

Decision Notice



Decision 279/2013 Mr Martin Williams and Skills Development Scotland

“If asked” media statements

Reference No: 201301910

Decision Date: 6 December 2013

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Rosemary Agnew

Scottish Information Commissioner

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



Summary

On 2 July 2013, Mr Williams asked Skills Development Scotland (SDS) for information relating to all questions and answers prepared in readiness for questions being asked by the media. SDS responded that it considered the cost of complying with the request would exceed £600 and therefore it was not obliged to comply. Following an investigation, the Commissioner accepted this argument.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance)

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 2 July 2013, Mr Williams wrote to SDS (a publicly owned company in terms of section 6 of FOISA and therefore a Scottish public authority by virtue of section 3(1)(b) of FOISA) with the following request:
I wish to make an FOI request for all the "if asked" questions and answers held by all facets of your media-facing operations from the past year. The "if asked questions" are those held by the body by those authorised to release information to the media in readiness for any questions asked by the media.
2. SDS responded on 19 July 2013. It informed Mr Williams that the information requested was held by a number of colleagues in various places and that it would take a considerable amount of time to retrieve the information requested. To do so, it estimated, would exceed the cost limit prescribed for the purposes of section 12(1) of FOISA and, therefore, it was not obliged to comply with the request. He was informed that, if he narrowed the focus of his request, it might be able to identify information without breaching the cost limit.



3. On 19 July 2013, Mr Williams wrote to SDS requesting a review of its decision on the basis that it had not explained why the cost of complying would be prohibitive. He therefore questioned its reliance on the cost limit.
4. SDS notified Mr Williams of the outcome of its review on 13 August 2013. It upheld the original decision, again informing Mr Williams that he might wish to narrow the scope of his request.
5. On 18 August 2013, Mr Williams wrote to the Commissioner's office, stating that he was dissatisfied with the outcome of SDS'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 Williams made a request for information to a Scottish public authority and 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. On 9 October 2013, SDS was notified in writing that an application had been received from Mr Williams and was invited to comment on the application, as required by section 49(3)(a) of FOISA. Specifically, the authority was asked to comment on its reliance on section 12(1) of FOISA.
8. SDS responded on 4 November 2013. It accepted that, while it had provided Mr Williams with some explanation as to its calculation of costs, it should have provided a specific cost breakdown. It provided the Commissioner with calculations of the costs taken into account for the purposes of applying section 12(1).

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all the relevant submissions, or parts of submissions, made to her by both Mr Williams and SDS. She is satisfied that no matter of relevance has been overlooked.



Section 12(1) – excessive cost of compliance

10. Section 12(1) 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 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 she find that the cost of responding to a request for that information would exceed this sum.
11. The projected costs the 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 authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The 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 £15 per hour.
12. SDS submitted that section 12(1) applied to Mr Williams' request. It confirmed that it held information falling within the scope of Mr Williams' request, but argued that the cost of locating, retrieving and providing that information would exceed the £600 cost limit.
13. SDS argued that Mr Williams' request was not specific and this added to the cost involved in searching for the information, as it was not possible to search key words when checking electronically. It submitted that there were a number of publicly available sources of information, such as the SDS website, which could have aided Mr Williams in formulating a more focused request. It drew comparison to *Decision 211/2013 Mr Martyn McLaughlin and the Scottish Ministers*, suggesting that Mr Williams' request was a "fishing expedition".
14. It also provided submissions to the effect that Mr Williams had subsequently submitted a narrowed request for a period of six months. It explained that, again, this narrowed request did not seek specific information and it could not search key words as mentioned above.
15. SDS explained that each staff member had to access their own personal email inboxes and drives (which no other staff had access to) in order to retrieve the information held. It also explained that it took 24 hours at the maximum cost of £15.00 per hour to respond to the narrowed request, the actual cost of responding to that request being £360.00.
16. SDS submitted that, given that it had cost £360 to respond to the narrowed request for a six month period, it was reasonable to estimate that the cost of providing information for a year, as initially requested by Mr Williams, would cost in excess of £600. While cost would not necessarily double, the Commissioner accepts this as reasonable in the circumstances of this case.
17. In all the circumstances, the Commissioner is satisfied that the costs identified in this case represent a reasonable estimate of the cost of complying with Mr Williams' request for information. Given the nature of the work required, the Commissioner does not consider that the request could have been responded to within the £600 limit.



18. Consequently, the Commissioner is satisfied that SDS was entitled to rely on section 12(1) of FOISA in relation to Mr Williams' information request, and therefore was under no obligation to comply with the request.

DECISION

The Commissioner finds that Skills Development Scotland dealt with Mr Williams' request in accordance with Part 1 of FOISA.

Appeal

Should either Mr Williams or Skills Development Scotland 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 December 2013



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.