

Decision Notice



Decision 029/2009 Councillor Sam Coull and the Scottish Prison Service

Cost of providing prisoner information

Reference No: 200900035
Decision Date: 11 March 2009

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Kevin Dunion
Scottish Information Commissioner

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Summary

Councillor Coull requested from the Scottish Prison Service (SPS) information relating to prisoners who had served over 4 years at Peterhead Prison, re-offended in Aberdeenshire and returned to Peterhead Prison to serve another sentence. The SPS responded by giving Councillor Coull notice that the cost of complying with the request would exceed the cost limit set for the purposes of section 12(1) of FOISA and therefore that it was not required to comply with the request. Following a review, Councillor Coull remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the projected cost of compliance would exceed the limit of £600 set for the purposes of section 12(1). He therefore found that the SPS had dealt with Councillor Coull's request in accordance with Part 1 of FOISA.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance) and 15(1) (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 7 October 2008, Councillor Coull wrote to the SPS setting out his concerns regarding prisoners who served sentences in Peterhead Prison for sexual offences and requested the following information:

I'm asking you under the Freedom of information (Scotland) Act to tell me how many have served their sentence of over four years, re-offended in Aberdeenshire and been returned to Peterhead Prison to serve another sentence. We both know of at least one but, to be quite clear, I only want the figures and not names.



2. The SPS responded on 4 November 2008, stating that the cost of dealing with Councillor Coull's request would exceed the upper cost limit of £600 set out in the Fees Regulations and therefore that it was not obliged to comply with the request by virtue of section 12(1) of FOISA. It explained why it considered this to be the case, noting that the request was not time limited. It advised that it might be able to provide certain summary statistics which would show the numbers of offenders who have served multiple sentences in Peterhead and invited Councillor Coull to consider reducing the scope of his request in order that the cost of compliance could be brought below the upper cost limit.
3. On 13 November 2008, Councillor Coull wrote to the SPS requesting a review of its decision. In particular, Councillor Coull stated that he believed a register must exist detailing each individual admission to the prison and enabling the identification of repeat offenders. Consequently he disputed that the cost would exceed £600. Councillor Coull made no response to the suggestion that the scope of the request might be reduced.
4. The SPS notified Councillor Coull of the outcome of its review on 8 December 2008. It upheld the original decision to apply section 12(1) of FOISA, explaining how any relevant information was recorded. It was able to confirm to Councillor Coull, however, that (while it was unable to provide details of where offences had been committed) there were currently 24 prisoners within Peterhead prison who had previously served a sentence there.
5. On 6 January 2009, Councillor Coull wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. In his application Councillor Coull informed the Commissioner that his initial request had been: *"Since becoming a single category sex offender's prison, how many have left Peterhead Prison to re-offend in Aberdeen/Aberdeenshire and been returned to Peterhead Prison"*. It will be noted that these were not in fact the terms of the original request, on which the Commissioner's decision must be based.
6. The application was validated by establishing that Councillor Coull 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

7. The SPS is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, on 9 February 2009 the Ministers were notified in writing that an application had been received from Councillor Coull and given an opportunity to provide comments on it, as required by section 49(3)(a) of FOISA. In particular, the SPS was asked to justify its reliance on section 12(1) of FOISA and to comment on its provision of advice and assistance to Councillor Coull, as required by section 15 of FOISA.



8. Any reference to submissions made by the SPS for the purposes of this investigation should be construed as referring to the submissions made by the Ministers on behalf of the SPS.
9. The SPS responded on 5 March 2009 with calculations of the costs taken into account for the purposes of section 12(1) of FOISA.
10. In response to questions regarding section 15 of FOISA and by way of proposing settlement, the SPS also repeated the offer that it might be able to provide some summary statistics which would show the numbers of offenders who had served multiple sentences in Peterhead. In addition, it offered to provide Councillor Coull with any further information held as to whether those current Peterhead prisoners who had previously served sentences there had reoffended in Aberdeenshire.
11. On 5 March 2009, Councillor Coull was informed of the settlement offer made by the SPS. On 8 March 2009, he responded to the effect that this offer was not acceptable as he wanted a clear and unequivocal response to his request of 7 October 2008.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Councillor Coull and the SPS and is satisfied that no matter of relevance has been overlooked.

Section 12(1) – Excessive cost of compliance

13. Section 12(1) provides that a Scottish public authority is not obliged to comply with a request for information where the cost of doing so (on a reasonable estimate) would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Fees Regulations. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to a request for that information exceeds this amount.
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, 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 (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.



15. The SPS explained that since the middle of the 1990s, information on the prisoner population had been recorded on its national prisoner records computer system. However, it also pointed out that Councillor Coull's request was not time limited and that to answer it comprehensively for information before the mid-1990's it would be necessary to refer to prisoners' paper files. It also explained that certain details are archived once a prisoner has been released and even for prisoners who have been in custody since the mid 1990's, an examination of the prisoner's paper file would also be necessary in order to respond to Councillor Coull's request.

Calculation of costs

16. The SPS further explained that at any given time there were a large number of prisoners located in different SPS establishments: prisoners were moved between prisons according to operational conditions and could be liberated from any one of the different SPS establishments. Therefore, a prisoner serving some time in HMP Peterhead while in SPS custody might not serve their entire sentence there and might not be liberated from Peterhead. The SPS indicated that a total of 457 prisoners currently within SPS custody were either serving or had served part of their sentence in Peterhead Prison. The SPS also advised that a further 788 individuals (now out of SPS custody) were recorded as having served part of their sentence in Peterhead. Not all of these prisoners or former prisoners, however, were serving or had served sentences of over four years.
17. The SPS explained that to identify the relevant group of prisoners it would have to manually calculate each prisoner's overall sentence length from information in the prisoner's historical paper file (this information in respect of previous sentences being archived in a different format to that in which it was held while the prisoner was serving that sentence). This would require it to access the historical warrant file of all identified prisoners, retrieve the individual warrant and sentence information and calculate the respective overall sentence lengths. As SPS could not easily tell which sentences related to each period in custody, they would also need to manually review each record to assess whether the prisoner had returned to Peterhead within a different period in custody.
18. In providing the above explanations as to the work which would be required to be carried out to comply with Councillor Coull's information request, the SPS included an estimate of the time required and the hourly rate of the staff member to collect and collate the information. On this basis, the SPS arrived at a projected cost of compliance of approximately £5,575. It also advised, as it had advised Councillor Coull in responding to his information request, that it would not expect to have complete and accurate information on the location of offences and would require to obtain this information from the Crown Office or the police.
19. Having taken due account of the submissions made by the SPS, together with the terms of section 12(1) and the Fees Regulations, the Commissioner is satisfied that the costs identified in this case represent a reasonable estimate of the cost of complying with Councillor Coull's request for information. Given the nature of the work required, the Commissioner does not consider that the request could be complied with within the £600 limit. Consequently, the Commissioner is satisfied that the SPS was entitled to rely on section 12(1) of FOISA in relation to Councillor Coull's information request, and therefore was under no obligation to comply with the request.



Section 15 of FOISA – duty to provide advice and assistance

20. Section 15(1) of FOISA requires a Scottish public authority, so far as it is 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. Examples of such advice and assistance given in the Ministers' Code of Practice on the discharge of functions by public authorities under FOISA include, in cases where section 12(1) applies, "an indication of what information could be provided within the cost ceiling". Having considered the SPS's responses to Councillor Coull and its submissions to the investigating officer, the Commissioner is satisfied that the SPS's explanations of the limitations of its systems, combined with its indication of the information it could provide within the £600 limit should Councillor Coull restrict the scope of his request, met the requirements of section 15(1) in this particular case.

DECISION

The Commissioner finds that the Scottish Prison Service acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Councillor Coull.

Appeal

Should either Councillor Coull or the Scottish Prison Service 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
11 March 2009



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.