



Scottish Information
Commissioner

Decision 011/2006 – Mr Leslie Pryde and Falkirk Council

Request for decision in relation to a Fees Notice

Applicant: Mr Leslie Pryde
Authority: Falkirk Council
Case No: 200502687
Decision Date: 1 February 2006

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 011/2006 Mr Leslie Pryde and Falkirk Council

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

Facts

1. On 7 June 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 the purchase of playground equipment within the Council during financial years 2003, 2004 and 2005, including tender documentation, purchase orders, supplier invoices, committee reports, copies of any replacement programmes, a copy of the annual inspection report “comm\002\03”, a copy of a tender document for Dunlop Playground Services, all costs associated with the playground fitter and staff, manual staff costs, maintenance programme and all correspondence associated with all aspects of sourcing and purchasing playground equipment held by the Council.
2. The Council responded to Mr Pryde’s application on 24 June 2005, stating that to provide him with the information which he had requested would cost more than the prescribed amount for responding to requests for information, as set out in regulation 4 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations), and refused to provide the information to him.
3. In its response, the Council advised Mr Pryde that it could supply a portion of the information which would not exceed the prescribed amount set out in the Fees Regulations in response to his request for a charge of £50.00.
4. 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.
5. 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 to disclose the information to the applicant would exceed the prescribed amount as set out in the Fees Regulations.



6. 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 information relating to purchase orders for free, 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.
7. The Commissioner notified the Council of the application made by Mr Pryde and invited its comments on 29 September 2005.
8. 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.
9. 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

10. 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.
11. The Commissioner is satisfied that Mr Pryde made a request for information to the Council on 7 June 2005 which was valid under the terms of section 1(1) of FOISA, followed by a valid requirement for review (in terms of section 20 of FOISA) on 6 July 2005.



12. The Fees Regulations allow public authorities to charge for certain costs involved with responding to an information request if the authority projects that the costs to it of dealing with the request will exceed £100. Although the first £100 of costs are to be provided free of charge to the applicant, the authority can charge 10% of any costs incurred by it which exceed £100. Where 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.
13. In this case, the Council has submitted that it would cost £1116 to provide the information which Mr Pryde has requested. Section 12 FOISA states that an authority is not obliged to respond to requests for information where it has estimated that the cost of complying with such a request would exceed such amount as may be prescribed in Fees Regulations. Paragraph 4 of the Fees Regulations states that the prescribed amount is £600.00.
14. 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.
15. The Commissioner is also satisfied that the Council fulfilled its duty to provide advice and assistance to Mr Pryde under section 15 of FOISA in offering to provide information to Mr Pryde even although it had no duty to do so.

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 and that the Council complied with Part 1 of FOISA in responding to Mr Pryde's information request.



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
1 February 2006