

Decision Notice

Decision 105/2017: Mr Andrew Picken and Glasgow Prestwick Airport Limited

Board meeting minutes

Reference No: 201700441
Decision Date: 5 July 2017



Scottish Information
Commissioner

Summary

Glasgow Prestwick Airport Limited (GPA) was asked for copies of specified board meeting minutes. GPA stated that it was not obliged to comply with the request as the cost of doing so would be more than £600.

Following an investigation, the Commissioner was not persuaded that GPA's submissions were sufficiently robust for her to accept that the request could be refused on grounds of excessive cost.

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 Appendix 1 to this decision. The Appendix forms part of this decision.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 21 December 2016, Mr Picken made a request for information to GPA. The information requested was:

As per your publication scheme (http://www.glasgowprestwick.com/wp-content/uploads/2016/06/GPA-MPS-classes_final_LM-1.pdf) can I please have a copy of the minutes for all board meetings between December 2013 and December 2016.

(GPA's publication scheme stated that minutes of board meetings were available on request.)
2. On 1 February 2017, Mr Picken wrote to GPA requesting a review of its failure to respond to his request.
3. GPA notified Mr Picken of the outcome of its review on 27 February 2017. GPA stated that it was unable to provide the information because to do so would cost in excess of £600 (section 12 of FOISA). GPA also stated that it was withholding the information under the exemptions in sections 33(1)(b) (Commercial interests and the economy), 36(2) (Confidentiality); 40(b) (Audit functions) of FOISA.
4. GPA also stated in its review outcome:

For your information, we will be updating our publication scheme accordingly. The publication scheme was created on transition to public ownership without an understanding of what would be involved in the supply of these minutes and the information that they would contain.

5. On 8 March 2017, Mr Picken wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Picken stated he was dissatisfied with the outcome of GPA's review because its publication scheme stated, at the time of his request, that board minutes were available on request. He had not been provided with them and suggested that GPA appeared to have an issue with transparency.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Picken made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 16 March 2017, GPA was notified in writing that Mr Picken had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. GPA was invited to comment on this application and to provide submissions explaining how it had concluded that it would cost in excess of £600 to provide the information to Mr Picken.
9. On 13 April 2017, GPA provided submissions with a cost breakdown, submitting that it would cost £6,215.16 to provide the information to Mr Picken. This was on the basis of having looked at only one set of minutes.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both Mr Picken and GPA. She is satisfied that no matter of relevance has been overlooked.
11. The Commissioner will not consider the exemptions claimed by GPA (sections 33(1)(b), 36(2) and 40(b) of FOISA) in this decision. She notes that GPA has not actually accessed the information in question, except for one set of minutes, due to the claimed cost of doing so. There would appear to be no rational basis, therefore, for GPA's conclusions that these exemptions would apply to the information. The Commissioner would expect to be satisfied that a public authority had given detailed scrutiny to any information it purported to withhold under an exemption in FOISA. Such scrutiny, never mind any sustainable arguments for withholding the information under the exemptions referred to, appears to have been wholly absent in this case.
12. The Commissioner will now consider GPA's application of section 12 of FOISA.

Section 12(1) - Excessive cost of compliance

13. 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 doing so would exceed the amount prescribed for that purpose in the Fees Regulations. This amount is currently £600 (regulation 5). 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.
14. 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) providing the 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.

15. An authority can take into account the time taken to redact information in order that a response can be provided when calculating the costs involved but cannot take account of the cost of determining (i) whether it actually holds the information requested, or (ii) whether or not it should provide the information.
16. GPA submitted that it operated on a commercial basis, at an arm's length from the Scottish Government, and that the style of its minutes was very detailed, containing information on a number of sensitive areas including commercial activity, security and personal information.
17. GPA stated that for its internal governance and management processes, the minutes enabled identification of which specific employees and board members made particular comments.
18. GPA explained that it had reviewed one set of minutes and used this to create the following cost breakdown:

Breakdown of costs to provide all Board minutes from November 2013 to January 2017

	Unit cost (£0.0)	Total cost for 42 sets of minutes (£)
Print (average 6 pages per minute)	0.60	25.20
Collation time (5 mins per minute)	1.17 (<i>£14.04/hour staff time</i>)	49.14
Redact by Company Secretary (1.5 hours per minute)	69.18 (<i>£46.12/hour staff time</i>)	2,905.98
Review by Chief Executive Officer (1 hour per minute)	58.27 (<i>£58.27/hour staff time</i>)	2,447.34
Approval by Chairman (20 mins per minute)	18.75 (<i>£56.25/hour staff time</i>)	787.50
	Total	6,215.16

19. Having considered GPA's submissions, the Commissioner does not believe she has been provided with sufficient evidence to accept that the cost of complying with the request would exceed £600.
20. She notes from its calculations that GPA has used an hourly rate that, for the most part, greatly exceeds the maximum amount allowed in the Fees Regulations (£15.00 per hour). In any event, the claimed redaction time appears excessive (bearing in mind that this can only be the time required for actual redaction, and not the time required for deciding what should be exempt and why) without further explanation.
21. Equally, the need for two levels of review/approval, by very senior officers of the company, is not explained, and neither is why either of these officers should require to spend so long scrutinising a minute which would, by then, already have received the detailed attention of the Company Secretary. Presumably, the Company Secretary would brief the Chief Executive and the Chairman in some way when presenting his or her conclusions. While there are no doubt matters covered in the minutes which would require careful attention, this

is not a level of scrutiny which would appear to be commensurate with the efficiency generally associated with operating “on a commercial basis”.

22. Taking all of the circumstances into consideration, the Commissioner finds that GPA has failed to justify its application of section 12(1) of FOISA in this case. As a result, the Commissioner cannot accept that section 12(1) applies to the information requested by Mr Picken. She therefore requires GPA to respond to Mr Picken’s requirement for review in accordance with Part 1 of FOISA (but other than in terms of section 12(1)). In other words, the new review outcome should be in accordance with section 21(4)(b) of FOISA.
23. As part of the process of carrying out a further review, GPA should consider whether any of the information in the minutes is environmental information. To the extent that it is, GPA must respond under the Environmental Information (Scotland) Regulations 2004 (and should consider the application of section 39(2) of FOISA).

The Model Publication Scheme

24. GPA has adopted the Commissioner’s Model Publication Scheme¹ (MPS) which states:

Class 3: How we take decisions and what we have decided – Description:

Information about the decisions we take, how we make decisions, and how we involve others.

The Commissioner expects authorities to publish the following information, as a minimum:

- *Decisions taken by the organisation: agendas, reports and papers provided for consideration and minutes of Board (or equivalent) meetings*
- *Public consultation and engagement strategies*
- *Reports of regulatory inspections, audits and investigations carried out by the authority*

25. GPA may wish to consider the extent to which withholding the minutes can be compatible with the MPS, and also whether, if it believes it has reviewed its Guide to Information in any way which affects an existing undertaking to publish minutes, it has done so in accordance with section 23 of FOISA and the Commissioner’s guidance on maintaining a Guide to Information²
26. The Commissioner will contact GPA separately regarding its compliance with the MPS.

1

<http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/TheModelPublicationScheme.aspx>

2

<http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/MaintainingAGuideToInformation.aspx>

Decision

The Commissioner finds that Glasgow Prestwick Airport Limited (GPA) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Picken.

The Commissioner is not satisfied that GPA was entitled to refuse to comply with the request under section 12(1) of FOISA.

The Commissioner requires GPA to provide a new response to Mr Picken's requirement for review, in terms of section 24(4)(b) of FOISA and other than in terms of section 12(1) of FOISA, by 21 August 2017.

Appeal

Should either Mr Picken or Glasgow Prestwick Airport Limited 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.

Enforcement

If Glasgow Prestwick Airport Limited (GPA) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that GPA has failed to comply. The Court has the right to inquire into the matter and may deal with GPA as if it had committed a contempt of court.

Margaret Keyse
Acting Scottish Information Commissioner

6 July 2017

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 £600).

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info