

Decision Notice



Decision 169/2012 Allied Vehicles Limited and Glasgow City Council

Electrically propelled vehicles

Reference No: 201201002

Decision Date: 17 October 2012

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Rosemary Agnew

Scottish Information Commissioner

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Summary

Allied Vehicles Limited (Allied Vehicles) asked Glasgow City Council (the Council) for (a) correspondence about electrically propelled vehicles and (b) correspondence mentioning Allied Vehicles since 1 January 2010. The Council applied exemptions and withheld the information. After a review, the Council concluded that the cost of complying with these requests would exceed £600, so it was not obliged to respond to them in line with section 12 of the Freedom of Information (Scotland) Act 2002 (FOISA).

Following an investigation, the Commissioner decided that the Council was entitled to refuse to comply with request (b) on the grounds that the cost of responding would exceed £600. However, she did not accept that the cost of complying with request (a) would exceed that limit and required the Council to respond to this request other than by refusing it on the grounds of excessive costs. The Commissioner also concluded that the Council had failed to provide reasonable advice and assistance in relation to request (b), and required the Council to provide advice to help Allied Vehicles make a narrower request.

Relevant statutory provisions

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

1. On 9 March 2012, Allied Vehicles wrote to the Council requesting the following information recorded since 1 January 2010:



- (a) All information contained within correspondence in any format sent by, or received by, four named employees, including correspondence in the case of email received in the form of carbon copy or blind carbon copy from other correspondents, where that correspondence refers to electric or electrically propelled vehicles.
 - (b) All information contained in any documents held by the Council where those documents include a reference to Allied Vehicles.
2. In this decision, all references to correspondence with Allied Vehicles are references to correspondence to and from its solicitors.
 3. The Council responded on 5 April 2012, refusing to provide the information on the grounds that it was exempt from disclosure under sections 30 (Prejudice to conduct of public affairs) and 36(1) (Confidentiality) of FOISA.
 4. On 12 April 2012, Allied Vehicles wrote to the Council requesting a review of its decision. Allied Vehicles considered that the Council had not confirmed that it held the requested information, and challenged the Council's application of the exemptions cited.
 5. The Council notified Allied Vehicles of the outcome of its review on 11 May 2012. The Council advised that, after review, it had concluded that the cost of complying with the request would exceed the upper limit of £600 allowed by section 12(1) of FOISA. The Council explained that the records were not held centrally, and a minimum of 15 officers would be required to search for the information. Based on a sampling exercise it had carried out on information held by one officer, the Council estimated that if each of the 15 officers undertook the same searches, it would cost £2,250 to provide the information, excluding any photocopying or printing costs.
 6. On 18 May 2012, Allied Vehicles wrote to the Commissioner, stating that it 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.
 7. The application was validated by establishing that Allied Vehicles 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. The case was then allocated to an investigating officer.

Investigation

8. The Council was notified in writing that an application had been received from Allied Vehicles, and given an opportunity to provide comments on the application, as required by section 49(3)(a) of FOISA.



9. The Council was asked to respond to specific questions, particularly in relation to its decision that section 12 of FOISA was applicable in this case. The Council was asked to provide details of its estimated costs in relation to Allied Vehicles' requests (a) and (b). The Council provided submissions explaining how the projected costs had been calculated.
10. The investigating officer subsequently raised questions about the assumptions underpinning the Council's calculations. In response, the Council provided revised estimated costs.
11. The relevant submissions received from both the Council and Allied Vehicles will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Allied Vehicles and the Council and is satisfied that no matter of relevance has been overlooked.

Section 12 – Excessive cost of compliance

13. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request will exceed the amount set out in the Fees Regulations for that purpose (currently £600). The Commissioner has no power to require the disclosure of information should she find that the cost of responding to a request exceeds this amount.
14. The projected costs that the public authority can take into account in relation to the request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the public authority reasonably estimates it will 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 or (ii) whether or not it should provide the information. The maximum hourly rate a public authority can charge for staff time is £15 an hour.

The Council's submissions

15. The Council's submissions included details of the searches that would be required in order to identify the information covered by each of Allied Vehicles' requests. The Council provided background information about the electrically propelled vehicles project, its contract with Allied Vehicles, and the work involved in locating, retrieving and finding the requested information. It confirmed that most correspondence had taken place by email and was held electronically, and only a limited number of documents were held in paper format.



Calculation of the cost of compliance

16. During the investigation, the Council was advised that the Commissioner was likely to consider that requests (a) and (b) were quite distinct and should be costed separately, because FOISA does not allow Scottish public authorities to aggregate requests for the purpose of determining whether compliance would cost more than £600. The Council accepted this view, and the point has not been considered further in relation to this decision.
17. The Council stated that, in relation to request (a), four named individuals held approximately 455 documents each (450 emails and five letters), while in relation to request (b), 16 individuals held approximately 400 documents each. These estimates were based on the sample searches conducted by the Council, involving the information held by one member of staff.
18. The investigating officer discussed with the Council whether all of the 16 individuals identified in relation to request (b) would hold similar quantities of relevant information. It was noted that two of the individuals (one named in relation to request (b), and one named in relation to both requests (a) and (b)) had left employment at the Council during the time period under consideration. The Council confirmed that the information held by these individuals had been passed on to other officials involved in the project. The investigating officer also noted that some of the individuals holding information relevant to request (b) were described as “supporting” some of the other officials, and suggested that these individuals were likely to hold less information because they would simply have been copied in to some of the correspondence. Again, the Council agreed with this assumption.
19. The Council advised that the majority of information was held electronically in emails and estimated the following times for each request:

	Request (a)	Request (b)
Retrieving, printing / copying and saving time per document	3 minutes	1.5 minutes
Redaction time per document	2 minutes	4 minutes

20. The investigating officer queried whether it would be possible to reduce the time required to retrieve documents, by using the computer search facility to carry out a single search of all information held by each individual rather than searching every document separately. She suggested that such a search would take less than one minute per individual. The Council agreed with this assumption.
21. The investigating officer also advised the Council that it could charge for the physical act of redacting exempt information from a document, but not the time taken to consider what information to redact. Following a discussion, the Council agreed that the redaction time could be limited to one minute per document.
22. The Council provided submissions to support its contention that the cost for an appropriate member of staff to undertake the work was £15 per hour.



23. In its submissions, the Council commented that to provide a copy of the information to Allied Vehicles it would have to photocopy each page of information at a cost of 10 pence per A4 sheet of paper.
24. After reviewing the assumptions on which it had calculated the cost of complying with requests (a) and (b), the Council submitted that the revised estimated costs were as follows:

	Request (a)	Request (b)
1 minute to search each individual's records (includes cost of searching records previously held by staff no longer working for the Council)	4 individuals = 4 minutes	16 individuals = 16 minutes
Number of documents falling in scope (based on the reduced estimates identified after discussion with the investigating officer)	1,174	3,750
Redaction time per document	1 minute	1 minute
Total time to search and redact	1,178 minutes	3,766 minutes
Cost at £15 per hour (25 pence per minute) to complete search	£294.50	£941.50
Photocopying charge of 10p per sheet, based on 2 A4 pages per document	2,348 documents x 10 pence = £234.80	7,500 documents x 10 pence = £750
Total cost	£529.30	£1,691.50

The Commissioner's conclusions

Request (a)

25. The Commissioner is pleased to note that, during the investigation, the Council accepted some of the suggested reductions to its cost calculations, which (as noted above) brought request (a) within the prescribed cost threshold of £600. The Commissioner therefore finds that the Council was wrong to refuse to comply with request (a) on the grounds that this would incur excessive costs, and now requires the Council to respond to request (a) in terms other than section 12(1) of FOISA.

Request (b)

26. As with request (a), the Council accepted some of the suggested reductions to its cost calculations for request (b), but in this case the reductions were not sufficient to bring the estimated cost of compliance within the £600 limit.



27. The Commissioner considers it likely that some further reductions could be made in relation to the estimated costs; for instance, costs associated with time required for redacting documents or the amount of photocopying required. However, even taking these notional reductions into account, the Commissioner is satisfied that the cost of complying with request (b) would still exceed the £600 limit prescribed by the Fees Regulations.
28. The Commissioner concludes that, in terms of section 12(1) of FOISA, the Council was under no obligation to comply with request (b) made by Allied Vehicles.

Section 15 – Duty to provide advice and assistance

29. Having established that the Council was correct to rely upon section 12(1) of FOISA to justify its refusal to comply with request (b), the Commissioner has also considered whether, in relation to this request, the Council complied with the duty to advise and assist Allied Vehicles in making its request, as required by section 15 of FOISA.
30. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. The Scottish Ministers' Code of Practice on the discharge of functions by public authorities under FOISA (the Section 60 Code) includes advice that where section 12(1) applies, public authorities may "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."¹
31. In its submissions, the Council advised that it had conducted a sample search for the information and therefore considered that the costs presented in its review response were accurate. The Council also noted that in its review response it had advised Allied Vehicles that it could narrow the scope of its request to bring the cost of compliance below £600.
32. The Commissioner accepts the points made by the Council, but expects a public authority to do more in providing advice and assistance to a requester than simply advising them to narrow the scope of the request, without giving some guidance on how this could be done in terms of the information held. For example, the Council might have advised Allied Vehicles that relevant information was held by 16 employees, and provided their job titles to enable Allied Vehicles to decide whether information held by some individuals could be excluded from the scope of the request. The Council might also have advised Allied Vehicles that the information included correspondence with Allied Vehicles, which they might wish to exclude.
33. Consequently, the Commissioner has concluded that the Council failed to comply fully with the duty in section 15(1) of FOISA to provide reasonable advice and assistance to Allied Vehicles in making its request. The Commissioner now requires the Council to remedy this failure by providing Allied Vehicles with such advice and assistance.

¹ See paragraph 1.9 in Part 2 of the Code at <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



DECISION

The Commissioner finds that Glasgow City Council (the Council) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Allied Vehicles Limited (Allied Vehicles).

In relation to request (a), the Commissioner found that the Council was wrong to advise Allied Vehicles that the provision of information would exceed the £600 prescribed limit set out in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations), and in this respect failed to comply with Part 1 of FOISA. The Commissioner requires the Council to respond to this request in terms other than section 12(1) of FOISA by Monday, 3 December 2012.

In relation to request (b), the Commissioner found that the Council complied with Part 1 of FOISA in advising Allied Vehicles that compliance with the request would exceed the £600 prescribed limit set out in the Fees Regulations. However, the Commissioner was not satisfied that the Council had complied with section 15(1) of FOISA in providing reasonable advice and assistance to Allied Vehicles. The Commissioner now requires the Council to provide such advice and assistance to Allied Vehicles.

Appeal

Should either Allied Vehicles or the 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
17 October 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.

...

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.