

Decision Notice



Decision 031/2012 Mr D and the Scottish Court Service

Live bail orders

Reference No: 201102062

Decision Date: 17 February 2012

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr D asked the Scottish Court Service (the SCS) for information about live bail orders issued by Edinburgh Sheriff Court.

The SCS advised Mr D that the way in which information about bail orders was held in its computer system did not allow it to identify which orders were live and which had fallen; to provide the information, the SCS would have to employ an IT contractor to write new software, at a cost of more than £600 (with the result that it was not obliged to comply with the request). Mr D was not satisfied by the response from the SCS. Following a review, he remained dissatisfied and applied for a decision from the Commissioner.

After investigation, the Commissioner found that the SCS was justified in concluding that the cost of providing the information to Mr D would exceed the £600 limit (and therefore that the SCS was not obliged to comply with Mr D's request).

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 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 the Appendix to this decision. The Appendix forms part of this decision.



Background

1. On 28 July 2011, Mr D asked the SCS for the following information in respect of Edinburgh Sheriff Court:
 - a) How many bail orders are currently in place?
 - b) How many people does this apply to (assuming some people will be the subject of more than one bail order)?
 - c) What is the highest number of bail orders in respect of the same person?
2. On 31 August 2011, the SCS provided Mr D with its response. In relation to the first part of his request, it told him that it was not possible to advise him how many bail orders were currently in place, as the database did not distinguish between those that were still live and those that had fallen. The SCS provided information about the number of bail orders granted in Edinburgh each month.
3. In relation to the second and third parts of Mr D's request, the SCS advised that it was not able to extract data at the level required to answer these. It was not data the SCS required for its own purposes and it would have to pay an outside IT contractor to write a new program to extract the information. This would cost more than £600: the SCS therefore refused to provide the information under section 12(1) of FOISA (Excessive cost of compliance).
4. On 3 September 2011, Mr D requested a review of the SCS's response. The SCS sent its response to this on 14 October 2011. It upheld the conclusions in its initial response, but provided some additional explanation of its position, along with answers to some additional questions raised in Mr D's request for review.
5. On 1 November 2011, Mr D wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SCS's review. It appeared to him that as Bail Orders were issued by the court, the control and management of that information was a matter primarily for the SCS. He applied to the Commissioner for a decision.
6. The application was validated by establishing that Mr D had made a request for information to a Scottish public authority and had applied for a decision from the Commissioner, in terms of section 47(1) of FOISA, only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



Investigation

7. On 15 November 2011, the investigating officer contacted the SCS, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the SCS was asked whether there was any possibility of bringing Mr D's request within the £600 cost threshold by narrowing the range of information covered by the request, and to provide a breakdown of the costs it would incur in providing the information requested. The SCS was also asked to explain what information it held about bail orders, and what information could be extracted from its IT systems without requiring additional programs to be written.
8. The SCS responded on 14 December 2011. It provided a detailed explanation of its involvement in the procedure surrounding the granting of bail, and a description of the information held on the case management system in relation to bail orders. It explained why the information requested by Mr D could not be provided by the case management system, but would have to be compiled by checking each case individually.
9. A summary of the SCS's response was sent to Mr D, but he remained dissatisfied with the explanation given. Further comments were sought, and received, from the SCS.
10. The relevant submissions received from both Mr D and the SCS will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the submissions which have been presented to him and is satisfied that no matter of relevance has been overlooked.

Section 12(1) of FOISA

12. Mr D asked how many bail orders were currently in place in respect of Edinburgh Sheriff Court. The SCS has advised that its case management database holds the following information in relation to bail orders: date imposed; conditions imposed; date of next calling; details of accused; applications in respect of bail (change of conditions / address details). However, the database does not record which bail orders remain live.



13. The SCS explained that the information in its database was structured for its operational needs, relating to the processing of court business. It went on to explain the involvement of the SCS in relation to the granting of bail: the SCS recorded bail decisions and printed out bail orders for the accused to sign. There was no requirement for the SCS to actively manage that data until a change of bail conditions (such as a change of address) was brought to the attention of the court. If the Procurator Fiscal deserted the case, there was no requirement for the SCS to be informed. The SCS was not required to take an active interest in live bail orders, and there was no marker within its database to show whether bail was live against any record for the accused.
14. The SCS commented that the police would note when a bail order was live, so they could be aware of any breach of order; the Procurator Fiscal would then commence any breach proceedings.
15. In relation to Mr D's second and third questions, the SCS explained that each time a case was raised against an accused person, it was registered as a new record within the SCS database, rather than being attached to any previous record the accused might have. Because no unique identifier existed for each accused person, the SCS argued that the only way it could retrieve the information requested by Mr D was to go through each case manually to see if bail remained live. The SCS provided the Commissioner with an extract from the database to demonstrate the difficulties it would face in establishing the number of individuals with live bail orders.
16. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Fees Regulations. The Commissioner has no power to require the release of information should he find that the cost of responding to a request for information exceeds this amount.
17. 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, which the authority reasonably estimates it is likely to incur in locating, retrieving and providing the information requested in accordance with Part 1 of FOISA. The public authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is set at £15 per hour.
18. The Commissioner accepts that the SCS has shown that it cannot easily identify which records in its case management system relate to cases where bail orders remain live, or the number of individuals to whom such orders apply, because its case management database has not been structured in a way which would allow the relevant records to be searched for and retrieved.



19. The SCS initially advised that it would have to seek the services of an external IT contractor to write a new program to extract information about the number of live bail orders. The cost of doing so was likely to be in excess of £600, based on the SCS's support service costs agreement with its IT contractor. However, the contractor later advised the SCS that it would not be possible to extract the required information from the data held in the case management system.
20. Having ruled out the option of automated search and retrieval, the question remained whether it would be possible to extract the information from the database in any other way, e.g. by examining each record individually. The SCS advised that bail orders had been granted in 6,815 cases brought to Edinburgh Sheriff Court in the previous 12 months. In any event, as cases can proceed for longer than a year, it would be necessary to go through not only the previous year's cases, but an indeterminate number of records to assess the cases where bail was still live, or the number of individuals to whom live bail orders applied.
21. The Commissioner accepts that the work involved in checking each record (and in some cases cross-referencing the information against other records) would incur staff costs in excess of £600. He is satisfied in the circumstances that the SCS was entitled to rely upon section 12(1) of FOISA in relation to Mr D's request for information.

DECISION

The Commissioner finds that the Scottish Court Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (in dealing with Mr D's information request).

Appeal

Should either Mr D or the Scottish Court Service 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 after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
17 February 2012



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.

...

- (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.

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.