

Decision Notice

Decision 003/2019: Mr N and Children's Hearings Scotland

Expense claims

Reference No: 201801418

Decision Date: 11 January 2019



Summary

CHS was asked for the expense claims of three officers, identified by role. CHS stated that that it was not obliged to comply with the request as the cost of doing so would be more than £600.

The Commissioner investigated and found that the CHS was not entitled to refuse to comply with the request on grounds of excessive cost.

Relevant statutory provisions

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

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 6 July 2018, Mr N asked Children's Hearings Scotland (CHS) for a range of information about the Glasgow Area Support Team and its panel members. Specifically, he asked for:
"Detailed (loss of employment income, travel, phone bills etc) expense claims of [the] Area Convenor, Deputy Area Convenor and Lead Panel Representative of the Glasgow Children's Hearing System (Children's Panel) from 1st April 2017 - 1st April 2018 financial year."
2. CHS responded on 31 July 2018 and stated that it did not hold the information Mr N had asked for.
3. Later that day, Mr N emailed CHS requesting a review of its decision. He considered CHS did hold the requested information.
4. CHS notified Mr N of the outcome of its review on 21 August 2018. It explained that individual claims are submitted on paper forms and they are not accessible in a digital format that would allow a straightforward draw down of the information requested. CHS was unable to provide the information because the cost of doing so would far exceed the £600 threshold.
5. On 22 August 2018, Mr N applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr N was dissatisfied with the outcome of CHS's review and provided a number of reasons why the information should be disclosed.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr N made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

7. On 21 September 2018, CHS was notified in writing that Mr N had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. CHS was invited to comment on this application and to provide submissions explaining how it had concluded that it would cost in excess of £600 to provide Mr N with the information he had requested.
9. CHS offered to disclose to Mr N the total sum of the expense claims for each of the three post-holders for the year 2017 - 2018. Mr N refused the offer and confirmed that he required a detailed breakdown of their expenses.
10. At the investigating officer's request, CHS provided further submissions on the costs that it would be likely to incur in providing the information requested by Mr N.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr N and CHS. He is satisfied that no matter of relevance has been overlooked.

Section 12(1) - Excessive cost of compliance

12. Under section 12(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently £600 (regulation 5). Consequently, the Commissioner has no power to order a public authority to disclose information should he find that the cost of responding to a request for that information exceeds this sum.
13. 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, the authority reasonably estimates it is likely to incur in:
 - (i) locating,
 - (ii) retrieving, and
 - (iii) providing the information requested in accordance with Part 1 of FOISA.

The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

14. An authority can take into account the time taken to redact information in order that a response can be provided when calculating the costs involved, but cannot take account of the cost of determining:
 - (i) whether it actually holds the information requested, or
 - (ii) whether or not it should provide the information.

How is the information held?

15. CHS explained that individuals submit expense claims on an ad-hoc basis and the information is held in hard copy in Glasgow City Council's buildings. A file is held for each individual; there is a section within the file for expense claims.

16. The information is held in the Area Support Team (AST) Clerk's Office (Glasgow City Council provides a clerking service and facilities to CHS).
17. Information relating to expenses is kept for six years plus the current financial year, in line with the CHS's retention schedule. Personnel records are kept for the duration of the individual's tenure with the Children's Panel and destroyed six years after their departure date.

How long would it take to extract expenses from files?

18. CHS submitted that it would take approximately one hour and 30 minutes to extract the expenses information from one file.

Number of expense claims

19. CHS confirmed that 43 expense claims had been identified.

Devolved budget search

20. CHS explained that some expenses are paid directly by the individual working for CHS from a devolved budget. It considered that the time required to identify and extract this information should be taken into consideration when calculating the cost of complying with Mr N's request. The claims for reimbursement from the devolved budget are processed separately, and the documentation held separately within an individual's file. CHS estimated that identifying and extracting one of these claims would take approximately 10 minutes (this estimate included looking through each person's file to check if it contains any of these claims; only certain staff are allowed access to do this).

Digitising of records

21. CHS explained that records are held (in hard copy) in Glasgow, and CHS is headquartered in Edinburgh. Although all expenses are paid for by CHS, this involves a two stage process. Panel and AST members submit their expenses claims forms and receipts to the AST Clerks office, which process the claim. Once approved for payment, Glasgow City Council fulfils the reimbursement, then submits an invoice for the aggregated total to CHS, who pay it back.
22. CHS considered that the time taken to digitise records should be taken into consideration. It considered that this is the most secure and cost effective way of sending them to staff in Edinburgh to review and redact. If CHS were to send the paperwork in hardcopy format, it would require that all of the forms and associated documentation be extracted, parcelled in such a way as to ensure that receipts stay with the correct forms, couriered to the Edinburgh office, scanned in, repacked, sent back and refiled. Digitising the documents in Glasgow would be a significantly less burdensome task, and would minimise the information and personal data security risks.
23. CHS estimated that the task of digitising the records would take approximately 20 minutes per claim (scanning the claim form and attaching receipts, and the organisation of the digital file). CHS believe that it would therefore take approximately 15 hours to digitise all of the claims.

Hourly costs

24. CHS identified the hourly costs as follows:
 - Person A: £11.50/hr. Collection of files, identification of forms/receipts that fall within scope, digitisation of original copies

- Person B: hourly cost in excess of the £15/hr maximum chargeable under the Fees Regulations. Identification of relevant records, redaction of text, compilation of final redacted documentation for mailing to requester.

Time to redact

25. CHS estimated that redacting exempt information from each claim and associated receipts would take approximately 10 minutes.

Other costs / time

26. CHS noted that Mr N would prefer to receive paper documentation. The redacted papers would need to be photocopied and posted. It considered that it would take three hours to photocopy and prepare the parcel for delivery, whilst it would cost £5.82 to courier the parcel.

Chargeable Amount

27. In the Commissioner's briefing on charging and excessive costs¹, he has noted that the Fees Regulations limit the chargeable amount to a proportion of the actual cost incurred. Where the cost to the public authority of responding to the information request:

- (i) is £100 or less, no charge can be made
- (ii) is above £100, the authority is allowed to charge of 10% of those costs up to £600
- (iii) exceeds £600, the public authority does not have to comply with the request.

28. CHS calculated the total cost of provision as follows:

Action	Resource	Cost
Retrieval of files	4½ hours @ £11.50	51.75
Digitisation of original copies (43 claims and receipts, at 20 mins each)	15 hours @ £11.50	172.50
Redacting (43 claims and receipts, at 10 mins each)	7.5 hours @ 15.00	112.50
Photocopying redacted docs	3 hours @ £15.00	45.00
Photocopying charge =	£0.10 per single side, each claim has 3 pages: 43x3x0.10	12.90
Courier delivery	Royal mail charge	5.82
Subtotal		400.47
Less first £100		300.47
Total chargeable amount x 10%		30.05

The Commissioner's conclusion

29. As can be seen from the cost calculation, the total estimated cost of provision is less than £600.
30. The Commissioner finds that CHS has failed to justify its application of section 12(1) of FOISA in this case, as the estimated cost of complying with Mr N's request is less than the amount specified in the Fees Regulations (£600). The Commissioner therefore requires CHS to respond anew to Mr N's requirement for review in accordance with Part 1 of FOISA (but other than in terms of section 12(1)).

¹ http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees_and_charging/ChargingFOISA.aspx

Decision

The Commissioner finds that Children's Hearings Scotland (CHS) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr N.

The Commissioner is not satisfied that CHS was entitled to refuse to comply with the request under section 12(1) of FOISA.

The Commissioner requires CHS to provide a new response to Mr N's requirement for review, other than in terms of section 12(1) of FOISA, by **25 February 2019**.

Appeal

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

Margaret Keyse
Head of Enforcement

11 January 2019

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 £600).

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