

Decision Notice



Decision 106/2008 Mr Joe Black and the Scottish Prison Service

Costs for the transportation of bed frames

Reference No: 200800349

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Black requested from the Scottish Prison Service (SPS) details of the costs of transporting bedframes made by prisoners. The SPS responded by stating that to respond to part of Mr Black's request would exceed the cost threshold and refused to supply other information on the basis that it was exempt under section 33(1)(b) of FOISA. Following a review, Mr Black remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the SPS had dealt with Mr Black's request for information in accordance with Part 1 of FOISA, by correctly applying section 12(1) of FOISA and refusing to comply with the request on the basis of excessive cost.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 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 1 August 2007, Mr Black wrote to the SPS requesting the following information, all relating to a contract between a bed manufacturer (Airsprung) and the SPS for the production of bed frames by prisoners:
 - i) the direct cost attributed per contract unit price of each half drawer base and each platform divan base for transport between HMP Shotts and the Fauldhouse depot;
 - ii) the highest price paid per transport load of bed frames and the number of units carried in that load. If the transport cost of each model was different, an itemised breakdown of the number of different models in that load;



- iii) the lowest price paid per transport load of bed frames and the number of units carried in this load. If the transport cost of each model of bed frame was different, an itemised breakdown of the number of different models in that load;
 - iv) a copy of the costings and any other relevant information in the pricing of the contract other than those deemed to be “financially confident”.
2. The SPS responded on 9 August 2007. In response to part (i) of the request, the SPS explained that the cost in dealing with the request would exceed the £600 cost threshold. In response to parts (ii) and (iii), the SPS stated that it was unable to provide an itemised breakdown of the different models in a particular load as it would differ from order to order, and that in any event the information sought was exempt under section 33(1)(b) of FOISA. In response to part (iv), the SPS stated that it had provided Mr Black with this information in its previous correspondence with him.
 3. On 15 October 2007, Mr Black wrote to the SPS requesting a review of its decision. In particular, Mr Black was dissatisfied with its application of section 33(1)(b) of FOISA and its statement that it could not provide some of the information which fell within the scope of his request.
 4. The SPS notified Mr Black of the outcome of its review on 15 November 2007. The SPS upheld its application of sections 12(1) and 33(1)(b) of FOISA in response to Mr Black’s request.
 5. On 1 March 2008, Mr Black wrote to the Commissioner’s Office, stating that he was dissatisfied with the outcome of the SPS’s review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
 6. The application was validated by establishing that Mr Black 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.

Investigation

7. The SPS is an Executive Agency of the Scottish Ministers (the Ministers) and a letter was sent to the Ministers’ Freedom of Information Unit on 8 April 2008 in line with agreed procedures, giving notice that an application had been received and that an investigation into the matter had commenced. The Ministers were asked to provide comments on behalf of the SPS in terms of section 49(3) of FOISA and to respond to specific questions on the application.
8. In its response to the Commissioner’s office the SPS outlined a settlement proposal and stated that it no longer wished to rely on section 33(1)(b) to withhold the information.



9. Mr Black was provided with an opportunity to respond to the SPS's settlement offer. After some deliberation and correspondence, Mr Black rejected the SPS's settlement proposal and asked the Commissioner to proceed to a decision.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the submissions that have been presented to him by both the SPS and Mr Black and is satisfied that no matter of relevance has been overlooked.

Background

11. Within its submissions, the SPS provided some background information as context to the request. The contract between the SPS and Airsprung to manufacture bed frames at HMP Shotts had been drawn up in 2004. The SPS manufactured two types of bed frame, half drawer base and platform divan base, and was paid for each frame produced at a unit rate (there being a different unit rate for each type). Airsprung paid for the materials and tools.
12. When the contract was initially negotiated, it was intended that Airsprung would drop off the raw materials and pick up the finished goods direct from HMP Shotts, and so no transport costs were built into the contract. However, due to space restrictions, this proved impossible and after a period of time it was agreed between HMP Shotts and the SPS Central Stores, which are based in Fauldhouse, that SPS vans would be used to transport the finished units to the stores for storage and uplift by Airsprung.
13. The SPS explained that in 2007 the transport procedures changed due to staff shortages and that consequently units were now transported from HMP Shotts to SPS Central Stores by contracted transport company. The SPS advised that it used 3 different transport companies for transportation of a number of items, not just bed frames. The 3 companies charged different prices depending on the distance of the journey and the number of pallets being transported.

Section 12(1) – Excessive cost of compliance

14. Section 12(1) of FOISA provides that a Scottish public authority need not comply with a request for information if the authority estimates that the cost of complying with the request would exceed the amount prescribed in the Fees Regulations for that purpose (currently £600). The authority's estimate must be a reasonable one. Where the Commissioner is satisfied that the costs of complying with a request exceed the amount prescribed in the Fees Regulations, he cannot order the public authority to comply with the request.



15. The projected costs which 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 it 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 or (ii) whether or not it should provide the information. The maximum hourly rate a public authority can charge for staff time is £15 per hour.
16. The SPS submitted that whilst ideally the transport costs for each unit should be known, it did not hold the actual costs per unit, the highest price paid or the lowest price paid, because the transport cost of these items was not based on a single unit cost. However, as had been explained to Mr Black, this information could be calculated from information held by the SPS, but doing so would exceed the £600 limit. As a conservative estimate, the SPS calculated that the work would take 52 hours of staff time at £15 per hour, giving a total of £780.
17. The SPS explained that transport for the bed frames was arranged and the details recorded by the following process:
 - i) A Transport Request Form (TRF - containing product code numbers) would be annotated manually in the establishment (i.e. HMP Shotts) and then faxed or posted to Central Stores;
 - ii) The TRF would be actioned by administrative staff to enable transport to take place;
 - iii) TRFs would be stored together in files containing all establishments' requests;
 - iv) The financial information from the TRFs would be put onto a spreadsheet to allow invoices to be paid;
 - v) The manual TRF forms would be archived every 6 months and a new file started.
18. To extract information from its records specifically to calculate the costs requested, the SPS advised that:
 - (a) A person of a suitable grade (E Band +) would have to work through the files and extract all TRFs relating to Shotts. There were around 120 TRFs per month from 3 different suppliers to search through. Also, to calculate the costs as at the time of Mr Black's request SPS would need to retrieve files from the archive store, as they were by then more than 6 months old. The SPS submitted that it could take around 20 hours to retrieve all relevant files and then extract all relevant TRFs.
 - (b) The SPS would then have to separate from the extracted TRFs those specific to Airsprung, as Central Stores received mixed loads from Shotts. This, the SPS submitted, would take around 8 hours.
 - (c) The invoices pertaining to the relevant TRFs would have to be sourced from file or from the SPS computerised financial system. The SPS submitted that this could take around 8 hours.
 - (d) These invoices and TRFs would have to be further investigated to calculate the highest and the lowest costs, which the SPS estimated would take around 8 hours.



- (e) These costs would then have to be broken down by model type to comply with Mr Black's request. This would require someone to type all the product codes into the computerised financial system, as the manual TRF did not supply this information. This, the SPS submitted, would take around 8 hours.
19. The SPS argued that there were no absolutely correct answers to Mr Black's questions, as other items were transported in addition to bed frames and the 3 companies charged different prices depending on the distance of the journey and the number of pallets being transported. The answers would, therefore, vary according to the periods used in the calculations. The SPS submitted that the longer the period used, the more accurate the figures would be. To allow for all seasonal variations, etc, the calculations would need to be done over a whole year (which would not be practicable as the current transport arrangements had only started in 2007). It could be done over a period of 3 or 6 months but this would exceed the cost limit. The SPS explained that its estimates were based on extracting the information from its records for a period of just 3 months.
20. The SPS noted that the method used to calculate the figures might appear complicated, but explained that this was unavoidable given that there were 3 separate systems which would have to be used to gather all the information required: one manual (TRF forms) and 2 computer based.
21. In total, the SPS argued that it would take approximately 52 staff hours to collate 3 months worth of the information to satisfy Mr Black's request. Charged at £15 per hour this would amount to £780, which is above the £600 threshold set down in the Fees Regulations.
22. Having considered carefully the manner in which the information is held by the SPS and the process required to extract from this the information sought by Mr Black, and given that he considers it reasonable in all the circumstances to deal with this request as a single request for information rather than 4 separate ones, the Commissioner is satisfied that the costs identified by the Ministers in this case are reasonable. The Commissioner notes Mr Black's offer to carry out any necessary calculations himself from the raw data held by the SPS, but given the way in which the information is held he does not consider this to be a viable solution to the question of excessive cost.
23. Having taken due account of the submissions that have been made by the SPS and Mr Black, therefore, together with the terms of the Fees Regulations, the Commissioner is satisfied that the SPS was correct to rely on section 12(1) of FOISA in this case and consequently was under no obligation to comply with the information request from Mr Black.



DECISION

The Commissioner finds that the SPS acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Black.

Appeal

Should either Mr Black or the SPS 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
3 September 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.

...

- (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.

...

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.