

Decision Notice



Decision 135/2009 Unison and North Lanarkshire Council

North Lanarkshire Council's Managing Attendance Policy

Reference No: 200900986

Decision Date: 20 November 2009

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Summary

Unison requested from North Lanarkshire Council (the Council), information relating to the Council's Managing Attendance Policy. The Council responded by stating that the cost of complying with the request would exceed the cost limit set for the purposes of section 12(1) of FOISA. Unison was not persuaded by the Council's cost estimates and consequently requested a review. Following this review, Unison 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 had dealt with Unison'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); 12(1) (Excessive cost of compliance) and 15(1) (Duty to advise and assist).

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 24 February 2009, Unison wrote to the Council requesting the following information;

"I am writing to request the information noted below for Local Government and Craft employees.

Since the approval of the Council's Managing Attendance Policy:

- *How many review meetings have been held for employees who have had 3 periods of sickness absence in a rolling 12 month period?*
- *How many of these review meetings have led to a disciplinary hearing?*



- *How many of the disciplinary hearings led to disciplinary action being taken against an employee?*
- *How many capability 1 meetings have been held?*
- *How many capability 2 meetings have been held?*
- *How many dismissals have resulted from any of the above?*

I require this information to be detailed for each Executive service.”

2. The Council responded on 24 March 2009, stating that the cost of dealing with Unison's whole request would exceed the limit as set out in the Fees Regulations and therefore it was not obliged to comply with the request by virtue of section 12(1) of FOISA. In this response, however, the Council added that certain of the information could be provided. Some of the information, it explained, could be provided free of charge and some could be provided at a fee, which it specified, in terms of the Fees Regulations. The Council requested that Unison make contact should it wish to pursue these options. It provided estimated costs for providing the remainder of the information requested, in excess of the £600 limit specified for the purposes of section 12(1).
3. On 17 April 2009, Unison wrote to the Council requesting a review of its decision. In particular, Unison found it difficult to believe the costs quoted in the Council's response. Unison also explained that it was left with the impression that the Council was using sub-standard record keeping as an excuse for its refusal to provide the requested information and that the Council would need to keep adequate records in order that it be able to monitor the success of the Managing Attendance policy.
4. The Council notified Unison of the outcome of its review on 15 May 2009. The Council upheld its original decision without amendment, while also providing some explanation of the work that would be required to deal with the full request. It also explained to Unison that if it were possible to re-shape the request or restrict the request while still providing Unison with information which would assist it in evaluating the operation of the Managing Attendance policy, every attempt would be made to accommodate that request.
5. On 26 May 2009 Unison wrote to the Commissioner, stating that it 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.
6. The application was validated by establishing that Unison 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

7. The investigating officer contacted the Council on 1 July 2009, informing it that an application had been received from Unison and giving it the opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). The Council was also asked to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, with calculations of the costs taken into account for the purposes of section 12(1).
8. An initial response was received from the Council. However, the Council subsequently notified the investigating officer of some errors it had identified in that response. Consequently, the Council issued an amended version of the submission to the investigating officer for consideration.
9. During the investigation, the investigating officer sought to clarify further the scope of Unison's request, primarily to gain an understanding of what it meant by the term "craft" employees within the context of the request. Also during these discussions Unison confirmed that although the request was in respect of "all" employees, it was not looking for information relating to teachers.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Unison and the Council and is satisfied that no matter of relevance has been overlooked.

Section 12(1) – Excessive cost of compliance

11. 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.
12. 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.



13. The Council submitted that the information requested was held in the personal files of individuals and in most cases at the location of their employment, of which the Council stated there were in excess of 400 relevant establishments. The Council went on to add that it did not have a facility to record block data about formal attendance review meetings, capability meetings, disciplinary information or the circumstances of a dismissal. This information, it added, was attached to individual staff files and would have to be produced manually in all cases.
14. During the course of the investigation, Unison submitted a copy of a report it received from the Council on a regular basis, providing information on absence statistics. It asserted that because the Council was in a position to provide these high level statistics, it should be in a position to provide the additional information Unison was looking for.
15. The Council explained that although there was a degree of collation involved in producing the report referred to by Unison, the high level detail gathered was predominately electronically generated. The level of detail sought in Unison's request was not required for these reports to be completed and consequently was not routinely gathered.

Calculation of costs

16. In submitting its projected costs, the Council confirmed that the estimates did not include a cost for the collation of information applicable to the three Corporate Services in respect of which it had previously advised Unison it could provide a response free of charge, i. e. Corporate Services, Finance and Customer Services and the Chief Executive's Office. Consequently, projected costs were provided to the investigating officer in relation to Learning and Leisure Services, Housing and Social Work Services and Environmental Services.
17. In consideration firstly of Learning and Leisure Services, the Council estimated the cost of complying with Unison's request would be £8,978.60. This was on the basis that there were 4,000 files to be searched manually, which would require two clerical assistants, working for 1000 hours between them (based on 15 minutes per file), at an hourly rate of £8.98. With respect to Housing and Social Work Services, the Council submitted that the estimated cost would be £3,712.14. This was on the basis that there were 4,424 files to be manually searched. These searches, the Council submitted would require to be carried out by a Senior Administration Officer at an hourly rate of £10.06 along with a Resource Officer at an hourly rate of £12.68. At 5 minutes per file, the Council estimated that 738 hours would be required to carry out the search. Finally, in consideration of Environmental Services, the Council estimated the cost of complying with Unison's request would be £1,537.50. This was on the basis that there were 1,234 files to be searched manually, which would require and HR Officer working for 102.5 hours (based on 5 minutes per file), at an hourly rate of £15.00.
18. Considering the projected costs as outlined above, the Council submitted that the total cost of complying with Unison's request would be £18,907.16.



19. Having taken due account of the submissions made by both Unison and the Council, together with the terms of section 12(1) and the Fees Regulations, the Commissioner is satisfied that the costs identified in this case (although considerable) represent a reasonable estimate of the cost of complying with Unison's request as made on 24 February 2009. Given the significant manual input associated with this request (in respect of which he accepts the Council's submissions as reasonable in the circumstances), the Commissioner does not consider that the request could be complied with within the £600 limit. In reaching this conclusion, he notes that it is clear the overall costs of compliance could not be brought within, or reasonably close to, that limit even if staff time were all charged at the lowest applicable rate.
20. Consequently, the Commissioner is satisfied that the Council was entitled to rely on section 12(1) of FOISA in relation to Unison's request and therefore was under no obligation to comply with the request.

Section 15 of FOISA – duty to provide advice and assistance

21. The Commissioner further notes that the Council made attempts to provide Unison with some of the information it requested free of charge and some additional information at a cost in line with the Fees Regulations. The Council further provided Unison with the opportunity to discuss the possibility of re-shaping its request with a view to providing it with information which would still allow it to evaluate the operation of the Managing Attendance policy.
22. 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 who has made, or proposes to make, a request for information to it. Examples of such advice and assistance given in the Scottish Ministers' Code of Practice on the discharge of functions by public authorities under FOISA include, in cases where section 12(1) applies, "an indication of what information could be provided within the cost ceiling". Having considered the Council's offer to Unison to amend its request, combined with the offer of certain of the information requested, the Commissioner is satisfied that the Council met the requirements of section 15(1) in this particular case.

DECISION

The Commissioner finds that North Lanarkshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Unison, section 12(1) of FOISA providing adequate grounds for refusing to comply with the request.



Appeal

Should either Unison or the 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
20 November 2009



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.

...

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.

...

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.