

# Decision Notice



Decision 130/2010 Mark Irvine and South Lanarkshire Council

Cost of providing information on specified posts

Reference No: 200901484  
Decision Date: 21 July 2010

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**Kevin Dunion**  
Scottish Information Commissioner

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



## Summary

Mr Irvine requested from South Lanarkshire Council (the Council) certain information relating to the job category of "Land Services Operative". The Council responded by providing some information, but withholding the majority under section 38(1)(b) of FOISA, which relates to personal data. Following a review, as a result of which the Council relied upon section 12(1) of FOISA, on the basis that the cost of complying with the request would exceed the maximum amount of £600, Mr Irvine remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had partially failed to deal with Mr Irvine's request for information in accordance with Part 1 of FOISA. While he found that the cost of complying with the request would exceed the maximum amount of £600, he found that the Council had not fulfilled its duty under section 15 of FOISA to provide reasonable advice and assistance to Mr Irvine. He therefore required the Council to consider whether any of the requested information (or any related information) can be provided within the £600 limit specified for the purposes of section 12(1), and to advise Mr Irvine accordingly.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance) and 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

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1. On 22 May 2009, Mr Irvine wrote to the Council requesting the following information:
  - i) *How many posts does the council currently employ in Job Category – Land Services Operative LSO 3 (2)?*
  - ii) *How many of these posts are placed on Spinal Column Point 25?*
  - iii) *How many of these posts are placed on Spinal Column Point 26?*



- iv) *How many of these posts are placed on Spinal Column Point 27?*
  - v) *How many of these posts are placed on Spinal Column Point 28?*
  - vi) *Please specify how many posts/postholders in Job Category LSO 3 (2) were placed on salary preservation once South Lanarkshire Council introduced its local Single Status arrangements in April 2004?*
  - vii) *Please specify the current number of preserved salary posts at each of the spinal column points between Spinal Column Points 29 to 50. In other words, how many LSO 3 (2) posts are preserved at Spinal Column Point 29, Spinal Column Point 30, Spinal Column Point 40 and so on – up to and including Spinal Column Point 50?*
2. The Council responded on 29 June 2009, seeking clarification of what Mr Irvine meant by the title “Land Services Operative LSO 3 (2)”, which it indicated did not exist. It explained that it had redesigned jobs in the course of implementing the Single Status Agreement and that the post titles Land Service Operative 1, 2 and 3 each encompassed many of the former manual worker roles and responsibilities as well as introducing new duties. Mr Irvine was asked to either re-phrase his request or supply more detail.
  3. On 7 July 2009, Mr Irvine wrote to the Council requesting a review of its earlier response, explaining that his understanding was that a post of Land Services Operative (LSO) 3 (Level 2) did exist, having absorbed a number of previous jobs (which he listed) from the pre-single status regime.
  4. The Council took Mr Irvine’s letter of 7 July 2009 to be clarification and responded on 5 August 2009 by releasing information in relation to the first part of his request. It withheld the remaining information relating to parts ii – vii inclusive on the grounds it believed this to be exempt under section 38(1)(b) of FOISA.
  5. On 31 August 2009, Mr Irvine wrote to the Council requesting a review in relation to parts ii – vii inclusive of his request, as he did not agree with the reasons provided for withholding this information.
  6. The Council undertook a review and issued its review decision to Mr Irvine on 25 September 2009, upholding its position that the information in question was properly withheld under section 38(1)(b) of FOISA.
  7. On 16 October 2009, Mr Irvine 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.
  8. The application was validated by establishing that Mr Irvine had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.



## Investigation

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9. On 3 November 2009, the Council was notified in writing that an application had been received from Mr Irvine and was asked to provide the Commissioner with the information withheld from Mr Irvine. The Council advised that this would not be possible, referring to the implications of the Data Protection Act 1998 and advising that the cost of collating the information would exceed the cost limit of £600 specified for the purposes of section 12 of FOISA. The case was then allocated to an investigating officer.
10. The investigating officer subsequently contacted the Council, 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 Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, including section 12. It was also asked to confirm the steps it had taken by way of advice and assistance under section 15 of FOISA, with a view to identifying what information could be provided within the cost limit.
11. In its submissions, the Council confirmed that it wished to rely on section 12(1) of FOISA, indicating that it was not required to comply with Mr Irvine's request as the cost of doing so would exceed the amount of £600 prescribed for the purposes of that section. The Council's arguments, insofar as relevant, will be considered fully in the Commissioner's analysis and findings below.

## Commissioner's analysis and findings

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

### Section 12(1) of FOISA

13. The Council submitted that it could not provide Mr Irvine with information that would address his request without exceeding the cost limit prescribed for the purposes of section 12(1) of FOISA and that it was therefore not obliged to comply with request.
14. Section 12(1) of FOISA relates to excessive cost of compliance. It provides that a Scottish public authority need not comply with a request for information if the authority estimates that the cost of doing so will exceed the relevant amount prescribed in the Fees Regulations. The limit set by regulation 5 of the Fees Regulations is currently £600.



15. In terms of regulation 3 of the Fees Regulations, the projected costs a Scottish public authority can take into account in relation to a request for information are 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 FOISA. The authority may not charge for the cost of ascertaining whether it actually holds the information or determining whether or not it should provide that information.
16. The Commissioner cannot, therefore, require disclosure of information where he is satisfied that the authority has reasonably estimated the cost of its location, retrieval and provision as exceeding £600.
17. For the purposes of calculating projected costs, regulation 3 has also placed a cap on the hourly rate the authority can charge for staff time. The maximum rate that can be charged is £15 per hour per member of staff.
18. The Commissioner considers this to be a single request with a number of interdependent parts: the Council agreed with this approach in the course of the investigation. The Council explained that it had identified 578 relevant records, each of which would require to be examined manually to locate the information requested by Mr Irvine.
19. During the investigation, the Council was asked by the investigating officer to consider whether any of the information could be provided electronically. The Council indicated that any search against the specified spinal column points using the Council's payroll system (which could be done electronically) would identify those employees *paid* at the relevant spinal column point, which could include enhancements and would not necessarily equate to those employees actually *placed* on those points. That this would not, the Council argued, fully satisfy Mr Irvine's request. In the circumstances, and taking account of confirmation from Mr Irvine in the course of the investigation that he was in fact seeking the latter figure, the Commissioner accepts the Council's position on this point.
20. The Council estimated that it would take an average of 15 minutes per record for the location and retrieval of information within each record, further explaining that this estimate included looking at the electronic record (which would provide a spinal column point entry) in conjunction with the hard copy personnel file and PDR record to identify inclusive additions to pay, payments for working patterns and additional tasks. It further explained that some files were more complex than others, noting that some employees had been placed on the relevant points more than 10 years ago, with changes likely to have taken place since then. It indicated that the work would require to be undertaken by an experienced officer.
21. Although the Council did not provide the figure for the total costs, based on the figures it provided in its submissions the total estimated costs (at 15 minutes for 578 records) would be £2,167.50 at the maximum rate of £15 hour. Even at a rate of £10 per hour, the figure would still exceed the cost limit of £600 considerably.



22. The Commissioner has considered the Council's arguments and calculations carefully and is satisfied in the circumstances that it was entitled to refuse Mr Irvine's request under section 12(1) of FOISA. Given the nature of the records and the required tasks as described by the Council, he accepts that the estimate of 15 minutes per record is reasonable in the circumstances. A considerable reduction of both the time and the rate applied would, in any event, be required to bring the costs within the £600 limit.
23. Consequently, the Commissioner is satisfied that the cost of locating, retrieving and providing the information requested by Mr Irvine, on a reasonable estimate, would exceed £600. Given this conclusion, he cannot require the Council to provide Mr Irvine with the information he requested.
24. As the Commissioner has found that the Council was entitled to refuse Mr Irvine's request under section 12(1) of FOISA, he will not go on to consider the application to the information requested of the exemption in section 38(1)(b) of FOISA.

#### **Section 15 of FOISA – the duty to provide advice and assistance**

25. Having established that the Council was entitled to rely upon section 12(1) in FOISA in refusing to comply with Mr Irvine's request, the Commissioner considers it appropriate in this case to go on and consider whether the Council complied with its duty to advise and assist Mr Irvine in dealing with that request, as required by section 15 of FOISA read in conjunction with the Scottish Ministers' Code of Practice on the discharge of functions by public authorities under FOISA (the Section 60 Code).
26. In correspondence with the Commissioner, Mr Irvine explained why he was dissatisfied with the Council's handling of his request. In particular, he had difficulty understanding how the Council could not provide information which was generic in nature and should, in his view, be routinely gathered. He complained that the Council failed to explain fully why it could not supply the information he had requested. During the investigation, he also indicated to the investigating officer that he would be prepared to reduce the scope of his request in line with the information held electronically by the Council.
27. Under section 15 of FOISA, 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. Where the authority has complied with the Section 60 Code in providing advice and assistance in any particular case, it is taken to have complied with this duty.
28. Paragraph 14 of Annex 3 of the Section 60 Code states that although a public authority is under no obligation to comply with a request for information where the cost of doing so would exceed £600, it should consider what information could be released free of charge or below the prescribed amount.



29. The Commissioner notes that, in this case, although the Council answered part (i) of Mr Irvine's request, the majority of the information requested was not released and the Council did not fully explain what information it held from which the relevant information might be extracted, the difficulties inherent in locating, retrieving and providing it, or whether any more limited information could be provided which might be of assistance to Mr Irvine. While the Commissioner notes that the Council's earlier (and apparently continuing) reliance on section 38(1)(b) of FOISA in relation to the information, he considers that it would have been helpful if the Council had considered its duty to provide advice and assistance from the outset and engaged with him with a view to identifying whether any relevant information could be provided.
30. For this reason, the Commissioner has concluded that the Council did not comply fully with the requirements of section 15 of FOISA in dealing with Mr Irvine's request. Consequently, he requires it to consider whether any of the requested information (or any related information) can be provided within the £600 limit and to advise Mr Irvine accordingly (with reasons if no information can be provided).

## DECISION

The Commissioner finds that South Lanarkshire Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Irvine. He finds that section 12(1) of FOISA applied in this case, and so the Council was under no obligation to respond to Mr Irvine's request.

However, the Commissioner also finds that the Council failed to comply with Part 1 of FOISA in failing to fulfill its duty to provide reasonable advice and assistance to Mr Irvine under section 15(1) of FOISA. Consequently, he requires the Council to consider whether any of the requested information (or any related information) can be provided within the £600 limit specified for the purposes of section 12(1), and to advise Mr Irvine accordingly (with reasons if no information can be provided). He requires the Council to do this by 6 September 2010.



## Appeal

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Should either Mr Irvine or South Lanarkshire 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**  
**21 July 2010**





## Appendix

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### 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.

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- (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.