

Decision Notice 124/2020

Records relating to a café

Applicant: The Applicant

Public authority: Glasgow City Council

Case Ref: 202000294



Scottish Information
Commissioner

Summary

The Council was asked for information relating to a specific café. Having initially disclosed some information, the Council changed its position at review, estimating that fully responding would exceed the £600 cost limit. The Council also disclosed some further information at review, stating it had done so under its duty to advise and assist.

The Applicant disagreed with the Council's decision that responding would be cost excessive, given that it had responded to his initial request, and previous similar requests, without cost being a factor. He also believed the Council held further information, not previously disclosed.

The Commissioner investigated and found that the Council had complied with FOISA in responding to the request.

Relevant statutory provisions

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 and 5

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 4 October 2018, the Applicant made a request for information to Glasgow City Council (the Council). The information requested was all Council records since and including 9 September 2018 related to a named café, to include:
 - copies of all documentation and correspondence including emails, letters, records of telephone calls and meeting notes, site inspection records and any other records the Council holds in relation to the café;
 - all the Council's internal communications regarding the café, correspondence with all other parties including members of the public, media, councillors etc., correspondence with the [Scottish] Public Services Ombudsman and records of all correspondence, communications and meetings with the café management/representatives/owners/staff, complaints from the public and the Council's replies with respect to these complaints and visits to the café by Council staff;
 - all records (written, including emails and verbal contact, telephone calls and visits to the café).
2. The Council responded on 31 October 2018, disclosing some information with some third party personal data redacted under section 38(1)(b) (Personal information) of FOISA, and explaining why disclosure of that information would breach the data protection principles in Article 5(1) of the General Data Protection Regulation. The Council further explained that any information comprising the Applicant's own personal data, which it could have withheld

under section 38(1)(a) (Personal information) of FOISA, was being disclosed solely to him, given he was the person making the request.

3. On 24 December 2018, the Applicant wrote to the Council, requesting a review of its decision as he believed the information provided was incomplete. Arguing that previous requests for review had yielded a great deal of information not included in the Council's initial responses to earlier requests, and citing examples of information he believed to be held by the Council in support of his view, he asked the Council to review its decision not to provide him with all the information requested.
4. Having received no response to his requirement for review within 20 working days, the Applicant wrote to the Commissioner on 16 June 2019, applying for a decision in terms of section 47(1) of FOISA based on the Council's failure to respond.
5. On 27 August 2019, the Commissioner issued *Decision 130/2019 The Applicant and Glasgow City Council*¹, finding that the Council failed to comply with section 21(1) (Review by Scottish public authority) of FOISA. The Decision required the Council to carry out a review and communicate the outcome to the Applicant.
6. The Council notified the Applicant of the outcome of its review on 29 August 2019. It recognised and apologised for the delay in responding, explaining this was due to administrative error. The Council substituted its original decision with a response in terms of section 12(1) (Excessive cost of compliance) of FOISA. The Council explained that a full response would require a Council-wide search. Anticipating an immense number of results, all of which would require examination for relevance and potential redaction, the Council estimated that this would be cost excessive, and so it was not required to comply with the request. The Council also informed the Applicant that, under its duty to advise and assist, further searches had been conducted and some additional information had been identified, which it disclosed to the Applicant with some third party personal data redacted under section 38(1)(b) of FOISA.
7. Acknowledging its obligations under FOISA, the Council referred to the number of information requests, requests for review, appeals to the Commissioner and complaints to the Council and the Scottish Public Services Ombudsman over the past four years, all of which were similar in nature. The Council explained that each one required substantial effort to trace relevant information (which involved many officers across different service areas), and incurred significant costs and staff time. The Council repeated a previous offer of exploring alternative ways of providing information without causing such a significant impact on its resources, for example by arranging a meeting, or narrowing the scope of the requests to exclude information the Applicant already held.
8. On 25 February 2020, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Council's review because he disagreed with its decision not to provide the information requested, but to rely on section 12(1) as an excuse not to comply. He argued that the Council had been able to provide information in its initial response, and in response to previous similar requests which covered different but longer time periods, without claiming excessive costs. He did not believe this had suddenly become an issue, particularly as the information he was seeking was very specific, and asked that the Council disclose the information requested, with personal data redacted where necessary.

¹ <https://www.itspubliknowledge.info/ApplicationsandDecisions/Decisions/2019/201901239.aspx>

Investigation

9. The application was accepted as valid. The Commissioner confirmed that the Applicant had made a request for information to a Scottish public authority and had asked the authority to review its response to that request before applying to him for a decision.
10. On 19 June 2020 the Council was notified in writing that the Applicant had made a valid application and the case was allocated to an investigating officer.
11. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and to answer specific questions. These focused on the Council's justification for relying on section 12(1) of FOISA.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.
13. The Applicant has raised no dissatisfaction with the Council's decision to withhold some personal data under section 38(1)(b) of FOISA. As such, this matter does not fall within the scope of the Commissioner's investigation.

Section 12(1) – Excessive cost of compliance

14. As stated above, the Applicant was dissatisfied with the Council's decision, at review stage, that responding to his request would be cost excessive and to refuse the request in terms of section 12(1) of FOISA.
15. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently £600 (see regulation 5). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for that information would exceed this sum.
16. The projected costs a Scottish 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) it reasonably estimates it will incur in locating, retrieving and providing the information requested, in accordance with Part 1 of FOISA. The maximum hourly rate the authority can charge for staff time is £15 per hour. The 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.
17. The Council submitted that section 12(1) applied to the request, arguing that the cost of locating, retrieving and providing all of the information falling within the scope of the request would exceed the £600 cost limit.
18. In support of its view, the Council explained it was the largest local authority in Scotland, employing over 27,400 employees across six service areas. It submitted that it did not hold the information centrally and, given the broad nature of the request, multiple searches were required across different databases and systems used by different departments, in addition

to searches of staff email accounts. Given this size and scale, the Council submitted it would be difficult to calculate the estimated costs of fully responding to the Applicant's request.

19. By way of illustrative example to support its position, the Council explained that a search of its records management system (ERDMS), using the café's address, returned approximately 22,000 pages of results. Accepting that only a proportion of these records would relate to the café, with a smaller percentage falling within the scope of the request, the Council believed this to be indicative of the scale and volume of records held, which would require to be searched to identify and locate any relevant information.
20. In addition to this, the Council submitted, searches of all staff email accounts would, alone, significantly exceed the £600 cost limit, given the time and resources these would entail.
21. With regard to staff costs, the Council stated that these would be calculated at the maximum rate of £15 per hour, as even the lowest staff grade incurred an employment cost which took the cost, to the Council, over £15 per hour.
22. For the reasons stated above, the Council confirmed that, while it was unable to provide an estimated cost calculation for a search of all Council records, it was clear that such a search would exceed the cost limit set out in the Fee Regulations.
23. With regard to the information disclosed to the Applicant in its initial response, the Council explained that this had been identified as a result of searches of departments the Council considered to be the most likely to hold relevant information. This, the Council explained, was on the basis that the Applicant often contacted these departments directly regarding the café. Officers within these departments undertook searches and identified a substantial amount of information which was disclosed to the Applicant, with some personal data redacted.
24. The Council referred to the Applicant's request for review, made on the basis that he did not believe the Council had provided all the relevant information it held. While the Council believed it had carried out reasonable and robust searches, it considered that the work already undertaken in responding to the initial request had likely exceeded the £600 cost limit. In light of the Applicant's belief that further information was held, the Council reached the conclusion, at review stage, that to satisfy his request for "all Council records" would require a search of records of the whole Council, including all staff mailboxes, given that the information was not held centrally. The Council did not consider this would be practical, and estimated the cost of doing so would exceed the £600 limit, taking account of the number of hours and resources required. On that basis, the Council maintained its reliance on section 12(1) of FOISA.
25. For the additional information provided at review stage, the Council explained that it had repeated the initial searches, and these had identified some further information which was disclosed to the Applicant in line with its duty, under FOISA, to advise and assist.
26. The Council acknowledged that it had responded to the initial request without citing cost as a factor, but argued that it was entitled to change its position at review stage. It noted that, as in this case, the Applicant often argued (for his earlier requests) that he had not been provided with all relevant information. Taking this into account, the Council reiterated that in order to be able to respond fully to the Applicant's request, in this case, for "all Council records" would require a search of the records of the whole Council, including email accounts.

27. The Council further submitted that, despite its repeated offers to meet with the Applicant to advise and assist him with narrowing the scope of his requests and to ascertain the specific information he sought, so that it could provide relevant information without impacting significantly on its services, the Applicant had not engaged with the Council on this matter.
28. Taking into account all of the circumstances, the Commissioner is satisfied that the Council has provided reasonable arguments in support of its view that the cost of complying with this request would exceed the £600 cost limit. He considers the scale and extent of the tasks described to be appropriate in the circumstances. It is clear, as the Council has argued, that Council-wide searches would be required to satisfy the Applicant's requirements. Given the nature of the work required, the Commissioner accepts that this request could not have been fully responded to within the £600 cost limit.
29. The Commissioner notes that the Council responded to the initial request following searches of certain departments which the Council believed most likely to hold relevant information, without citing cost as an issue. He would comment that there is provision in section 21(4) of FOISA for a Scottish public authority to change its position at review, where it considers a different response to be the correct one, whatever decision was made in responding to the initial request.
30. The Commissioner further notes that there is no provision in FOISA obliging an authority to provide information in response to a request which it has deemed to be cost excessive in terms of section 12(1) of FOISA. He recognises that, in this case, the Council chose to provide some information, solely under its duty to advise and assist. In his view, doing so did not nullify the application of section 12(1), in terms of the Council being able to respond to the request fully.
31. Consequently, the Commissioner is satisfied that the Council was entitled to rely on section 12(1) of FOISA in relation to the request, and was therefore under no obligation to comply with it.

Decision

The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Council wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement

6 October 2020

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.

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