

**Decision 026/2006 Mr David Ewen of the Evening
Express and Aberdeen City Council**

Request for Council modernisation documentation

**Applicant: Mr David Ewen of the Evening Express
Authority: Aberdeen City Council
Case No: 200502973
Decision Date: 15 February 2006**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
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KY16 9DS



Decision 026/2006 – Mr David Ewen of the Evening Express and Aberdeen City Council

Request for documentation relating to modernisation plans – information request refused on the basis of excessive cost under section 12(1)

Facts

Mr Ewen, a journalist with the Evening Express, asked Aberdeen City Council (the Council) to provide him with all reports, documentation and correspondence relating to its modernisation plans.

The Council advised Mr Ewen that the cost of supplying this information would exceed the £600 cost threshold. Mr Ewen applied to the Commissioner for a decision.

Outcome

The Commissioner found that the Council would have incurred costs in excess of the £600 limit set by regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) in complying with Mr Ewen's request. It therefore applied section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) correctly in withholding the information on the grounds of excessive cost, and complied with Part 1 of FOISA in that respect.

However, the Commissioner found that the Council did not carry out its duty to advise and assist Mr Ewen under section 15 of FOISA, in that it failed to contact him to find out whether it would be possible for him to narrow his request in order to bring the cost under the £600 limit established by section 12 of FOISA for complying with a request for information.



Appeal

Should either the Council or Mr Ewen 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.

Background

1. On 1 September 2005, Mr Ewen asked the Council to provide him with information to answer six questions which he had asked about the Council's modernisation plans.
2. The Council responded by letter on 27 September 2005, answering four of Mr Ewen's questions, but issuing a refusal notice under section 16(4) (excessive cost for compliance) for his question (question 5) about modernisation plans and his question (question 6) about correspondence about pay between officials and members of the administration.
3. On 28 September 2005, Mr Ewen asked the Council to review its refusal notice and asked to be provided with the costs associated with providing the information.
4. On 19 October 2005, the Council communicated the decision of its Review Panel (of 7 October 2005). The Review Panel upheld the initial decision to issue a refusal notice on grounds of excessive cost of compliance. The review estimated cost of compliance to be in excess of £2700. It also stated that disclosure of information to answer question 6 would substantially inhibit the free and frank exchange of views for the purposes of deliberation and claimed the exemption under section 30(b)(ii) of FOISA.
5. On 25 October 2005, Mr Ewen applied to me for a decision as to whether the Council had dealt with his information request in accordance with Part 1 of FOISA. In particular, he was dissatisfied with the Council's decision not to provide copies of all reports and documentation relating to the modernisation plans on grounds of excessive cost. He asked for a breakdown of costs for the information he had requested, but accepted the Council's decision not to release, on the grounds of section 30(b)(ii), information in answer to his question 6.
6. The case was allocated to an Investigating Officer.



The Investigation

7. Mr Ewen's appeal was validated by establishing that he had made a valid information request to a Scottish public authority and had appealed to me only after asking the public authority to review its response to his request.
8. The Investigating Officer contacted the Council on 15 November 2005 for its comments on the application (in terms of section 49(3)(a) of FOISA) and for further information, in particular a breakdown of the costs. The Council was also asked if it had contacted Mr Ewen to ask him to restrict his information request. The Council responded on 13 December 2005, providing:
 - Aberdeen City Council – Single Status/ Job Evaluation Information Pack
 - A breakdown of costs, with comments.
9. The Single Status agreement is a national agreement reached by Local Authority employers and trade unions in June 1999. Elements of this agreement are a fair and non-discriminatory pay structure (which will deal with the issue of equal pay) and the modernisation of service delivery.
10. The Council did not state that a modified request would be given due consideration.

Submissions from the Council

11. The Council stated that Mr Ewen had asked for all the information on a certain area and had made no attempt to narrow his enquiry. It stated that Mr Ewen had made numerous freedom of information requests and had not attempted to focus his requests. The Council was unable to evidence having attempted to contact Mr Ewen to assist him in narrowing his request, although it stated that it believed there had been a telephone conversation.
12. The Council stated that the 2100 job descriptions, person specifications and evaluation sheets compiled for the single status exercise amounted to 12,600 sheets of A4 paper. This was what it regarded Mr Ewen as requesting. The permitted photocopying cost of 10 pence per sheet comprised £1,260. The Council advised my Office that when the documentation was photocopied for internal use, it required three staff employed for three days to copy the documentation. The Council stated that were it to cost the staff time at £7.39 per hour, the cost would include a further £465. The Council had not included this cost since the projected cost already exceeded the maximum in the Fees Regulations.
13. The Council stated that it had since issued an Information Pack on the subject of Single Status/Job evaluation, which Mr Ewen received on 24 November 2005. This pack contained links to information on the single status/job evaluation. However, the Council accepted that whilst this pack drew on the information requested, it was not equivalent to it.



Submissions from Mr Ewen

14. Mr Ewen stated that the Council had not attempted to assess the amount of information which it could provide within the limit set by the Fees Regulations and that the Council had not contacted him to assist him in narrowing his request.

The Commissioner's Analysis and Findings

15. Mr Ewen had asked that I investigate whether the Council should have offered to supply some of the information he had requested.
16. Whilst it would not be reasonable to expect authorities to anticipate what an applicant might want, or to enter into a lengthy process of negotiation in relation to what might be provided, if an authority does not make it clear to an applicant that a request could be narrowed it would be failing in its duty under section 15 of FOISA. Section 15 of FOISA requires authorities to provide reasonable advice and assistance to a person who makes a request for information. This duty is further expanded on in 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). Paragraph 14 of Annex 3 of the Section 60 Code states that although under no obligation to comply with a request for information which would exceed £600, an authority should consider what information could be released free of charge or below the prescribed amount. I am satisfied that the Council did not make reasonable efforts to establish whether part of the information could be made available to Mr Ewen for free, or for a charge within the £600 threshold specified in section 12 of FOISA.
17. Therefore, whilst I accept that the cost of providing the information would still exceed the £600 threshold specified for complying with an information request, the Council failed to advise and assist Mr Ewen properly under section 15 of the Act, by not contacting him to find out if it would be possible to narrow his request further to bring the cost below that limit.
18. I therefore find that the Council failed in its duty to provide advice and assistance under section 15(1) of FOISA.



Decision

I find that Aberdeen City Council would have incurred costs in excess of the £600 limit set by regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) in complying with Mr Ewen's request. It therefore applied section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) correctly in withholding the information on the grounds of excessive cost, and complied with Part 1 of the Act in that respect.

However, I also find that Aberdeen City Council failed to advise and assist Mr Ewen properly under section 15 of FOISA, by failing to contact him to discuss if it would be possible to narrow his request further in order to bring the cost under the £600 limit for complying with a request for information. I require the Council to take steps to do this.

I cannot require the Council to take any action until the time allowed for an appeal to be made to the Court of Session has elapsed. I therefore require the Council to take steps to ascertain whether it would be possible to narrow Mr Ewen's request further in order to bring the cost under the £600 limit within 45 days of the date of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
15 February 2006