

Decision Notice

Decision 085/2016: Ms X and the Scottish Courts and Tribunals Service

Statistics about jury service

Reference No: 201502295

Decision Date: 15 April 2016



Scottish Information
Commissioner

Summary

On 10 September 2015, Ms X asked the Scottish Courts and Tribunals Service (SCTS) for statistics about jury service. SCTS told Ms X that complying with her request would cost more than £600 and it was therefore not obliged to comply. It upheld this position on review. Following an investigation, the Commissioner found that SCTS had responded to Ms X's information request in accordance with Part 1 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 10 September 2015, Ms X made an information request to SCTS. She asked for:
 - (i) The number of people across Scotland called up for jury service in the last five years (broken down by month/court/sex of juror and age or age bracket).
 - (ii) How many were excused (again, broken down by month/court/sex of juror and age or age bracket).
 - (iii) A list of the excuses accepted and not accepted.
 - (iv) How many jurors were supplied to the courts (broken down by month/court/sex of juror and age or age bracket).

Ms X indicated a preference for the information in EXCEL format and asked to be informed if the request was "above the cost threshold".

2. SCTS responded on 9 October 2015. SCTS explained that the information was held in its case management system, maintained by an outside contractor. SCTS said that the information could not be extracted without considerable costs. It cited section 12 of FOISA, and explained that it was not obliged to respond to Ms X's request because the cost of doing so would exceed £600. To assist, SCTS provided information it had previously extracted from its system showing the options for excusal and the total excusals for the period 2011 - 2014.
3. On 21 October 2015, Ms X wrote to SCTS requesting a review of its decision. She did not believe that just because an IT service was contracted out to an external service provided, this should mean that the information gathered by the authority was not covered by FOISA. She explained that other court services in the UK had provided the information.
4. SCTS notified Ms X of the outcome of its review on 18 November 2015. SCTS apologised for any confusion caused by reference to its outside contractor and accepted that the

information remained subject to FOISA. It explained that information covered by her request was not required for SCTS business, so its new jury system database had not been constructed with a built-in search function which would allow it to run a simple report to establish the number of persons called up for jury service. SCTS stated that its IT service contractor would charge a minimum of £500 (plus VAT) to run the search. Therefore, even though Ms X had offered to reduce the scope of her request, the minimum cost to SCTS would be £500 (plus VAT, totalling £600).

5. On 27 November 2015, Ms X applied to the Commissioner for a decision in terms of section 47(1) of FOISA. She believed it was in the public interest to have access to such information, as the court service is given public money to function, and any citizen could be called for jury service. She believed that the Home Office and Northern Ireland Courts Service both collect the type of statistical information she had asked for.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Ms X made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to her for a decision.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. SCTS was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.

Commissioner's analysis and findings

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

Section 12(1) - Excessive cost of compliance

9. 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 (regulation 5). Consequently, the Commissioner has no power to require the disclosure of information should she find that the cost of responding to a request for information exceeds this sum. (Although Ms X argued that it was in the public interest for the information to be made available, the public interest is not a matter which the Commissioner can take into account here.)
10. The projected costs 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 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 whether it actually holds the information requested, or whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
11. Ms X thought that someone from SCTS could extract the data. SCTS was asked to explain how the information was held, particularly in relation to the role of the outside contractor.

SCTS replied that information regarding the number of people cited for jury service and information on excusals from jury service (at both the revisal notice stage and at the point of citation) is recorded on a live operational case management system (“the jury system”). The jury system sits on IT servers belonging to SCTS and allows staff to run pre-existing reports furnishing them with a list of names and addresses of potential jurors. It also allows SCTS staff to insert excusal information, if required. Further information on jury excusals is also contained within individual court records, called the List of Assize.

12. SCTS explained that, since 2014, the jury system has been supported by an external contractor. As a consequence, extracting any information from the jury system requires additional software programs to be written. In the normal course of its business, SCTS does not require the information requested by Ms X. It does not have the expertise to extract this information from the case management system, and would require the services of the IT contractor who supplied the jury system.
13. SCTS explained that when it approached the contractor to enquire about the cost of extracting data to answer Ms X’s request, it was advised that to extract any data beyond the SCTS’s specified operational needs would result in a charge, estimated at £500 plus VAT (at a rate of 20%). This means that the minimum possible fee for extraction of data from the jury system would be £600.
14. The SCTS clarified its submission by explaining that it would inevitably incur additional costs in dealing with the request. It would cost £600 solely for the IT consultant to write the script and to provide the information to SCTS. The data provided by the IT consultant would be in a form requiring further manipulation and checking before it could be used to respond to Ms X’s request. Further time would have then been required for the handling of the response to Ms X. In total, SCTS estimated that this would be in the region of around five hours.
15. SCTS was asked if it was required to provide jury statistics to any other organisation, such as the Scottish Government. SCTS said there was no such requirement, and reiterated there is no operational reason why it would require this information, which was why a function for interrogating the jury system for this data was not procured at the time the contract was put in place.
16. SCTS explained that guidance issued to its staff tells them to note the reasons for excusal on the List of Assize. They are not instructed to update the jury system with excusal reasons, although it is expected that they will do so, so as to assist in the re-citation of excused jurors.
17. SCTS supplied the Commissioner with its correspondence with the IT consultant, showing that the cost of an additional report would be £500 (plus VAT). The Commissioner accepts that some additional costs would be incurred in providing the data to Ms X, taking the cost over the £600 threshold.
18. The Commissioner accepts that at least some of the statistical information requested by Ms X is routinely published by the Crown Court in England and Wales, and that it was reasonable for Ms X to expect that similar information would be available from SCTS. However, given the way in which SCTS holds the information, and the requirement for an external contractor to be involved in retrieving the information, the Commissioner is satisfied that SCTS has provided a true estimate of the costs it would incur in complying with Ms X’s request.

19. Taking account of all the circumstances, the Commissioner is satisfied that the request could not have been dealt with within the £600 cost limit, so SCTS was entitled to rely on section 12(1) of FOISA and was under no obligation to comply with the request.

Section 15 - Duty to provide advice and assistance

20. Section 15(1) 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.

21. The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public authorities under FOISA and the EIRs¹ provides (at paragraph 9.3.3 in Part 2):

When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice, you may wish to take account of how much the cost limit has been exceeded. Any narrowed request would be a separate new request and should be responded to accordingly.

22. The Commissioner considers this important if the public authority is to fulfil its duty to provide advice and assistance under section 15 of FOISA. Frequently, a dialogue between the authority and the applicant will be desirable, if the applicant is to understand fully what can be provided within the cost limit.

23. SCTS concluded that there was no possible way in which Ms X could lessen the overall cost of complying with her request by narrowing its scope, because the IT consultant would charge a minimum of £500 (plus VAT) for extracting any amount of data from the jury system. In an attempt to assist her, SCTS had provided some figures on jury citations and excusals which had been extracted from its system in 2014 (when the system was still maintained in-house). This data covered the years 2011 to August 2014. SCTS also provided Ms X with a list of excusal reasons, again from data which had been extracted previously.

24. In the circumstances of this case, the Commissioner has concluded that the SCTS complied fully with its duty under section 15(1) of FOISA.

Decision

The Commissioner finds that the Scottish Courts and Tribunals Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Ms X.

Appeal

¹ <http://www.gov.scot/Resource/0046/00465757.pdf>

Should either Ms X or SCTS 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

15 April 2016

Appendix 1: 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.

...

(4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

(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.

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