

Decision Notice



Decision 075/2013 Mr V and Aberdeen City Council

Provision of community based programmes for sex offenders

Reference No: 201202518
Decision Date: 22 April 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 18 September 2012, Mr V asked Aberdeen City Council (the Council) for information regarding the provision of community based programmes for sex offenders.

Following a review, the Council informed Mr V that the cost of fulfilling his request would exceed £600, and so it was not obliged to comply with the request. Following an investigation, the Commissioner accepted the Council's position.

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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 18 September 2012, Mr V wrote to the Council requesting all information, including updates, that the Council had provided to sentencers and the Parole Board about the available provision of community based programmes for sex offenders in the local criminal justice area since 1 January 2006.
2. Mr V received no response to his request.
3. On 29 October 2012, Mr V wrote to the Council to request a review in respect of its failure to respond.
4. The Council notified Mr V of the outcome of its review on 27 November 2012. It informed Mr V that the cost of fulfilling his request would exceed £600. Therefore, section 12 of FOISA applied, with the result that it was not obliged to comply with the request. The Council provided Mr V with a breakdown of how it arrived at the projected cost, which only covered the period 2007 to 2011.



5. On 4 December 2012, Mr V wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr V made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 21 January 2013, the Council was notified in writing that an application had been received from Mr V. The Council was also given an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA), and asked to justify its reliance on section 12(1) of FOISA.
8. The Council responded, providing further submissions during the investigation.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr V and the Council. She is satisfied that no matter of relevance has been overlooked.

Section 12(1) – excessive cost of compliance

10. The Council confirmed that it wished to rely on section 12(1) of FOISA in relation to Mr V's request. Were the Commissioner to accept that section 12(1) applied, she could not require the Council to comply with the request. To do this, she would need to be satisfied that (on a reasonable estimate) the cost of complying with the request would exceed the figure of £600 specified for that purpose by regulation 5 of the Fees Regulations.
11. The projected costs a Scottish 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 will incur in
 - locating
 - retrieving and
 - providingthe information requested in accordance with Part 1 of FOISA. The maximum hourly rate the authority can charge for staff time is £15 an hour.



12. The authority may not charge for the cost of determining whether:
 - it actually holds the information, or
 - it should provide the information.
13. The Council explained that it did not provide updates or reports to the Courts or the Parole Board on the availability of community based programmes for sex offenders. The Council told the Commissioner that it therefore considered what other information it held which could fall within the scope of Mr V's request. It concluded that this would be any relevant information contained in Social Enquiry Reports (SER), now known as Criminal Justice Social Work Reports (CJSWR). These reports were, the Council submitted, prepared at the request of the Court and used as an aid to sentencing.
14. The Council described the nature of the information contained in these reports, which would (where appropriate) comment on an offender's suitability for a community based programme, as well as the suitability of community based programmes for the individual. The Council submitted that comment would not be made on the suitability of a particular programme if the programme was not available in the area.
15. The Council explained that specific information about places, times, etc. of community based programmes was not included in these reports. The Council also informed the Commissioner that the information in these reports could not be considered an "update".
16. The Council told the Commissioner that once a SER/CJSWR had been submitted to the Court, a hard copy would be retained on the individual client's file. It also confirmed that it retained electronic copies of these for five years. For previous years (in this case, 2006-07) it would have to undertake a manual search for hard copies held within individual client files. It provided a revised cost breakdown to reflect the need for this manual search (which had not been referred to in the estimate provided for Mr V).
17. The Council calculated that it would cost approximately £23,065.50 to locate, retrieve and provide the information held electronically. This was based on an assessment that it would have to search through each SER/CJSWR held electronically, to check whether they contained information falling within scope of the request, and then extract any relevant information. Given a total of 11,533 reports and a projected average time of eight minutes to look through each, the Council estimated that it would take 1,537.7 hours to complete this element of the task. The work would require to be carried out by staff charged at the maximum hourly rate.
18. The Council submitted that it would cost a further £101,677.50 to locate, retrieve and provide the information held in manual files for 2006-07. It explained the steps required, including identification of all relevant Criminal Justice Social Work (CJSW) clients, location of the files and ascertaining whether the client had a conviction for a sexual offence. Thereafter, an officer would have to search each file where the client had such a conviction individually, to identify whether a SER/CJSWR report had been provided to the Court in relation to that client.



19. While the Council found it difficult to estimate how much time would be required for the second element of the task before completion of the first, it submitted (on the basis of 13,557 client files for the relevant period) that the whole task for 2006-07 would take approximately 6,778.5 hours. Again, it identified an hourly rate of £15 an hour for this work.
20. The Council therefore submitted that the total cost of complying with Mr V's request would be £124,743.00.
21. The Council provided the Commissioner with a detailed explanation as to why it would require to charge the maximum £15 an hour for locating, retrieving and providing the information. Given the nature of the information, the Commissioner accepts this explanation
22. In his application to the Commissioner, Mr V commented that he considered the cost estimate the Council had provided for the period 2007 to 2011 to be grossly inflated. He understood that the Criminal Justice Service had data systems in place for identifying clients with sexual offence convictions, so it would not be necessary for the Council to interrogate every single client file. The Commissioner has considered this point, but accepts the Council's submissions as to the work required.
23. Mr V also queried whether the information he was seeking was information to be found in individual client files. The Commissioner understands this point, but (having considered the Council's submissions) accepts that it is reasonable to conclude that the information described in those submissions is the only information it is reasonably likely to hold which would even approximate to what Mr V asked for.
24. Although the Council is required to provide reports to the Parole Board to assist in its decision making, it submitted that these reports do not contain information falling within scope of Mr V's request. The Commissioner is satisfied that it is reasonable to conclude that this is the case.
25. Having considered the submissions from the Council, together with the terms of section 12(1) and the Fees Regulations, the Commissioner is satisfied that the costs identified in this case represent a reasonable estimate of the cost of complying with Mr V's request for information. Mr V may not have been provided with calculations for the 2006-07 period, but it is clear that the cost of compliance exceeds £600 considerably even when that period is left out of account: given the costs involved, it is difficult to identify what useful information could be provided within the cost limit (and, in any event, the information from the client files does not appear to be what Mr V is looking for).
26. In all the circumstances, therefore, the Commissioner is satisfied that the Council was entitled to rely on section 12(1) of FOISA in relation to Mr V's information request, and therefore was under no obligation to comply with the request.



DECISION

The Commissioner finds that, in respect of the matters specified in Mr V's application, Aberdeen City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002.

Appeal

Should either Mr V or Aberdeen City Council 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
22 April 2013



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.

...

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.