

Decision 073/2006 Mr Steve Connolly and the University of Glasgow
<i>Request for financial information, including examples of purchasing policy exception</i>

Applicant: Mr Steve Connolly
Authority: University of Glasgow
Case No: 200503079
Decision Date: 08 May 2006

Kevin Dunion
Scottish Information Commissioner

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Decision 073/2006 – Mr Steve Connolly and the University of Glasgow

Request for financial information, including examples of purchasing policy exception – information withheld under section 12(1) – period for response to request for review section 21(1) – duty to provide advice and assistance section 15(1) – content of refusal notice section 16

Facts

Mr Connolly requested of the University of Glasgow that it provide him with an electronic copy of the buying order and invoice for an occasion when the University rules were waived by way of purchasing policy exception. He also asked for details of other occasions when the University of Glasgow had waived rules in this way.

The University stated that there was no buying order for the particular transaction and provided a redacted copy of the invoice, but refused on the grounds of section 12(1) (excessive cost) of the Freedom of Information (Scotland) Act 2002 (FOISA) to supply documentation on all instances of waiver of the purchasing rules. Mr Connolly applied to the Commissioner for a decision.

Outcome

The Commissioner found that the University of Glasgow would have incurred costs in excess of the £600 limit set by regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) in complying with Mr Connolly's request. It therefore applied section 12(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) correctly in withholding the information on the grounds of excessive cost, and complied with Part 1 of FOISA in that respect.

He also found that the University of Glasgow partially failed to comply with Part 1 of FOISA in that it failed to comply with section 21(1) of FOISA in dealing with the applicant's requirement for review within the statutory time limit, section 16 in failing to specify the relevant provisions of FOISA when refusing the applicant's request and section 15(1) (duty to provide advice and assistance).



Appeal

Should either the University of Glasgow or Mr Connolly 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 of receipt of this notice.

Background

1. On 1 September 2005 Mr Connolly wrote by email to the University of Glasgow (the University) asking it to provide him with an electronic copy of the buying order that its financial director had raised in relation to a service provider in a specific instance (supply of a facilitated risk management workshop) when the relevant University rules were waived, and the invoice that the University had received from the service provider. This followed previous freedom of information requests by Mr Connolly to the University. Mr Connolly also asked for details of other occasions when senior managers of the University had waived rules in this way. Mr Connolly restricted his request to amounts paid in excess of £3,000 during the year ended 31 August 2005.
2. On 27 September 2005 the University responded to the request. It stated that the waiver of the quotation/tender procedure was at the discretion of its departments, which operated in a devolved budget environment with all buying decisions being taken at a local level within central financial regulations. The reply said that the University placed many thousands of purchase orders each year and most were not available electronically. Records were not centrally held and it would be 'resource intensive' to locate all of the waiver forms. The University said that to locate an order would require a manual search and a "Fees Notice" would have to be calculated. Additionally the University said that the documentation would provide no further substantive information than that which had already been supplied.
3. Mr Connolly then emailed (7 October 2005) the University clarifying his two requests and making a requirement for review of the refusal: firstly, he pointed out that he had asked for a buying order and an invoice in relation to a specific transaction; and secondly, he expressed surprise that the University could not supply any information about occasions when its rules had been waived during the relevant period, given that the University had advised that waiver was a rare occurrence.



4. On 11 November 2005 the University wrote to Mr Connolly with details of its review of its refusal. The University provided a letter of engagement and invoice in relation to Mr Connolly's first request. In the letter of engagement it redacted information under section 33(1)(b) (commercial interests) and section 38(2)(a)(i) (personal information) of FOISA.
5. In relation to the second request the University explained that it operated in a devolved financial, operational and management environment within parameters set up by the University Court. The use of a purchasing policy exception (PPE) was a matter for the devolved budget holder to assess and the University operated within the guidelines produced by the Scottish Funding Council in its 'Financial Memorandum' and 'Code of Audit Practice'. Consequently, the requested information was not aggregated centrally. The University estimated that each faculty produced approximately 900 relevant orders (i.e. orders that might activate a PPE). To find any PPE, the 9 academic faculties and the University's central administration service would have to be searched manually. The University estimated the total cost to be £1,050 and this was in excess of the £600 limit in the Freedom of Information (Fees for Required Disclosure)(Scotland) Regulations 2004. The University supplied Mr Connolly details of the one relevant purchase over £100,000, since purchases of this amount were centrally monitored.
6. Finally, Mr Connolly was invited to modify his request with a view to bringing it within the cost limit and advising that such a modification would be treated as a new request.
7. On 11 November 2005 Mr Connolly applied to me for a decision as to whether the University had dealt with his information request in accordance with Part 1 of FOISA.
8. The case was allocated to an investigating officer.

The Investigation

9. Mr Connolly's appeal was validated by establishing that he had made a valid information request to a Scottish public authority and had appealed to me only after asking the public authority to review its response to his request.
10. My investigating officer then contacted the University asking for its comments on the application (including its reasons for applying the cost limit) and for further information in relation to this case, in particular the information requested by Mr Connolly. The University responded on 13 December 2005, providing:



- Copies of the Letter of Engagement (redacted and unredacted) supplied to Mr Connolly
- A copy of the University Purchasing Office Policy Statement
- A copy of the University Financial Handbook
- Directory of faculties, departments and other divisions of the University
- A sample of a PPE form, a copy of a completed PPE form and comments on the operation of the PPE system
- Comments on, and breakdown of, its calculation of the cost of providing the requested information
- Comments on compliance with the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA (the Section 60 Code)
- Copy of 'University of Glasgow – Secretarial, Clerical and Related Staff – Grading Definitions'
<http://www.gla.ac.uk/services/humanresources/staff/sardefin.htm>

Submissions from the University

11. The University stated that there was no centralization of the use of Purchasing Policy Exception Forms. The University contacted all Heads of Department to assess the cost of providing the information to Mr Connolly. It was estimated that each Faculty produced approximately 900 relevant orders (i.e. orders that might activate a PPE). The 9 faculties and AIMS therefore comprised 10 devolved budget areas with an estimated 900 relevant orders each for the time period (July 2004 – August 2005), all of which would have to be searched manually. It also stated that faculties were divided into departments and projects all of which had devolved budgets. A search for PPEs would involve a search of over 200 Departments and 70 offices, and also many specific research projects. The University contacted one faculty (Physics and Astronomy) and asked for an estimate of the cost of providing all PPEs relating to that faculty. This faculty stated that it would have to sift manually approximately 900 orders to extract and duplicate the PPEs. The University therefore estimated the number of forms to be sifted as 9000 (i.e. 900 x 10). Temporary staff would be needed to carry out the necessary work, at an estimated cost of £15 per hour. The cost would be £105 per day, and the University estimated that 10 days would be required to complete the exercise, giving a total cost of £1,050.



12. The investigating officer again contacted the University (12 March 2006) to clarify if this sum (£1,050) was the cost of assessing how many orders (of the estimated 9000) which were held by the University were those with the PPE, or if this sum was the cost of assessing the orders with the PPE and then copying and redacting these orders. If the £1,050 estimate related to the latter, it was asked of the University how it had calculated the sum since it had given no indication of the number of orders which would attract the PPE.
13. The University replied (13 March 2006) explaining how it had arrived at the cost of £1,050. It explained that a trial had been completed (on 8 November 2006) in the Physical Sciences Faculty. The buyer for this Faculty had manually checked the 1000 purchase orders. This buyer had found 44 purchase PPE forms, of which 13 were within the financial constraints set by Mr Connolly in his request. The time taken for this was half a day. This faculty was one where the purchasing was centrally controlled and quicker to search. The University indicated that the devolved financial and operational environment meant that most of the faculties, departments and administrative offices would need to be manually searched and that this would take, at the very least, 10 days (from which the £105 per day cost multiplied by 10 days) was calculated.
14. The University was also asked to justify the staff cost of £15 per hour. It replied that due to the nature of the information requested, which included a letter of engagement and contractual information, the task of locating, retrieving, copying, scanning and redacting the information would require to be undertaken by a member of staff at secretarial and clerical grade 6, and that such a person might have to be employed on a temporary basis. It would only be a member of staff at this level who would have the knowledge and experience required to carry out these activities in relation to this type of information. The hourly rate for such a member of staff at the starting point of that scale was £16.16 per hour - based on an annual salary of £29,428 and a 35 hour working week. The salary scales are published at:

<http://www.gla.ac.uk/humanresources/salaries/secretarial2005.htm>
15. The University stated that it was committed to complying with FOISA and the Section 60 Code. It stated that it had communicated to Mr Connolly that he could modify his request and the University would respond to it, providing the information requested if that could be done within the £600 limit. It had also, it stated, in the spirit of advice and assistance, provided the applicant with a copy of a completed PPE for a purchase in excess of £100,000 since this was held centrally, although Mr Connolly had not requested this.



16. In response to the applicant's surprise that there was no buying order raised, the University drew attention to its Purchasing Office Policy and Regulations, which were available through its FOISA publication scheme and on its website. This policy contained details of situations in which the PPE should be used. A reference to this document had been communicated to the applicant. The main principles of the policy were summarised.

Submissions for the applicant

17. Mr Connolly argued that the University had not properly used section 38 of FOISA since the names redacted were of people who were employed for the tasks they were doing, funded by the public purse. He also stated that the authority had already admitted that its normal rules were waived in the engagement of this supplier and that there was a public interest in the terms of engagement being released.
18. Mr Connolly asked that I investigate whether the authority's records management was in accordance with the law since it seemed to him that basic information could not be made available. The authority had claimed that it did not raise a buying order for the purchase. The applicant expressed surprise that a financial director would authorise expenditure without raising a buying order and asked that I investigate the authority's claim that there was no buying order.

The Commissioner's Analysis and Findings

19. During my investigation the University accepted that it had misapplied the exemptions in section 33(1)(b) and section 38 of FOISA and accordingly provided Mr Connolly with an unredacted copy of the letter of engagement. Therefore, I am not required to consider these matters further in this decision.
20. Mr Connolly had asked that I investigate whether there was a buying order raised for the subject of his first request. The University sent my office a copy of its purchasing policy statement which explained the circumstances which would require to exist for a PPE to be appropriate. The University's policy & guidance states that official order forms must be raised for most purchases of goods and services before the purchase is made but that there will be some exceptions to this rule. The investigating officer contacted the University about this point and I accept that the University does not hold a buying order as requested by Mr Connolly for the transaction. In this case neither a Purchase Order Form (to order the service) nor a Purchasing Policy Exemption Form (to record the justification for the use of a supplier without competitive quotes) was used. The only documents related to the supply of the facilitated risk management workshop were a letter of engagement and an invoice, both of which have been supplied to Mr Connolly.



21. The University said that in a spirit of advice and assistance it had provided the applicant with a copy of the one relevant completed PPE for a purchase in excess of £100,000 since this was held centrally, although Mr Connolly had not requested this. Mr Connolly had requested examples of the use of the PPE in instances in excess of £3,000. His request would, as far as I can see, include purchases in excess of £100,000.

22. The University stated that the collection and collation of the information, and if necessary the redaction of information, involved the appraisal of contractual information and this was one of the reasons why the staff cost was at the higher end (Grade 6) of secretarial and clerical staff scales. My investigating Officer asked the University to detail the grade of staff required to keep the projected costs under £600, assuming the time required for the task being 10 days (which admittedly was open to question for a lower grade of staff). The University explained that to keep the projected costs under £600 would require a clerical employee of grade 1 (£7.90 per hour). The generic job description for this grade states:

‘Routine work involving well-defined procedures under regular or direct supervision. The tasks carried out will normally be of a repetitive nature, allowing little scope for the exercise of personal initiative. This grade should also be regarded as an entry and training grade. It is expected that an employee under training will not spend more than one year in this grade, subject to satisfactory progress.’

The generic job description for a grade 2 member of staff (which would produce a projected cost of £608.34) states:

‘Work along specified lines but requiring some experience, personal responsibility and initiative. Work to daily routine but will have a certain amount of responsibility for dealing with minor matters without close supervision. Duties may involve the exercise of IT skills appropriate to the job and/or the checking and overseeing of the work of Grade 1 Staff.’

On the basis of this description of the responsibilities of staff at these grades, I accept that a higher Grade of staff is required to deal with Mr Connolly’s request and that this higher grade would take the projected costs above the £600 limit of the Fees Regulations.

23. Whilst it would not be reasonable to expect authorities to anticipate what an applicant might want, or to enter into a lengthy process of negotiation in relation to what might be provided, if an authority does not make it clear that a request might be narrowed with a view to bringing it within the cost limit it is likely to be failing in its duty to provide advice and assistance under section 15 of FOISA. The University accepted in its correspondence with my investigating officer that it could have been clearer in its offer to deal with a



revised offer that this might bring the cost under £600. I find that the University failed partially in its duty to provide advice and assistance under section 15 of FOISA. Its initial response indicated that the request could exceed the fee limit and that a fee notice would have to be calculated. The University should have made clearer if its initial response was seeking clarification of the request or refusing on grounds of excessive cost. If refusing on grounds of excessive cost, it should have indicated the cost and invited the applicant to narrow his application. At no point in its initial response did the University mention the provisions of FOISA (or associated regulations or codes) that deal with excessive cost, but simply provided an internet link to its FOISA review procedure. While I accept that this link met the requirements of section 19 of FOISA (content of certain notices), by failing to specify the provisions of FOISA under which his request was being refused the University failed to comply with the requirements of section 16 (in particular section 16(4)) in respect of the content of refusal notices. However, the University did inform Mr Connolly of the cost and invite him to modify his request when it responded to his requirement for review and also in its correspondence with my office. The ability to make a modified request is still open to Mr Connolly.

24. As I have said in a previous decision – 062/2006 Mr Najem Al Hasan, Expressplans.com & North Ayrshire Council, it is important for authorities to note that any estimates made in accordance with the Fees Regulations should be made as accurately as possible, and should be informed by careful consideration of the actual cost to the authority of providing the information. It will frequently be appropriate for authorities to undertake a small representative sample of the work required, in order to inform any subsequent estimation of charges.
25. Regarding Mr Connolly's request that I investigate the records management policy of the University since it seemed that basic information was not available, I must state that FOISA gives a person the right to receive held information. I do not have the power to require that an authority reorder its system of record management in a way that ensures information is held in a certain way. However, as the FOISA Code of Practice on Records Management (the Section 61 Code) states, "If an authority fails to have regard to the Code, they may be failing in their duty under the Act". From the investigation, I accept that PPE Forms are retained within individual departments and are not centrally held. This appears to have the potential to create compliance problems since requests for information will demand more time and resources when the search must range over 200 Departments and 70 offices, and many specific research projects, rather than a single centralised department or office (or, for that matter, a unified records management system that can be searched across all departments and offices). The University said to my investigating officer that it is intending to allocate more resources to records management, and will be reconsidering how and where its corporate records (including financial and purchasing records) should be retained.



26. Section 21(1) of FOISA gives authorities a maximum of 20 working days from receipt of the requirement to comply with a requirement for review. The University did not respond to Mr Connolly's requirement for review within the timescale specified in section 21(1) of FOISA.

Decision

I find that the University of Glasgow would have incurred costs in excess of the £600 limit set by regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 in complying with Mr Connolly's request for information. It therefore applied section 12 (1) of the Freedom of Information (Scotland) Act 2002 (FOISA) correctly in withholding the information on the grounds of excessive cost, and complied with Part 1 of FOISA in that respect.

I find that the University of Glasgow failed to comply with section 21(1) of FOISA by failing to respond within 20 working days to Mr Connolly's request for review.

I find that the University of Glasgow partially failed to comply with its duty to provide advice and assistance under section 15(1) of the Act by failing to assist Mr Connolly in establishing whether relevant information could be provided within the upper cost limit.

I also find that the University of Glasgow failed to comply with section 16(4) of FOISA in that it did not specify that it was refusing Mr Connolly's request under section 12(1) of FOISA.

I do not require the University of Glasgow to take any further action in response to this decision.

Kevin Dunion
Scottish Information Commissioner
08 May 2006

