



Scottish Information
Commissioner

Decision 008/2007 Prison Governors Association - Scotland and the Scottish Prison Service
<i>Information about pay bill of Scottish Prison Service HQ over the last 3 years</i>

Applicant: Prison Governors Association - Scotland
Authority: Scottish Prison Service
Case No: 200601654
Decision Date: 18 January 2007

Kevin Dunion
Scottish Information Commissioner

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Decision 008/2007 Prison Governors Association - Scotland and the Scottish Prison Service

Request for information about the pay bill of the Scottish Prison Service's Headquarters over the last 3 years, broken down by pay band – excessive cost of compliance – section 12 of FOISA – Commissioner found that the cost of compliance exceeded the £600 prescribed limit set out in the Fees Regulations

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement), 12(1) (Excessive cost of compliance), 15 (Duty to provide advice and assistance).

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 regulations 3 and 5.

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Ms Audrey Park, Chair of the Scottish branch of the Prison Governors Association (the Association) made a request to the Scottish Prison Service (SPS) seeking information about salary costs and pay bandings at SPS HQ over the last three years.

The SPS withheld the information on the grounds of section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). After seeking an internal review the Association asked the Commissioner to consider the SPS's handling of its request as it disputed the costs involved.

The Commissioner found that the SPS had provided sufficient evidence to support its estimate of the cost of providing the information requested. Accordingly, section 12(1) of FOISA constituted appropriate grounds for refusal to provide the information requested by the Association.



Background

1. On 5 June 2006, the Association made two requests for information to the SPS. The requests were for:
 - a) A copy of the recently published SOR (Structural Organisation Review) report (which was produced by the SOR team, a joint SPS / Trade Union Side initiative to establish how the SPS will look in the medium to long term future).
 - b) Details of the total pay bill for the SPS Headquarters for financial years 2004/5, 2005/6 and 2006/7 (anticipated), broken down by pay band.
2. The SPS responded to the requests from the Association on 5 July 2006 as follows:
 - a) With regard to its first request, the SPS informed the Association that it was withholding the SOR report under sections 29(1)(a) and 30(b) of FOISA.
 - b) With regard to its second request, the SPS informed the Association that the requested information included details which were not currently recorded by their financial and payroll systems (i.e. spend per pay banding per financial year). The SPS estimated that it would take a minimum of 10 working days to perform the analysis required, resulting in total estimated costs of £1,200, a figure which substantially exceeds the £600 prescribed limit set out in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations). As a result the SPS refused to release the information on the grounds of section 12(1) of FOISA, which relates to excessive costs of compliance.
3. On 21 August 2006, the Association wrote to the SPS asking for a review of its decision to withhold the information to its second request on the basis of excessive costs as it disputed the estimated costs of £1,200. The Association considered that the pay bill for each prison could easily be obtained from each prison's IT system. No request for review was made in response to the refusal to supply the SOR report and therefore this did not form part of my investigation.
4. The SPS responded on 26 September 2006 to the Association's request for review. The SPS upheld its original decision not to release details of the SPS HQ total pay bill on the grounds of excessive costs (section 12(1) of FOISA).



5. The Association wrote to my Office on 10 October 2006 stating that it was dissatisfied with the outcome of the SPS review and applying to me for a decision in relation to the withheld salary data. The Association queried the £1,200 costs of compliance cited by the SPS and asked me to investigate on its behalf. The Association's application was validated by establishing that it had made a valid information request to a Scottish public authority under FOISA (i.e. the SPS) and had appealed to me only after asking the SPS to review its response to the request.

Investigation

6. My Office sent the Association a letter on 19 October 2006 advising it that a full investigation would now be carried out into its case.
7. A letter was also sent to the SPS on 19 October 2006, in terms of section 49(3)(a) of FOISA, giving notice that an appeal had been received and that an investigation into the matter had begun. The SPS was invited to comment on the matter raised by the Association and on the application as a whole.
8. In its response, the SPS provided my Office with a full analysis of the application of section 12(1) which confirmed that the estimated costs of compliance would be in excess of £600.

The Commissioner's Analysis and Findings

Excessive cost of compliance

9. In this particular case, the Association queried the SPS's estimated costs of fulfilling its information request. Therefore this investigation focused on whether the costs provided by the SPS were valid estimates.
10. Section 12 of FOISA relates to excessive cost of compliance, and states under section 12(1) that:

"Section 1(1) [of FOISA] 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..."



11. The Scottish Ministers have, under regulation 5 of the Fees Regulations, set this prescribed amount at £600.
12. Section 12(1) of FOISA, read in conjunction with regulation 5 of the Fees Regulations, therefore states that public authorities are under no obligation to comply with requests for information where the cost of doing so would exceed this figure of £600. Consequently, as Commissioner, I have no power to force the release of information should I find that the cost of responding to any single request for information exceeds this amount.

Would the cost of complying with the request exceed £600?

13. In its original response the SPS had advised the Association that it would cost some £1,200 to provide the information it requested and in its 15 December submission to my Office, the SPS provided a detailed breakdown of the manual analysis that would be required in order to provide the information requested by the Association.
14. The SPS stated that in order to provide the information the Association requested, with regard to pay bandings and expenditure, staff would have to extract details from both the financial and payroll systems, merge details held on independent systems and classify, collate and summarise the analysis into the categories requested. This required a large degree of manual input which the SPS estimated would take a total of 80 hours (charged at £15 per hour).
15. The SPS provided a breakdown of the three different processes that would have to be undertaken to fulfill this request:
 - Finding data on employees with SPS contracts (34 hours) = £510
 - Finding data on employees with Scottish Executive contracts (24 hours) = £360
 - Working out the anticipated spend for 2006/07 (20 hours) = £300
16. The SPS have charged the maximum £15 per hour for all of the above work as they claim it would involve staff at SPS grade E level, who are paid more than £15 per hour.
17. After reviewing the SPS submission detailing its estimated costs, I accept that a reasonable estimate of the cost of providing the information requested by the Association would be around £1,200, which is in excess of the £600 limit laid down in the Fees Regulations.
18. This being so, I accept that section 12(1) of FOISA applies to the Association's request.



19. However, the breakdown of costs provided by the SPS does indicate that some of the requested data could have been provided to the Association as each of the three separate processes required to produce the data costs less than £600.
20. Under section 15(1) of FOISA, public authorities are obliged to provide reasonable advice and assistance to a person who proposes to make, or has made, a request for information. 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) advises under paragraph 20 that appropriate help could include an indication of what information could be provided within the cost ceiling, in instances where a request would be refused on cost grounds.
21. I note however that the SPS failed to offer such advice in its communication with the Association in relation to this case and I consider that it would have been reasonable for the SPS to have done so.

Decision

I find that section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) constitutes appropriate grounds for refusal of the Prison Governors Association - Scotland's (the Association) request in the circumstances of this case.

However, I also find that, in failing to provide reasonable advice and assistance to the Association in terms of section 15(1) of FOISA, the Scottish Prison Service (SPS) failed to comply with Part 1 of FOISA.

I therefore require the SPS to contact the Association within 45 days of receipt of this decision notice with a view to discussing with the Association what information could be provided within the cost ceiling.



Appeal

Should either the SPS or the Association wish to appeal against this 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.

Kevin Dunion
Scottish Information Commissioner
18 January 2007



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.

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.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).



The 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.