

Decision Notice



Decision 048/2010 Mr Tom McPherson and Glasgow City Council

Cemetery lair records

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Summary

Mr Tom McPherson (Mr McPherson) requested from Glasgow City Council (the Council) the information contained in the lair books for a specific cemetery. The Council responded by withholding the information in terms of the exemptions at sections 33(1)(b) and 38(1)(b) of the FOISA. Following a review, during which the Council upheld its original decision and additionally cited the provisions in sections 12(1) and 25(1) of FOISA, Mr McPherson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the projected cost of compliance would exceed the limit of £600 set for the purposes of section 12(1). He therefore found that the Council was not obliged to respond to the information request. He concluded that the Council had dealt with Mr McPherson's request in accordance with Part 1 of FOISA.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 11(1) and (2) (Means of providing information) 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 the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 7 May 2009, Mr McPherson wrote to the Council, asking why he could not access the lair books for Craigton Cemetery, as he would like to make a digitised copy of the records. Mr McPherson pointed out that he was aware that a microfiche copy of the lair records was available at the Mitchell Library but commented that it was an out of focus 35mm copy.
2. The Commissioner has interpreted this request as Mr McPherson asking for the information contained within the lair books. It is clear from submissions received from the Council that this is also how the Council interpreted Mr McPherson's request.



3. The Council responded on 3 July 2009 and withheld the information in terms of sections 33(1)(b) and 38(1)(b) of FOISA. It confirmed that a microfiche copy of the information was held at the Mitchell Library, but commented that this copy had been obtained by the City Archivist from a private record rather than supplied by the Council's Land and Environmental Services Department. It stated that the Council was not obliged to update the version of the records held by the Library.
4. On 6 July 2009, Mr McPherson wrote to the Council requesting a review of its decision.
5. The Council notified Mr McPherson of the outcome of its review on 31 July 2009 and upheld the application of the exemptions at sections 33(1)(b) and 38(1)(b) of FOISA. At this stage, it also applied the exemption in section 25(1) of FOISA, on the basis that information Mr McPherson had requested could be obtained from its Genealogy Centre upon payment of a fee of £61 for each lair record to be searched.
6. The Council also claimed that it was not obliged to respond to Mr McPherson's information request, on the basis that, in terms of section 12(1) of FOISA, the cost of complying would exceed the £600 prescribed limit set out in the Fees Regulations.
7. On 4 August 2009, Mr McPherson wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
8. The application was validated by establishing that Mr McPherson had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

9. The investigating officer subsequently contacted the Council on 25 August 2009, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on the provisions of FOISA it considered applicable to the information requested.
10. The Council responded by providing its submissions on the application of the provisions at sections 12(1), 25(1), 33(1)(b) and 38(1)(b) of FOISA. Additional comments on a number of points were provided by the Council in follow-up correspondence with the investigating officer.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered the submissions made to him by both Mr McPherson and the Council and is satisfied that no matter of relevance has been overlooked

Section 12(1) of FOISA - excessive cost of compliance

12. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Fees Regulations. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to a request for information exceeds this amount.
13. The projected costs that 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, which the public authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The public authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is set at £15 per hour.
14. The Council submitted that the cost of providing the information contained within the lair books to Mr McPherson in a digitised form would cost more than the upper limit of £600. The Council explained that the records for this particular cemetery comprised of thirty two ledgers with each ledger containing 200 pages. The volumes are larger than A3 in size and cannot be copied using a conventional photocopier. The Council explained also that the ledgers are fragile and contain historic documents. As such, they cannot be unbound, and should be handled with particular care.
15. The Council went on to explain that when a request is received from a member of the public for information contained within the ledgers, that it would be copied by hand from the books and provided to the applicant upon payment of a set fee (currently £61 for each lair record searched.)
16. In order to provide a copy of the information contained within the lair books to Mr McPherson, the Council submitted that it would need to purchase a specialist scanner. The Council's Land & Environmental Services Department received a quotation for the purchase of such a scanner as follows:

Bookeye 3 A1	£28,000
Bookeye 3 A2 with A1 Plate.....	£17,800
Delivery Installation and training.....	£500



Service Contracts:

Bookeye A1.....£2400

Bookeye A2.....£1600

17. The Council went on to state that officers in its Cemeteries and Crematoria Department had consulted with fellow professionals in the Mitchell Library and had been advised that this type of work would involve approximately 10 minutes to scan each page. As the grade of staff member who would undertake this type of work would be CA2 (annual salary £15,101 - £16,512) the Council submitted, the hourly rate of cost to the Council would work out at between £7.85 and £8.58.
18. On the above basis, even without taking account of the purchase cost of the cheaper scanner at £17,800, the Council argued that compliance with Mr McPherson's request would exceed the £600 upper limit.
19. The Commissioner has also carried some research into the costs of digitising burial records (for example the estimated cost involved in digitising the burial records held by Angus Council is available online in the Infrastructure Services Committee Report no. 314/09.)
<http://www.angus.gov.uk/ccmeetings/reports-committee2009/Infrastructure/314.pdf>
20. The Commissioner would treat with caution the Council's submission that it would take as long as 10 minutes per page to scan the lair books and is of the view that this time could be considerably lessened. However, he accepts that even if the time taken to scan each page was reduced to one minute, the cost to the Council, based on 32 volumes each containing 200 pages, at an hourly rate of £7.85, would be £837.33. This would be before adding on the cost of purchasing an appropriate specialist scanner.
21. Mr McPherson has accepted that the cost of providing the information within the lair books in a digitised format would exceed the £600 prescribed limit. He was asked by the investigating officer whether he would want to have access to the information within the lair books for inspection purposes only.
22. In response, he explained that it would only serve his purpose to be able to have a digitised copy of the lair books and that access to the lair books for inspection only would not be sufficient for his requirements. For this reason, the Commissioner has not considered in this case whether the Council could supply the information in an alternative form within the cost threshold.
23. Mr McPherson submitted that he himself, through his digital archiving company, would be prepared to undertake the copying work of digitising the lair books at no cost to the Council and would provide the Council with a copy free of charge.
24. When asked to comment on this proposal, the Council indicated that it would not be willing to allow Mr McPherson's company to make a digital copy of its lair books.



25. The Commissioner accepts that the Council is within its rights to decide how and by whom any copying of its records should be carried out. He has made Mr McPherson aware that it is outwith the Commissioner's remit to compel the Council to allow a digitised copy of their lair books to be made by Mr McPherson's company.
26. He accepts that the cost to the Council of providing Mr McPherson with the information contained in the lair books in a digitised format would exceed the limit of £600 set for the purposes of section 12(1) of FOISA.
27. Consequently, he is satisfied that the Council was entitled to rely on section 12(1) of FOISA in relation to Mr McPherson's request and therefore was under no obligation to comply with the request.

Interpretation of the information request

28. As noted above, the Commissioner has interpreted the original request by Mr McPherson as a request for the information contained in the lair books in question. However, he recognises that the request could be read as a request simply to access the lair books in order to make a digitised copy of the books. (During the investigation, it was not possible to clarify the original intention behind Mr McPherson's request.)
29. In the event that the intention behind the request was simply for access to the lair books (as opposed to receiving a copy of the books), the Commissioner considers it appropriate to consider the terms of section 11 of FOISA.
30. Section 11 provides that, where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in section 11(2), the authority must, so far as it is reasonably practicable, give effect to that preference.
31. Section 11(2) provides three ways in which access to information can be provided (these are set out in full in the Appendix).
32. The first option, set out in section 11(2)(a), i.e. the provision of a copy of the information, has been considered in some detail above. If Mr McPherson did want a copy of the information, then the Council would not have been under any obligation to deal with the request on the basis that the cost of complying with the request would exceed the prescribed limit set out in the Fees Regulations.
33. It is clear that Mr McPherson did not ask for a digest or summary of the information, as set out in section 11(2)(b).



34. The third option, set out in section 11(2)(c), is the provision to the applicant of a reasonable opportunity to inspect a record containing the information. If it is the case that Mr McPherson wishes to take a digital copy of the records as part of his inspection, the Commissioner considers, taking into account matters such as the time which it would take to digitise the records and the need for a member of the Council's staff to be present while this is happening (particularly given the condition of some of the volumes and the fact that some of the information is likely to be exempt under section 38(1)(b) of FOISA), that it is not reasonably practicable for the Council to give effect to this preference.

DECISION

The Commissioner finds that Glasgow City Council (the Council) complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr McPherson. He finds that section 12(1) of FOISA applied in this case, and so the Council was under no obligation to respond to Mr McPherson's request.

Appeal

Should either Mr McPherson or Glasgow City 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
18 March 2010



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.
...
- (6) This section is subject to sections 2, 9, 12 and 14.

11 Means of providing information

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as it is reasonably practicable, give effect to that preference.
- (2) The means are –
 - (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
 - (b) such provision to the applicant of a digest or summary of the information; and
 - (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.

...



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.

...

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.