



Scottish Information
Commissioner
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Decision Notice 030/2025

Centralisation of Reasonable Adjustment budget/Access to Work activity

Authority: Chief Constable of the Police Service of Scotland
Case Ref: 202401152

Summary

The Applicant asked the Authority for information relating to the centralisation of the Reasonable Adjustment budget/Access to Work activity to its Equality and Diversity Team, and associated resourcing considerations. The Authority stated that complying with the request would exceed the £600 cost limit, and so it was not obliged to comply. The Commissioner investigated and found that, not only had the Authority failed to provide adequate submissions to justify its position, it had also failed to provide adequate advice and assistance to the Applicant.

Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002](#)¹ (FOISA) sections 1(1), (2) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance); 47(1) and (2) (Application for decision by Commissioner)

[Freedom of Information \(Fees for Required Disclosure\) \(Scotland\) Regulations 2004](#)² (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost – prescribed amount)

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

² <https://www.legislation.gov.uk/ssi/2004/467/made>

Background

1. On 1 December 2023, the Applicant made a request for information to the Authority. She asked for all correspondence (formal and informal), documentation including briefing material, Board papers, meeting minutes and decision documents relating to the centralisation of the Reasonable Adjustment budget/Access to Work activity to the Equality and Diversity Team, and associated resourcing considerations.
2. The Authority wrote to the Applicant on 6 December 2023, asking her to clarify the timeframe which her request covered.
3. That same day, the Applicant informed the Authority that she did not know the precise date; however, she asked the Authority to try 1 January 2017 to 1 December 2023.
4. The Authority responded on 11 January 2024, refusing the request in terms of section 12(1) of FOISA on the basis that it considered that the cost of complying would exceed the [£600] cost limit set out in the Fees Regulations. The Authority explained that, as documentation would not necessarily be titled as set out in the Applicant's request, every possible document (including emails, memos, letters and minutes) would have to be reviewed for the past seven years.
5. That same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because:
 - she was surprised that even the key papers and records of decisions for such a significant change were not readily accessible within the corporate record and/or within the records of the Equality and Diversity Team;
 - other than being asked to specify date ranges, she had not been offered any advice and assistance, including that on how to reduce costs, and
 - the Authority's response was overdue.
6. Having received no response from the Authority to her requirement for review within 20 working days, the Applicant wrote to the Commissioner on 10 March 2024. The Applicant stated that she was dissatisfied with the Authority's failure to respond and applied to the Commissioner for a decision in terms of section 47(1) of FOISA. This resulted in the issue of [Decision 077/2024](https://www.foi.scot/decision-0772024)³ by the Commissioner on 2 May 2024. In that Decision, the Commissioner found that the Authority had failed to comply with Part 1 of FOISA by failing to respond to the Applicant's requirement for review within the 20 working day timescale set out in section 21(1) (Review by Scottish public authority) of FOISA.
7. The Authority notified the Applicant of the outcome of its review on 11 April 2024, apologising for the delay in responding and fully upholding its original decision. The Authority explained that its understanding of "Access to Work" in the context of the request, was the Government grant scheme that helped people with a disability to start or remain in employment, providing financial and practical support to help disabled people overcome the barriers they face in the workplace. Having made enquiry with its People and Development Team, it stated that there was no dedicated Access to Work function or department within the Authority, or any individual with that responsibility in their job title etc.; as such, Access to Work matters would be dealt with by various team members as and when appropriate.

³ <https://www.foi.scot/decision-0772024>

8. The Authority explained that searches for information were limited to those that could be carried out by a simple search of Windows and/or Outlook using various key word searches. While the terms used in the request could arguably form search parameters, the Authority believed these were incredibly wide in scope in a “Human Resources” context. It estimated that, for the time period stated, several thousand officers and staff would have been impacted in some way by Reasonable Adjustments/Access to Work matters. In light of all of this, the Authority was satisfied that it had correctly applied section 12 of FOISA.
9. On 26 August 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that she was dissatisfied with the outcome of the Authority’s review because:
 - having refused her request in terms of costs, the Authority had provided no information and had given no advice as to how to reduce the costs of complying;
 - she had clearly identified the team in the Authority which, at the time of her request, worked on Reasonable Adjustments and Access to Work matters, a substantial amount of whose time had been spent on this work in the last few years;
 - many of the reasons given by the Authority for refusing the request were irrelevant;
 - she had not asked about casework or ongoing activity, but had requested governance papers addressing the decision to move the budget and workload and, as such, she believed these documents should exist and be clearly named, filed and accessible, and
 - she had provided sufficient information for the key Board and decision papers to be located.
10. In the interests of moving this forward, and in an attempt to reduce costs, the Applicant stated that she would be willing to amend her request to Board papers, meeting minutes and decision documents relating to the centralisation of the Reasonable Adjustment budget/ Access to Work activity to the Equality and Diversity Team and the associated resourcing considerations that were considered.

Investigation

11. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
12. On 1 October 2024, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
13. In light of the Applicant’s offer to refine her request, the Authority was asked to provide evidence of any contact with the Applicant in this regard. In response, the Authority explained that there was no structured filing system that related purely to the subject area in question, meaning that the whole system would require to be searched. As such, it had not contacted the Applicant as there seemed to be no way to refine the request to bring it within the cost limit. The Authority confirmed, however, that if the Applicant wished to alter the terms of the request, it would consider it.
14. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was subsequently invited to comment on this application and to answer specific questions. These focused on the

Authority's justification for refusing the request on the basis that it would cost in excess of £600 to comply, and on what advice and assistance the Authority had given to the Applicant to help her to refine her request to bring it within the cost limit.

Commissioner's analysis and findings

15. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 12(1) (Excessive cost of compliance)

16. 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.
17. 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.
18. In its submissions to the Commissioner, the Authority confirmed that it still wished to rely on section 12(1) and disputed that it had interpreted the request too widely. In support of this, it referred to the first line of the request which, alone, sought all correspondence and documentation, and the time period which spanned six years which, in the Authority's view, was incredibly wide in scope.
19. The Authority also disagreed with the Applicant's view that a number of statements in its review outcome were irrelevant to her request. It acknowledged that it could have explained their relevance more clearly, but the response was intended to illustrate the difficulties in searching for relevant information. The Authority explained that the reference to the number of officers and staff was intended to illustrate the scale of documentation held within the People and Development record set that would include the terminology included in the request.
20. The Authority stated that it had no means of searching for historical papers addressing the decision to move the budget and workload, that would exclude more general information, as keyword searches (which was the only search option available) could not exclude those other documents. It confirmed that it did have a record retention policy, but did not have mandated file-naming conventions or formally defined folder structures. Due to this, departments were responsible for creating and managing their own structures and practices, which varied quite significantly. Acknowledging that the Applicant believed there would be a clearly defined, dedicated location for all related records, the Authority confirmed that this was not the case, a position which had been confirmed by its Director of People and Development and its Equality and Diversity Manager.

21. In relation to the information captured by the request, the Authority explained that this could be held in a number of locations, including but not limited to personal and shared email accounts and network drives, in addition to any paper records which may exist.
22. The Authority was asked to explain how it had calculated the costs of responding, and to provide a worked example to illustrate this. In response, the Authority explained that it was difficult to arrive at an exact cost as it had been unable to complete meaningful searches:
- Given the volume of data, front end of searches of Windows Explorer were not working within the time constraints of a normal working day.
 - ICT colleagues estimated that to perform a search using just one keyword or phrase would require a network search to be run overnight.
 - Any added complexity, such as additional search terms, would require extra time.
 - As an example, within the “Equality and Diversity” folder within the People and Development shared drive, each team member had their own sub-folder, some of which contained over 100 sub-folders.
 - The “Equality and Diversity Manager” sub-folder contained 262 sub-folders, one of which (as a dip sample) contained a further 65 sub-folders.
 - One member of the team (picked at random) had almost 5,000 emails in their Outlook account for the relevant period.
 - Almost 700 Access to Work folders existed within Outlook for the relevant period, each of which contained between 10-70 emails.
23. Being a living wage employer, the Authority stated that there was little opportunity to carry out any FOI-related research for less than the maximum £15 per hour (including employer contributions). It believed that, in this case, the staff involved in any such searches would be more senior than a Grade 1 post.

Section 15 (Duty to provide advice and assistance)

24. Section 15(1) of FOISA requires a Scottish public authority, so far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. Section 15(2) states that a Scottish public authority shall be taken to have complied with this duty where (in relation to the provision of advice or assistance in a particular case) it conforms with the [Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information \(Scotland\) Regulations 2004](https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/)⁴ (the Section 60 Code).
25. The Section 60 Code states, at section 5.1 in Part 2 (under “Authorities should offer advice at all stages of a request”):
- “Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded.” (Paragraph 5.1.1)

⁴ <https://www.gov.scot/publications/foi-eir-section-60-code-of-practice/>

26. It further states, in section 5.3 in Part 2 (under “Authorities must provide appropriate advice and assistance to enable applicants to describe clearly the information they require”):
- “...The authority must provide appropriate advice and assistance to enable an applicant to make their request in a way which will describe the information they want reasonably clearly. The authority should remember that applicants cannot reasonably be expected to always possess identifiers such as file reference numbers or the description of a particular record. Applicants should not be expected to always have the technical knowledge or terminology to identify the information they seek.” (Paragraph 5.3.1)
 - “If an authority is unclear about what information the applicant wants, it should obtain clarification by performing its duty to provide reasonable advice and assistance to the applicant. Where a request is not reasonably clear, advice and assistance could include providing an outline of the different kinds of information which might meet the terms of the request; providing access to detailed catalogues and indexes, where available, to help the applicant ascertain the nature and extent of the information held by the authority; providing a general response to the request setting out options for further information which could be provided on request; contacting the applicant to discuss what information the applicant wants.” (Paragraph 5.3.3)
 - “The aim of providing advice and assistance is to give the applicant an opportunity to discuss their application with the authority, with the aim of helping the applicant describe the information being sought reasonably clearly, so that the authority is able to identify and locate it.” (Paragraph 5.3.4)
27. In her application to the Commissioner, the Applicant was dissatisfied that the Authority had provided no advice on how to reduce the costs of her request. She stated that she was surprised that the Authority was of the view that there was no way to refine the request without even discussing it with her which, she believed, was indicative of a lack of good faith and willingness to respond to a reasonable request.
28. The Authority was asked to explain what steps it had taken to help the Applicant reduce the costs of her request. In response, the Authority disputed that it had failed to advise the Applicant on this. It submitted that its review outcome had clearly explained the difficulties with the wide scope of the request, and had recommended that the Applicant “provide further details of the type of information sought that could perhaps allow for more focused searches to be conducted”. It had also explained that the only means of searching for relevant information was via simple Windows/Outlook searches and, given the extent to which Access to Work/Reasonable Adjustments operated within the organisation, the results would be substantial. In relation to the Applicant’s suggested amended request (as described in her application to the Commissioner), the Authority confirmed that the search methodology that would require to be employed, i.e. keyword searches, remained the same.
29. The Authority was asked for its suggestions on refining the request to bring it within the cost limit. In response, the Authority stated that it could only suggest that the Applicant could perhaps suggest or agree an acceptable search methodology that would let a definitive position be reached.
30. It explained that colleagues in ICT had advised that they could, in theory, conduct a search for nested keywords (e.g. documents/emails containing a combination of words/phrases), although this was a lengthy process given the volume of data held (estimated at a minimum of a couple of days, progressively longer depending on the complexity of the search

parameters), or indeed the search might just fail. The Authority therefore suggested that the Applicant could identify a list of keywords she felt would be present in materials relevant to her request (e.g. “budget”, “access to work”, “reasonable adjustment”, “centralisation” etc), and the Authority would arrange such a search. It stated, however, that the results would still likely be extensive and section 12 might still apply, but it hoped that this would demonstrate the situation more clearly to the Applicant.

31. The Authority suggested that a reasonable compromise would be a search focussed on the Equality and Diversity folder within the People and Development folder. Acknowledging that there may well be relevant information held outwith that area, the Authority believed this would seem a logical place to focus activity in terms of moving forward. It again suggested asking the Applicant to come up with search terminology which it would scope with its ICT Team. It believed this would result in one of two outcomes, either a volume of information so large that section 12 still applied, or information which could be assessed for disclosure.

The Commissioner’s view on section 12(1) and section 15

32. The Commissioner has carefully considered all relevant submissions and the terms of the request. He notes that the Authority claims that it was not obliged to comply with the request as the cost of doing so would be more than £600.
33. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that the cost of complying with the request would exceed the £600 cost limit. In this case, the Commissioner is not satisfied that the Authority has achieved this, notwithstanding the opportunity given to provide comments.
34. The Commissioner would expect an authority to conduct reasonable, proportionate searches when responding to a request for information. This does not mean that searches have to be “100% guaranteed”. Section 12(1) is intended, no doubt, to accommodate shortcomings in an authority’s records management systems, but authorities must take care not to rely too readily on perceived shortcomings in this area, where there might still be reasonable and proportionate ways of fulfilling the request. While there will be instances where a search of an authority’s entire system would be necessary for it to be able to respond to a request (and therefore carrying the possibility of invoking section 12(1)), the Commissioner is not convinced that this is the correct approach in this case.
35. The Commissioner notes that, during the investigation, the Authority was able to suggest appropriate keyword searches of locations most likely to hold relevant information. This leads him to question why, in its review outcome, the Authority merely asked the Applicant to provide further details of the type of information sought, without offering any suggestions to what and where it might be able to search within the cost limit. The Authority has provided the Commissioner with no evidence that it had discussed any of this detail with the Applicant at any stage, in line with the Section 60 code referred to above.
36. While the Commissioner acknowledges that, in its review outcome, the Authority explained the issues associated with searches, he notes that it did not offer any positive suggestions to help the Applicant reframe her request.
37. The Commissioner would stress that, in providing advice and assistance to an applicant to help them refine a request, so that the authority can carry out reasonable searches to identify any relevant information, the onus is on the authority, not the applicant, to suggest ways in which this can be achieved. An authority cannot expect an applicant to have such knowledge of its records management practices to allow them to come up with search terms

and locations – in the Commissioner’s view, this is entirely unrealistic and goes against the practice expectations set out in the Section 60 code.

38. The Commissioner finds that the Authority’s submissions on the costs involved in complying with the request fall short in the following key respects:
- While the Authority has illustrated the scale of searches, it has failed to provide evidence of any sample searches having been carried out (even a keyword search of the location most likely to hold information), which would have given a better idea of the extent of information covered by such a search, and the likely actual time such a search would take.
 - The Authority also failed to provide a robust cost calculation for the request in question, or any part thereof, for example, based on the results of a single keyword search of the most relevant location.
39. In all the circumstances, therefore, the Commissioner cannot uphold the Authority’s claim that it would be too costly to comply with the request. Neither can he agree that the Authority provided sufficient advice and assistance to the Applicant to reach a mutually-agreeable approach. He requires the Authority to reconsider the projected costs of complying with the request and, in doing so, he requires it to liaise and engage with the Applicant, and reach mutual agreement on relevant search terms and locations to be searched (both of which to be suggested by the Authority), in order that it can carry out reasonable, proportionate searches to locate any relevant information held in those locations.
40. The Commissioner cannot, therefore, find that the Authority was entitled to rely on section 12(1) of FOISA in this case and, in failing to provide adequate advice and assistance to the Applicant, he also finds that it failed to comply with the requirements of section 15 of FOISA.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

Specifically, the Authority has failed to satisfy the Commissioner that it would be too costly to comply with the request. As a result, the Commissioner finds that Authority was not entitled to rely on section 12(1) (Excessive cost of compliance) of FOISA and, in doing so, it failed to comply with section 1(1) (General entitlement) of FOISA.

The Commissioner also finds that the Authority failed to comply with the duty in section 15 (Duty to provide advice and assistance) by failing to provide adequate advice and assistance to the Applicant.

The Commissioner therefore requires the Authority to reconsider the projected costs of complying with the request, liaise with the Applicant to reach mutual agreement on search terms and locations to be searched, carry out reasonable and proportionate searches based on these, reach a decision on that basis and issue a revised review outcome to the Applicant, with explanation (all in terms of section 21 of FOISA), by **28 March 2025**.

Appeal

Should either the Applicant or the Authority 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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

11 February 2025