of £12.75 was inclusive of overtime payment as the work required to provide the information requested would (because of its volume) require to be undertaken on an overtime basis. I cannot accept the rate of £12.75 per hour on that basis. FOISA places a duty on Scottish local authorities to provide information when requested and requests should be dealt with as part of the day to day business of the authority and prioritised on the basis as any other statutory responsibility. There may be specific reasons why certain work requires to be carried out on an overtime basis, but I cannot accept an argument (as the Council appears to have presented here) that the whole of a given task requires to be performed at overtime rates simply because of its volume.
21. In this particular case, however, even after the reduction of the overtime hourly rate of £12.75 to the standard hourly rate for the staff concerned of £8.50 (which I accept as reasonable in the circumstances), the total estimated cost of complying with the request for one department alone would be £1,005.50. I accept this as a reasonable estimate in the circumstances. I note the higher rate of £15 per hour applied for the collation of the relevant information and its entry on a database and accept that it would be reasonable to allow for at least some of this more complex work being done by staff at a higher grade than those carrying out the basic checking and extraction: however, given that even a uniform rate of £8.50 for all of the work would result in an estimated cost of £986.00 for one of the Council's six departments, I do not consider it necessary to determine whether the maximum rate of £15 would be appropriate in the circumstances for these three hours.
22. I am therefore satisfied that the cost of complying with Councillor Welsh's request would exceed the prescribed limit laid down in the Fees Regulations. As a result, I am satisfied that the Council has relied on the provisions of section 12(1) of FOISA correctly.

Decision

I find that North Lanarkshire Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Councillor Welsh, in that it would have cost more than £600 to provide him with the information he requested and therefore section 12(1) of FOISA applied to the request.



Appeal

Should either Councillor Welsh or the Council wish to appeal against this decision, there is an 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 notice.

Kevin Dunion
Scottish Information Commissioner
24 January 2008



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

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.