

# Decision Notice 067/2020

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## Time taken to respond to complaints

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**Applicant: The Applicant**

**Public authority: City of Edinburgh Council**

**Case Ref: 201902193**



Scottish Information  
Commissioner

## Summary

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The Council was asked for the longest time it had taken to respond to a Stage Two complaint.

The Council explained that providing a response to the request would exceed £600 and so it was not obliged to comply with the request. Following an investigation, the Commissioner agreed.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 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 Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 13 September 2019, the Applicant made a request for information to City of Edinburgh Council (the Council). The information requested was: *What is the longest time the City of Edinburgh Council has taken to respond to stage 2 of a complaint.*
2. The Council responded on 10 October 2019. The Council cited section 12(1) of FOISA, informing the Applicant that the cost of locating, retrieving and providing the information would exceed the £600 statutory maximum. However, the Council also advised the Applicant that if she revised the scope of her request it might be possible to provide her with a portion of the information she was asking for. It provided an explanation of the work that would be required to obtain the information and informed the Applicant that it had estimated that over the past five years there had been 604 complaints which had remained open for over 200 days. However, the Council stated that to give an accurate answer to the request it would have to manually search through each of the 604 paper complaints files because the information could not be accurately obtained from the database.
3. On 11 October 2019, the Applicant wrote to the Council requesting a review of its decision. She stated that the Council should use a benchmark of 500 days rather than 200 days as there would be fewer cases that took over 500 days to respond to.
4. The Council notified the Applicant of the outcome of its review on 7 November 2019. The Council upheld its application of section 12(1) of FOISA. It explained that the way in which it stores records of complaints means that it is not possible to extract a report which identifies the information requested. The only way to accurately ascertain how long the complaints cases had actually taken to be resolved was to read the paper case files and find out from the case notes. The Council explained that staff within the Council responsible for reporting on complaints knew that there was one complaint that took in excess of 200 days and therefore all complaints which were closed within 200 days could be excluded from consideration.

5. On the same date, the Applicant wrote to the Commissioner. The Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated that she had asked for a review because the Council had chosen 200 days rather than 500 days. She was dissatisfied because the reviewing officer had not challenged the original responding officer's choice of a 200 day period.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that the Applicant 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 2 December 2019, the Council was notified in writing that the Applicant had made a valid application which had now been passed 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 to answer specific questions. These related to the reasoning as to why it would cost in excess of £600 to provide an accurate response to the Applicant's request.

## **Commissioner's analysis and findings**

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

### **Section 12(1) - Excessive cost of compliance**

10. 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.
11. 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.

#### *Submissions from the Council*

12. The Council explained that its current Complaint Handling Procedure was approved in August 2018. A Stage One complaint relates to straightforward complaints which require little or no investigation and to which a response should be provided within five working days. A Stage Two investigation takes place where a complaint has been escalated from a Stage One or where a complaint is recognised as requiring detailed investigation.
13. A Stage Two complaint response should be issued within 20 working days, but the Council explained that, for both Stage One and Stage Two, these timescales can, after consultation

with the complainant, be extended where it is necessary for appropriately handling the complaint. As such, there is no definitive timescale by which a Stage Two complaint investigation must be completed, as the specific circumstances of each Stage Two investigation will determine the timescale set.

14. The Council explained that it does not routinely record or report upon the number of days it takes to close complaints. It also does not have one system within which all complaints are recorded. This is because each Service within the Council has its own arrangements for handling complaints tailored to the specific requirements of that service and its customers.
15. To identify the information asked for, the Council would need to interrogate all of these systems for the longest period complaints have remained open, and thereafter view every record to identify whether a complaint was logged at Stage One or Stage Two. From reviewing the information held on its systems the Council also recognised that there were data quality issues. Some complaints remained open on the system considerably longer than when they had been concluded due to administrative delays with closing the record on the system.
16. The Council highlighted that its record retention period for complaint records is five years and, in the absence of clarification from the Applicant about the timeframe of the request, this was the period identified as being applicable to the request.
17. The Council explained that the period of 200 days was chosen as the starting point following consultation with the Strategic Complaints Officer. This officer had a Council wide overview of complaints and, from her working knowledge of complaints over the previous five years, the longest case she could recall was a highly complex social work complaint case that took over 200 days to conclude. To identify which of the 604 cases had remained open for more than 200 days due to not being resolved, as opposed to which remained open due to an administrative error, each individual record would have to be opened and examined.
18. The Council estimated that each record would take a minimum of five minutes to examine, considering complaints are recorded on various systems, and the fact that it would need to drill into the source material rather than the information being easily identified in the database record. Drilling into the source material would be necessary to identify whether or not the complaint was a Stage Two complaint. This is not recorded in the database record visible in the system, but is detailed in the correspondence and other documentation attached to it. The documentation would also show a timeline as to when the complaint had actually been resolved, which may not be the same date as that showing when the case had been closed (again due to some cases being closed at a date later than when the complaint was resolved).
19. Allowing for five minutes for examination of each record would equate to at least 50 hours of work being required to check the paper files. Therefore, the calculation of the estimated cost of compliance allowing for 50 hours of work at a cost of £15 per hour would total £750.
20. The Council explained that the work of interrogating the records held in its various Complaints Handling systems and of extracting relevant information from those records would require to be undertaken by a Grade 7 Officer within the Strategic Complaints function of the Council. The mid-point hourly rate for a Grade 7 post is £17.04, which for the purposes of the calculation of cost of complying with the information request is reduced to the statutory maximum of £15.00.

21. A member of staff at this grade would be required to ensure that the officer undertaking the task was one with sufficient knowledge and skills of how to access the records and ascertain the status and stage of each complaint. A member of staff of lower grade would not have all the skills and knowledge required to do this.
22. The Council considered it to be more than likely that the vast majority of the records in question were records that had remained open beyond 200 days due to administrative error/failure to close the record and not because any of the complaints are ones for which a Stage Two investigation has taken in excess of 200 days. Therefore, it was the assessment of the Council, based on the professional knowledge and relevant awareness of the Strategic Complaints Officer, that the only way to ensure a full and accurate response is provided to the Applicant would be to check all records which appear to have been open for longer than the known complex case.
23. The Council believed that, thereafter, it would be very likely, indeed probable, were it to conduct searches only of requests longer than 500 days, that it would require to move to consider cases of less than 500 days before it would find the information required to provide an accurate response to the Applicant's request.
24. The Council explained how it had retrieved the figure of 604 complaints remaining open for over 200 days. Its Strategic Complaints Officer undertakes quarterly statistics reporting to the Scottish Public Sector Ombudsman. This involves gathering reports from the Capture database system and from colleagues in Waste Services, Children's Services, Education, Criminal Justice and Revenue & Benefits. One of the fields included within these quarterly reports is "total days".
25. To identify the number of complaints over the past five years which were open for more than 200 days, the Strategic Complaints Officer checked each of 20 quarterly reports, sorted the spreadsheet by the "total days field" and counted how many complaints have "total days" of over 200. Across the 20 quarterly reports, there were a total of 604 complaints which have "total days" of 200 days or more. The Council provided a screen shot from its Capture System to the Commissioner.
26. The Council reiterated that the figure of 604 complaints would include those complaints which had not been timeously closed down due to administrative error. To carry out the same search with a figure of 500 days would result in the same type of inaccurate result.
27. Finally, the Council also pointed out that in its initial response the Applicant had been advised that she might not have been aware of the size and scope of the information request she had made and that she may be able to receive a portion of what she was looking for. To search through just a few of the paper files would cost less than searching through them all. However, the Council notes that the Applicant did not take up the offer to reduce the scope of her request.
28. Having taken account of the submissions and explanations provided by the Council, the Commissioner accepts that the only way in which an accurate response could be provided to the Applicant's request would be for the Council to manually search through all of its files to ascertain from the case-notes in the files the circumstances in which the complaint was resolved and the date of resolution.
29. 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.

30. Having established that the Council was entitled to rely on section 12(1) of FOISA to refuse to comply with this request, the Commissioner will consider whether the Council complied with its duty to advise and assist as required by section 15 of FOISA.
31. The Council submitted that on 24 September 2019, the Council asked the Applicant to clarify the time frame of her request. The Applicant responded by simply restating the original request. The Council responded to the Applicant to advise that her request would require the Council to consider all records held to ascertain the response to her request.
32. The Commissioner notes that the Council's initial response reasserts that the Applicant may not have been aware of the size and scope of her request and suggest the possibility of narrowing the scope of the request.
33. In light of the above, the Commissioner is satisfied that the Council fulfilled its duties in terms of section 15 of FOISA when responding to this request.

## Decision

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The Commissioner finds that the City of Edinburgh Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

## Appeal

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Should either the Applicant or City of Edinburgh 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**

**18 May 2020**

## Appendix 1: Relevant statutory provisions

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### 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.  
...

#### 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 respect 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



**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**