



Scottish Information
Commissioner

Decision 002/2006 – Mr Leslie Pryde and Falkirk Council

Request for decision in relation to a Fees Notice

**Applicant: Mr Leslie Pryde
Authority: Falkirk Council
Case No: 200502539
Decision Date: 10 January 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



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Fees Notice issued in response to information request – whether notice was properly calculated – Fees Notice held to be correct

Facts

1. On 5 May 2005, Mr Pryde made an information request to Falkirk Council (the Council) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). Mr Pryde requested certain financial information in relation to Kinneil Nursery in Bo'ness, including staff costs, heating costs, maintenance costs and all other costs associated with the running of the Nursery. The information sought by Mr Pryde included, for certain costs, copies of orders and invoices.
2. The Council responded to Mr Pryde's application on 27 May 2005 and provided him with most of the information that he had requested. However, some of the information, including copies of invoices requested, was not provided to Mr Pryde.
3. In its response, the Council did not advise Mr Pryde of his right to request a review of the decision made by the Council or to refer the matter to the Scottish Information Commissioner as required by section 19(b) of FOISA.
4. Mr Pryde wrote to the Council on 7 June 2005 and advised the Council that he had not received some of the information which he had requested.
5. On 21 June 2005, the Council responded to Mr Pryde's letter of 7 June 2005. In this letter, the Council apologised for overlooking Mr Pryde's request for copies of invoices in its earlier response. However, the Council also stated that the invoices being sought by Mr Pryde are held centrally and that it would take the Council some time to be able to gather these documents. In this letter, the Council indicated that it would make a charge for supplying this information and provided Mr Pryde with a Fees Notice to advise what the charge would be and how this was broken down under the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).
6. On 6 July 2005, Mr Pryde wrote to the Council requesting that it review its decision to make a charge for the provision of the information.
7. Mr Pryde received a response from the Council on 27 July 2005 in relation to his request for a review. In its response, the Council outlined why it had come to the conclusion that a charge should be made for the invoices Mr Pryde was seeking.



8. On 2 September 2005, Mr Pryde applied to the Scottish Information Commissioner for a decision as to whether the Council had been correct to issue him with the Fees Notice. Mr Pryde was concerned that in the past he had been provided with a lot of information relating to purchase orders and he had not been charged for this, yet he was now being charged for the location, retrieval and copying of invoices. In addition, Mr Pryde was unhappy with the hourly rate which the Council was quoting for clerical staff in the Fees Notice which he received.
9. The Commissioner notified the Council of the application made by Mr Pryde and invited its comments on 3 October 2005.
10. A response was received from the Council on 14 October 2005, containing details of the correspondence which had passed between it and Mr Pryde. The Council provided arguments as to why it felt it reasonable to make the charge it did to provide the information to Mr Pryde. The Council also outlined the process that would have to be gone through to locate, retrieve and copy the invoices and the time that this would take.
11. Further correspondence subsequently took place between the Commissioner and the Council through October, November and December 2005, seeking clarification on, and a detailed breakdown of, the hourly rate the Council was seeking to charge for the location, retrieval and copying of information by clerical staff and any central costs considered by the Council. The Commissioner noted that the Council was charging the upper limit allowed under the Fees Regulations (£15 per hour for each member of staff) and wanted to ensure that the Council could evidence that this cost would actually be incurred.

The Commissioner's Analysis and Findings

12. Under section 49(1) of FOISA, except where an application is frivolous or vexatious or where an application has been withdrawn or abandoned, the Commissioner must consider whether the request for information has been dealt with in accordance with the requirements of Part 1 of FOISA and must issue a Decision Notice to both the applicant and the public authority.
13. The Commissioner is satisfied that Mr Pryde made a request for information to the Council on 5 May 2005 which was valid under section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 6 July 2005.



14. The Fees Regulations allow public authorities to charge for some of the costs which they will incur in responding to an information request. If an authority wishes to make a charge, it must project (i.e. estimate) the costs involved and issue a fees notice to the applicant. Although the first £100 of costs are to be provided free of charge to the applicant, the authority can charge a maximum of 10% of any costs incurred by it which exceed £100. Where the projected costs include the cost of staff time in locating and retrieving the information, the cost of staff time must not exceed £15 per hour for each member of staff engaged on the task. According to the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code), the projected costs for staff time can include overheads such as the managerial or supervisory costs of responding to an information request.
15. A public authority does not have to provide information if the projected cost to it of dealing with a request exceed £600. In this case, the Council has submitted that it would cost £499.25 to provide the information which Mr Pryde has requested. As mentioned above, under the Fees Regulations, where the projected costs exceed £100 but do not exceed £600, the authority can charge a maximum of 10% of the difference between the projected costs and £100. Therefore, in this instance, the fee which the Council is seeking to recover from Mr Pryde is £39.93.
16. The Commissioner is satisfied, on the basis of the information provided to him by the Council, that the Council has calculated the Fees Notice correctly and that it has correctly applied the hourly rate of £15 when calculating the projected costs and the fees to be paid.
17. However, the Commissioner finds that the Council failed to comply with the requirements of Part 1 of FOISA in that it failed to advise Mr Pryde of his right to ask for a review of the decision or about his rights to apply to the Commissioner for a decision under section 19(b) of FOISA. Despite this, Mr Pryde did ask for a review and made an application to the Commissioner and so was not prejudiced by this failure. The Commissioner therefore does not require the Council to take any action as regards this technical breach of FOISA.

Decision

The Commissioner finds that the Fees Notice issued by Falkirk Council was in line with the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004.



The Commissioner also finds that the Council failed to advise Mr Pryde of his rights under section 19(b) of FOISA, but in the circumstances does not require the Council to take any steps to remedy this breach.

Appeal

Should either Mr Pryde or Falkirk Council wish to appeal the 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 of receipt of this notice.

Margaret Keyse
Head of Investigations
10 January 2006