

Decision Notice

Decision 173/2018: Mr D and Highland Council

Unpaid Parking Fines

Reference No: 201800753

Decision Date: 31 October 2018



Scottish Information
Commissioner

Summary

The Council was asked about unpaid parking fines. It provided some information. The Council also explained that extracting information for part of the request would cost more than £600 and so it was not obliged to do so.

The Commissioner investigated, and accepted that the cost of complying with the request would exceed the prescribed limit.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) 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.

Background

1. On 9 February 2018, Mr D made a five-part request for information to Highland Council (the Council) on the subject of unpaid parking fines. Having asked (in part 1) how much the Council was owed in unpaid fines and what the position was in the previous year also, part 2 of the request asked “How many actual parking fines does that equate to in both years?”
2. The Council responded on 1 March 2018, disclosing information. It explained that Council enforcement in this area did not begin until October 2016 and provided a weblink to the data it held and published for penalty charge notices (PCNs). It stated that it was unable to define how long fines had been outstanding.
3. On 2 March 2018, Mr D wrote to the Council, requesting a review of its decision as he believed the Council had not answered his request fully. Given that the Council had not been undertaking the enforcement for fully two years, he indicated he would accept figures for the last full year. In an email of 15 March 2018, he confirmed that the outstanding information included that covered by part 2 of his request.
4. The Council notified Mr D of the outcome of its review on 16 March 2018. It provided some information but – in respect of part 2 – explained that its systems did not hold the information in a way that allowed it provide the requested figure without checking each notice to confirm its status. Given the numbers involved, this would cost more than the £600 limit set under section 12(1) of FOISA. This meant that it was not obliged to comply with the request.
5. On 30 April 2018, Mr D wrote to the Commissioner’s office. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr D stated he was dissatisfied with the outcome of the Council’s review, noting that other local authorities could provide the numbers he sought.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr D made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 7 June 2018, the Council was notified in writing that Mr D had made a valid application. 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. The Council was invited to comment on this application and answer specific questions, relating to its estimated costs and whether the information was held for the purposes of FOISA.
9. The Council responded to these points, acknowledging that it held the information and providing details of its cost estimates.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr D and the Council. He is satisfied that no matter of relevance has been overlooked.

Information held by the Council

11. Under section 1(4) of FOISA, the information to be provided in response to a request under section 1(1) is that falling within the scope of the request and held by the authority at the time the request is received.
12. "Information" is defined in section 73 of FOISA as "information recorded in any form". Given this definition, it is clear that FOISA does not generally require a public authority to create recorded information in order to respond to a request, or to provide information which is not held in recorded form (e.g. to elicit an opinion from an official).
13. In his application, Mr D commented that other local authorities to whom he had sent the same request had supplied all the information he stipulated in his request, so he expected the Council to disclose what he requested. It will be apparent, however, that the above definition relates to information actually held by a Scottish public authority, which is not necessarily to be equated with information an applicant believes the authority should hold. In particular, it cannot be taken for granted that local authorities will hold the same information on a particular matter, or that they will necessarily all hold such information as they do hold in common in the same way (the latter point being of potential relevance when considering the application of section 12(1) – below): in other words, each authority's submissions on the information it holds must be considered individually.
14. The Council acknowledged that it held the "building blocks" from which the numbers sought by Mr D could be calculated, within the system it employed to manage PCNs. At the time of the request, however, it did not have the capacity (for technical and other reasons), to interrogate the system and produce a report with the required figures. At the time, this would have involved staff reviewing PCNs individually and then carrying out the requisite calculation – not tasks requiring the exercise of complex skill or judgement, but ones it considered would be time-consuming (see consideration of section 12(1) below).

15. In the circumstances, the Commissioner accepts the information requested by Mr D was held by the Council at the time it received Mr D' request, as it held the relevant raw data and – once these were extracted – the required calculations could be done readily.
16. The Council informed the Commissioner that new functionality had been developed for its PCN system more recently, which meant it could now extract information using computer software. The Council then extracted data which it disclosed to Mr D: Mr D was not, however, satisfied that this met his requirements.
17. In any case, the availability of relevant information now is not relevant to whether section 12(1) of FOISA applied at the material time for the purposes of this case (i.e. when the Council carried out its review, at the latest). At that time, the Commissioner accepts that the Council was not in a position to extract the required information electronically. In considering whether the Council was entitled to rely on section 12(1) of FOISA in this case, the Commissioner must consider the means available to it at that time.

Section 12(1) – Excessive cost of compliance

18. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation 5 of the Fees Regulations). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for information exceeds this sum.
19. 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) which the authority reasonably estimates it is likely to 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 whether it actually holds the information requested, or whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
20. The Council explained that the only method available for extracting and collating the required information was to review each PCN individually. Staff would need to check each and every record to extract the necessary detail, then calculate the required totals from those details.
21. The Council explained the process as follows:
 - Approximately four minutes to interrogate individual PCN files (15 per hour)
 - There are 12,092 PCNs to be checked (March 2018), equating to 806 hours work
 - The hourly rate charged would be £15 per hour, giving a total cost of £12,050.
22. It is not clear why, from the Council's submissions, all the required work would need to be done by a member of staff charged at £15 per hour. That said, the Council's other estimates appear realistic and even halving the hourly rate (which would be somewhat less than a local authority was in a position to charge for any staff) would still produce a figure very significantly in excess of the £600 limit.
23. In all the circumstances, the Commissioner is satisfied that the request could not have been complied with within the £600 cost limit. Consequently, he finds that the Council was entitled to rely on section 12(1) of FOISA and was under no obligation to comply with the request.

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr D.

Appeal

Should either Mr D or the Council 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

31 October 2018

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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

- (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.

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info