

Decision Notice



Decision 087/2014 Mr Brian Sheen and the Chief Constable of the Police
Service of Scotland

Blocking access to websites

Reference No: 201302911
Decision Date: 15 April 2014

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

On 29 October 2013, Mr Sheen asked the Chief Constable of the Police Service of Scotland (the Police) for information about the number of times that its monitoring software had blocked access to websites categorised as pornography or gambling, and the number of unique visitors/users that were blocked. The Police informed Mr Sheen that complying with his request would cost in excess of the £600 cost limit set by the relevant Fees Regulations and, therefore, they were not obliged to comply with it. Following an investigation, the Commissioner accepted this, but found that the Police had failed to provide advice and assistance in line with section 15 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance)

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 29 October 2013, Mr Sheen asked the Police how many times the software that monitors internet usage had blocked access to websites categorised as pornography and gambling. Mr Sheen asked for this information for the months between June 2013 and September 2013, and also requested the number of unique visitors/users that were blocked under each category.
2. The Police responded on 13 November 2013, informing Mr Sheen that it would cost in excess of £600 to fulfil his request and, by virtue of section 12 of FOISA, they were not obliged to comply with the request.
3. On 13 November 2013, Mr Sheen emailed the Police to request a review of their decision as he did not consider it would be costly to extract the requested information.



4. The Police notified Mr Sheen of the outcome of their review on 10 December 2013, upholding their original response, without amendment.
5. On 10 December 2013, Mr Sheen emailed the Commissioner, stating that he was dissatisfied with the outcome of the review from the Police 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 Sheen 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 7 January 2014, the Police were notified in writing that an application had been received from Mr Sheen and were given an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA. Specifically, the Police were asked to justify their application of sections 12(1) and 17(1) of FOISA.
8. During the investigation, the Police provided detailed submissions to support their consideration that it would incur excessive costs to provide the information requested.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both Mr Sheen and the Police. She is satisfied that no matter of relevance has been overlooked.

Section 12(1) - excessive cost of compliance

10. Under section 12(1) of FOISA, a Scottish public authority is not obliged to comply with a request for information where the estimated cost of complying would exceed the amount prescribed in the relevant Fees Regulations. This amount is currently £600 (regulation 5 of the Fees Regulations). Consequently, the Commissioner has no power to order a public authority to disclose information should she find that the cost of responding to a request for that information exceeds this sum.



11. 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, the authority reasonably estimates it is likely to incur in:
 - (i) locating
 - (ii) retrieving, and
 - (iii) providingthe information requested in accordance with Part 1 of FOISA. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
12. 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.
13. The Police explained that, when the Police Service of Scotland came into existence in April 2013, the eight former police forces retained their legacy IT systems; this setup would be rationalised going forward as business area and structural changes were made and implemented. Therefore there were currently a number of legacy systems and practices in place; some of these are dependent on system capability and others are limited in terms of capacity/proportionality. The department responsible for internet monitoring also varied across the legacy areas from Information Management/Security to Professional Standards or Counter Corruption Units.
14. The Police explained that the internet blocking software used does not generate a management report each time a user attempts to access a blocked website; instead, web history is stored via the monitoring software in place on each legacy force's network. To access this information requires interrogation at an individual account level, as there is no overarching report. The Police explained that a report could be run for an individual officer's account activity, but not for multiple users. Therefore, in order to obtain the information requested by Mr Sheen, the Police would have to individually access the browsing history of every live user in the remaining networks; this would be undertaken for each of the former forces. This search would cost more than £600 and section 12 of FOISA would apply.
15. The Police confirmed that there was one exception to the situation outlined above, and that they could provide a report containing the information requested by Mr Sheen in relation to the former Strathclyde Police Force area, covering one year. This report was provided to Mr Sheen during the investigation. The Police confirmed that no other legacy computer systems were capable of producing the same type of report for the remaining areas.
16. In providing an estimate of the cost of providing information for the remaining areas, the Police referred to the Tayside Division in which there are 1900 user accounts present on the system, each of which would require to be individually accessed to locate the requested information, taking an average of five minutes per account, (depending on the level of activity of the user), and overall requiring around 160 hours of research for Tayside Division alone.



17. Having taken account of the above submissions, the Commissioner is satisfied that the costs identified in this case represent a reasonable estimate of the cost of complying with Mr Sheen's request for information, and that the request could not have been dealt with within the £600 cost limit.
18. Consequently, the Commissioner is satisfied that the Police were entitled to rely on section 12(1) of FOISA, and were under no obligation to comply with the request.

Section 15 – Duty to advise and assist

19. Section 15(1) requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
20. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA (the Section 60 code) provides ¹ (at 1.9):
Where the cost of responding to a request made under FOISA will exceed the upper cost limit of £600 ... the authority may again consider what information could be provided below the cost limit, and suggest how the applicant may wish to narrow the scope of their request accordingly.
21. Section 15(2) of FOISA states that a Scottish public authority which, in relation to the provision of advice and assistance in any case, conforms with the section 60 code, is taken to comply with the duty to provide reasonable advice and assistance in section 15(1).
22. In their submissions, the Police stated that it would be impractical to suggest alternative ways to source the information as to answer the request would require all user accounts to be individually checked. As there was no facility to extract sample or refined data, the act of performing the individual checks would be required in any case.
23. The Commissioner accepts this explanation, but considers that the refusal notice issued by the Police should have provided a clear explanation as to why it would be so difficult to extract the requested information. This would have helped Mr Sheen to understand why it would cost so much to comply with an apparently reasonable request for recorded information. Consequently, the Commissioner has concluded that the Police failed to comply fully with the duty in section 15(1) of FOISA to provide reasonable advice and assistance to Mr Sheen in making his request. During the investigation, Mr Sheen received an explanation of the difficulties involved in obtaining the information he had asked for, and consequently the Commissioner does not require the Police to take any further action to remedy this failure.

¹ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



DECISION

The Commissioner finds that the Chief Constable of the Police Service of Scotland (the Police) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Brian Sheen.

The Commissioner finds that the Police were not obliged to comply with Mr Sheen's information request, given that section 12(1) of FOISA applied.

However, the Commissioner finds that the Police failed to provide reasonable advice and assistance to Mr Sheen to explain why it would be difficult to provide the requested information and therefore failed to comply with section 15(1) of FOISA. As the Police provided an explanation to Mr Sheen during the investigation, the Commissioner does not require the Police to take any action in relation to this breach.

Appeal

Should either Mr Brian Sheen or the Chief Constable of the Police Service of Scotland wish to appeal against this decision, they have the right to 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.

Margaret Keyse
Head of Enforcement
15 April 2014



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.

...

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).



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.