



Scottish Information
Commissioner

**Decision 022/2007 Mr John McCubbin and North
Ayrshire Council**

*Information relating to the installation of new central heating
systems*

**Applicant: Mr John McCubbin
Authority: North Ayrshire Council
Case No: 200601438
Decision Date: 6 February 2007**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
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Decision 022/2007 Mr John McCubbin and North Ayrshire Council

Request for information relating to the installation of new central heating systems by North Ayrshire Council – some information released but some withheld under section 12 of the Freedom of Information (Scotland) Act 2002 – Commissioner satisfied that North Ayrshire Council acted correctly in withholding the information under section 12

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 12(1) (Excessive cost of compliance); 15(1)(Duty to provide advice and assistance)

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

The full text of each of these provisions forms part of the Appendix attached to this decision. The Appendix forms part of this decision.

Facts

Mr McCubbin emailed North Ayrshire Council (the Council) requesting information relating to the installation of central heating systems in its housing stock. Amongst other items, Mr McCubbin specifically requested the number of P plus gas central heating radiators the Council had installed in the last five years.

The Council responded to Mr McCubbin's requests but provided only a general response to the request for the number of P plus radiators installed.

Mr McCubbin was dissatisfied with the Council's response to this specific request and asked it to review its decision.

Upon review, the Council stated that it was refusing to supply any further detailed information on the grounds that the cost of doing so would exceed the £600 threshold.



Mr McCubbin was dissatisfied with the response from the Council and submitted an application for a decision by the Commissioner.

Following an investigation, the Commissioner found that the Council would have incurred costs in excess of the £600 limit set by the Fees Regulations for the purposes of section 12(1) of FOISA in complying with Mr McCubbin's request and therefore acted in accordance with Part 1 of FOISA in not supplying the information to Mr McCubbin.

Background

1. On 1 August 2006, Mr McCubbin requested by e-mail, information relating to the installation of new central heating systems in Council housing in North Ayrshire. Mr McCubbin specifically requested the following:
 - a) How many P plus gas central heating radiators has the Council installed in the last five years?
 - b) Is the specification on all new central heating systems being done with this P plus radiator system?
 - c) Is it normal for a contractor to design the central heating systems for Council housing stock?
 - d) Is it normal to increase the BTUs (British thermal units) in all new installations?
2. In its initial response, dated 4 August 2006, the Council supplied Mr McCubbin with responses to questions (a) - (d). In responding to question (a), however, the Council simply stated that it would have installed thousands of radiators of this type in its housing over the last five years.
3. This initial response was later clarified by the Council in an e-mail dated 10 August 2006. In this response the Council explained to Mr McCubbin that it would be unable to provide the exact number of P Plus radiators installed by the Council in the last five years. The Council explained that the information was not readily available and would entail in excess of 40 hours of work.
4. On 10 August 2006, Mr McCubbin requested that the Council review its decision with regard to part (a) of his request.
5. The Council responded to Mr McCubbin's request for review on 29 August 2006, informing him that the Council was continuing to refuse to provide the information, on the grounds that the cost of doing so would exceed the threshold set in terms of the Freedom of Information legislation.



6. Mr McCubbin was dissatisfied with this response and applied to the Scottish Information Commissioner for a decision on 1 September 2006.
7. The application was then validated by establishing that Mr McCubbin had made a request for information to a Scottish public authority and had applied for a decision only after asking the authority to review its response to his request.

The Investigation

8. A letter was sent to the Council on 11 October 2006, in terms of section 49(3)(a) of FOISA, giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was invited to comment on matters raised by the applicant and on the application as a whole.
9. The Council responded on 31 October 2006, confirming that it upheld the position detailed in its review letter to Mr McCubbin dated 29 August 2006.
10. My Office contacted the Council again on 8 November 2006 seeking clarification on a number of points.
11. The Council responded on 17 November 2006 providing the clarification sought and a further detailed estimate of the costs that would be incurred in responding to Mr McCubbin's request.

The Commissioner's Analysis and Findings

12. 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 Mr McCubbin and the Council and am satisfied that no matter of relevance has been overlooked.
13. 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..."



14. The Scottish Ministers have, under regulation 5 of the Fees Regulations, set this prescribed amount at £600.
15. 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.

Submissions from the Council

16. The Council argued that it would incur a cost of £724.59 in providing Mr McCubbin with the information requested.
17. The Council submits that the contracts awarded for the installation of central heating radiators cover many houses, with each contract covering different types of houses and requiring a variety of central heating systems. Each contract includes a chart which records the relevant detail of houses including the different house types. Each house type will also have a particular set of contract drawings. The Council explain that these drawings can be quite large in scale and from these drawings it is possible to identify which houses have P plus radiators installed. However, not every house of a certain type would have P plus radiators installed and accordingly it would be necessary to check every drawing for every house to assimilate the information necessary to answer Mr McCubbin's request.
18. The information received from the Council's Technical Services indicated that a number of different staff would be involved in identifying the information required.
19. The Council explains that an Archivist would be involved in finding the papers for the particular contract. Administrative staff would be required to take the contract documents and identify the relevant parts of the contract papers for further examination. The Senior Clerk of Works would be involved in looking at the contract elements and an Architectural Technician in identifying the relevant data on P plus radiators.
20. The Council indicates that the posts described above cover a variety of grades from GS3-Tech 4/5. Averaging the costs of these posts across the various tasks, the Council estimates that a staff cost of £8.73 per hour would be incurred (this was revised from £15 per hour during correspondence with my Office).



21. The Council has identified that within the last five years 33 central heating contracts were awarded. Within these contracts the Council estimates that there would be in the region of 300 drawings. The Council estimates that the time required to review each contract document would be 15 minutes followed by a further 15 minutes per set of contract drawings, resulting in 83 hours of work.
22. The Council therefore estimates that the total cost incurred to provide Mr McCubbin with this information would be £724.59
23. The Council further states that it considered the nature of Mr McCubbin's request (in the context of his other dealings with it) as a wide-ranging enquiry as to the frequency of the use of P Plus radiators and therefore concluded that provision of the relevant information in respect of a shorter period would not satisfy his request.
24. It is clear from the estimations provided by the Council that the cost of providing the information to Mr McCubbin would exceed the £600 prescribed limit as defined by the Fees Regulations. I am satisfied that the Council's estimate is a reasonable one in the circumstances.
25. I therefore conclude that the Council was not obliged to comply with the request as the cost of doing so would have exceeded the prescribed limit of £600.

Section 15: Duty to provide advice and assistance

26. Under section 15(1) of FOISA, public authorities are obliged to provide reasonable advice and assistance to a person who proposes to make, or has made, a request for information. The Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code) advises under paragraph 20 that appropriate help could include an indication of what information could be provided within the cost ceiling, in instances where a request would be refused on cost grounds.
27. I note, however, that the Council failed to offer such advice in its communications with Mr McCubbin in relation to this case. I note the Council's assertion that it did not consider this necessary in the circumstances, but I am not satisfied from the information provided to me that this conclusion was justified. Therefore, I consider that it would have been reasonable for the Council to have offered Mr McCubbin such advice.



Decision

I find that North Ayrshire Council (the Council) would have incurred costs in excess of the £600 limit set by regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 in complying with Mr McCubbin's request. The Council therefore acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), and in particular with section 12(1), in not supplying the information to Mr McCubbin.

However, also find that, in failing to provide reasonable advice and assistance to the Mr McCubbin in terms of section 15(1) of FOISA, the Council failed to comply with Part 1 of FOISA.

I therefore require North Ayrshire Council to contact Mr McCubbin within 45 days of receipt of this decision notice, with a view to discussing with him what relevant information could be provided within the cost ceiling.

Appeal

Should either Mr McCubbin or the North Ayrshire Council wish to appeal against the Commissioner's 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 of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
6 February 2007



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.

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.