

# Decision Notice



Decision 053/2011 Mr George Green and East Lothian Council

Purchase of audio-visual equipment

Reference No: 201002293

Decision Date: 14 March 2011

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**Kevin Dunion**

Scottish Information Commissioner

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Doubledykes Road  
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## Summary

Mr Green asked East Lothian Council (the Council) for information about the money spent on purchasing audio-visual equipment during the last three years, audio-visual equipment repaired during that period and the suppliers used by the Council.

The Council provided some information, but Mr Green was not satisfied with its response and asked for a review. After review, the Council provided some additional information in relation to part of his request, but advised that the cost of complying with the first part of his request would exceed the sum of £600 prescribed for the purposes of section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Mr Green subsequently applied to the Scottish Information Commissioner for a decision on that point.

The Commissioner accepted that it would cost more than £600 to provide all information covered by the terms of Mr Green's request, and therefore that the Council was not obliged to comply with the request. However, he also found that the Council had failed to comply with section 15(1) of FOISA in failing to provide reasonable advice and assistance to Mr Green in relation to his request. In the circumstances, the Commissioner did not require the Council to take any action in relation to this failure.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance) and 15 (Duty to provide advice and assistance)

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

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1. On 18 October 2010, Mr Green asked the Council to provide the following information:
  - a) How much money has been spent on new TV, Video, Audio, DVD equipment in the last 3 years?
  - b) What electronic equipment (TV, Video, Audio, DVD) has been repaired in the last 3 years?
  - c) What are the names of the suppliers of this new equipment?
  - d) What is the Council's position on protecting the environment and reducing costs?
2. On 15 November 2010, the Council responded to Mr Green's request. In relation to his first question, it advised that it did not record spending at the level of detail requested, but provided an estimate of £8,000 based on a consultation with Council departments. In relation to the second question, it advised that the answer was "nil". In relation to the third question, the Council provided the names of three companies.
3. Mr Green wrote back on the same day to request a review of the Council's response. He did not consider the Council's response provided a full answer to his request, and asked for "nothing less than [the] accurate detailed account of what was asked". He also pointed out that the Council had not answered the last part of his request.
4. On 14 December 2010, the Council wrote to Mr Green with the outcome of its review. The Council provided Mr Green with a link to information on its website which would explain its position on protecting the environment and reducing costs. In relation to the first part of his request, the Council advised Mr Green that it would cost in excess of £600 to provide more detailed information about the money spent on new audio-visual equipment (£600 being the amount prescribed for the purposes of section 12(1) of FOISA (Excessive cost of compliance)).
5. Mr Green remained dissatisfied with the Council's response, and applied for a decision from the Commissioner on 14 December 2010. He did not accept that it would be too costly to retrieve information about equipment supplied by two companies.
6. The application was validated by establishing that Mr Green had made a request for information to a Scottish public authority and had applied for a decision from the Commissioner, in terms of section 47(1) of FOISA, only after asking the authority to review its response to that request. The case was allocated to an investigating officer.



## Investigation

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7. On 17 December 2010, the Council was notified in writing that an application had been received from Mr Green and was asked to provide any comments it wished to make on the application (as required by section 49(3)(a) of FOISA). The Council was also asked for more explanation of the work involved in retrieving and extracting the information from the relevant invoices, and about the extent of the consultation which had produced the figure of £8,000 (as notified to Mr Green in the Council's initial response to his request).
8. On 21 January 2011, the Council provided its comments on Mr Green's application, along with the additional information requested by the investigating officer. The Council agreed that Mr Green should receive a copy of a document showing how the figure of £8,000 had been calculated, and another document showing a list of payments made to the companies with whom the Council had an official contract to supply audio-visual equipment.
9. This information was supplied to Mr Green. He felt that a decision from the Commissioner was still required.
10. On 25 January 2011, the Council was asked for some further information about the way it had calculated the cost of retrieving all information covered by Mr Green's request. The Council provided this information on 16 February 2011.
11. The Council's responses are considered in detail in the next part of this decision notice.

## Commissioner's analysis and findings

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12. In coming to a decision on this matter, the Commissioner has considered all of the submissions which have been presented to him and is satisfied that no matter of relevance has been overlooked.
13. The Commissioner has interpreted Mr Green's request for review (and therefore his application) as relating to part a) of his information request only.

### Cost of providing the requested information

14. In part a) of his request, Mr Green asked how much money had been spent on new audio-visual equipment in the last 3 years. The Council initially provided Mr Green with an estimated total of £8,000, based on information obtained from consultation with individual Council departments. Mr Green was not satisfied that the information was sufficiently accurate or detailed. The Council acknowledged that it was likely to hold other information covered by his request, but advised that, as the cost of providing this information would exceed the £600 limit specified in the Fees Regulations for the purposes of section 12(1) of FOISA, it was not required to release the information.



15. 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. In terms of regulation 5 of the Fees Regulations, this is £600. 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.
16. During the investigation, the Council provided the Commissioner with a list of payments to the Council's official suppliers of audio-visual equipment (Document 14, the second document referred to in paragraph 8 above). The Council advised that this did not represent a complete record of the Council's spending on audio-visual equipment, as Council departments were free to purchase such equipment from other suppliers, should they wish to do so. Any of the 558 officers holding Council credit cards could have made such purchases.
17. The Council was asked how many invoices would have to be scrutinised in order to obtain a complete record of spending on audio-visual equipment, and how long this might take. The Council found this impossible to answer. It explained that its accounting system did not have an individual ledger code for audio-visual equipment, and that each transaction for the last three years throughout the Council would have to be examined to establish whether it related to such equipment. In addition, each of the 558 Council credit card holders would have to examine all their entries for the three-year period; it advised that each card holder retained their own statements.
18. The Council was asked why each credit card holder would have to go through their own payments record, and why this would take an hour in each case. The Council was asked whether a single member of staff could undertake a search of the credit card statements, and if so how long this would take.
19. The Council explained that monthly files detailing credit card purchases were stored on a shared electronic folder accessible to Finance department staff. However, this did not provide sufficient information to enable a single member of staff to check all entries and determine whether or not they related to the purchase of audio-visual equipment. Each entry, it advised, had a "transaction description" of up to 30 characters, but this included the User ID (5 characters), the supplier details (10 characters), and a maximum of 13 characters to describe the transaction. The Council confirmed that there was no key-word search function on the accounting system.
20. The Council also advised that, in one month alone, 9,556 separate transactions were posted.
21. The Council was asked about the ledger codes used in Document 14, and whether it would be reasonable to expect other purchases of audio-visual equipment to use the same two ledger codes (enabling the search to be narrowed).



22. The Council advised that credit card users could not determine the cost-subjective part of the ledger code, which was determined by the supplier type – from an example provided, it was apparent that this could lead to different types of goods being covered by the same code, if provided from a particular supplier. It therefore could not be assumed that purchases of audio-visual equipment from sources other than a contracted supplier would be recorded under the same ledger code as the purchases from the contracted suppliers.
23. Having considered the Council's submissions, the Commissioner accepts that the information requested by Mr Green cannot readily be identified or extracted from the Council's accounting system, and that scrutiny of individual transaction records would be required in order to identify and extract the relevant information. Given the number of records involved, the Commissioner accepts that the cost of this work would exceed £600 in terms of staff time alone, and therefore, that the Council was not required to comply with the request under section 12(1) of FOISA.

#### **Section 15 – Duty to provide advice and assistance**

24. Section 15 of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person proposes to make, or has made, a request for information to it. The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 states that,
- “Where the cost of responding to a request made under FOISA will exceed the upper cost limit of £600 ... the authority may ... consider what information could be provided below the cost limit, and suggest how the applicant may wish to narrow the scope of their request accordingly.” (paragraph 1.9)
25. The Council took the view that it had met this obligation by providing Mr Green with an estimate total figure of £8,00, while explaining that it would be time-consuming and costly to extract information at the level of detail he had requested.
26. The Commissioner does not accept that the Council met its obligations under section 15(1) of FOISA by simply explaining that it would be time-consuming and costly to extract information at the level of detail requested. Not only did the Council fail to identify that it held additional information which could have been provided within the cost threshold (specifically, the information in the documents described in paragraph 8), but the Commissioner considers that the Council should have provided Mr Green with a more detailed (and therefore more persuasive) explanation of the difficulties of extracting the information he required from its accounting system, such as was provided to the Commissioner during investigation and summarised in this decision. This might have persuaded Mr Green to accept the Council's refusal on the grounds of cost; or it might (with reference to the information which could be supplied within that limit) have enabled him to narrow the focus of his request and bring it within the cost limit.



27. The Commissioner therefore finds that the Council failed to comply with section 15(1) of FOISA in dealing with Mr Green's request. As a full explanation has now been provided through this decision notice, and as information was supplied to Mr Green in the course of the investigation (as described in paragraph 8 above), the Commissioner does not require the Council to take any further action in response to this failure.

## DECISION

The Commissioner finds that East Lothian Council (the Council) failed to comply in full with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Green.

The Commissioner accepts that the cost of providing all information relating to part a) of Mr Green's request would exceed £600 and consequently that (by virtue of section 12(1) of FOISA) the Council was not obliged to comply with part a) of the request (being the only part covered by Mr Green's application).

The Commissioner also finds, however, that the Council failed to comply with section 15(1) of FOISA, in failing to provide reasonable advice and assistance to Mr Green.

For the reasons set out above, the Commissioner does not require the Council to take any action.

## Appeal

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Should either Mr Green or East Lothian 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.

**Margaret Keyse**  
**Head of Enforcement**  
**14 March 2011**





## Appendix

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### 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.

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

##### 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.

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##### 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.