



Scottish Information  
Commissioner

**Decision 194/2006 Mr John Robertson and  
Aberdeen City Council**

*Request for Councillors' taxi expenses*

**Applicant: Mr John Robertson  
Authority: Aberdeen City Council  
Case No: 200601144  
Decision Date: 30 October 2006**

**Kevin Dunion  
Scottish Information Commissioner**

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## Decision 194/2006 Mr John Robertson and Aberdeen City Council

***Request for individual councillors' taxi expenses – whether information is held for the purposes of the Freedom of Information (Scotland) Act 2002-whether cost of compliance is excessive.***

### Relevant Statutory Provisions and Other Sources

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) General Entitlement; 10(1) Time for Compliance; 12(1) Excessive cost of compliance; 17(1) Notice that information is not held; 19 Content of certain notices

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004, regulations 3 and 5

The Local Authorities Etc. (Allowances) (Scotland) Regulations 1995, regulation 28

The full text of each of these provisions forms part of the Appendix attached to this decision. The Appendix forms part of this decision.

### Facts

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Mr Robertson, a journalist with The Press and Journal, asked Aberdeen City Council (the Council) for the total claimed in taxi fare expenses by councillors in each of the last five years. Mr Robertson also requested that the information be listed by councillor per year.

The Council responded to Mr Robertson's request, supplying him with a total figure for taxi fare expenses incurred by councillors for the periods 2002-2003, 2003-2004 and 2004-2005. The Council stated that the detailed breakdown sought by him was not held in any readily accessible format.

After reviewing its decision, the Council replied that it did not hold the information sought by Mr Robertson. Mr Robertson was dissatisfied with this response and applied to the Scottish Information Commissioner for a decision.



The Commissioner found that the Council acted incorrectly in its application of section 17 of the Freedom of Information (Scotland) Act 2002 (FOISA) in determining that the information requested by Mr Robertson was not held.

However, the Commissioner found that the Council 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 Robertson's request and therefore acted in accordance with Part 1 of FOISA in not supplying the information to Mr Robertson.

## Background

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1. On 20 January 2006, Mr Robertson requested by email from the Council, the total taxi fare expenditure claimed by councillors in each of the last five years. Mr Robertson also requested that this information be listed by councillor per year.
2. In its response, dated 1 March 2006, the Council supplied Mr Robertson with total expenditure incurred by the council in respect of taxi fare expenses claimed by councillors for the years 2002-2003, 2003-2004, and 2004-2005. The Council stated that the information is not held in any readily searchable format, as there is no statutory requirement to report on it, and that extracting the data would require an exhaustive manual search of individual ledgers and validation of the results with individual councillors. However, the Council suggested that it may be possible to provide Mr Robertson with a breakdown for year 2005.
3. On 5 May 2006, Mr Robertson asked the Council to review its decision and specifically asked the Council to supply him with the breakdown of the taxi expenses incurred for year 2005 as suggested in the Council's response dated 1 March 2006.
4. The Council carried out a review on 19 May 2006 and advised Mr Robertson of the outcome of the review on 24 May 2006. The Council stated that the information sought by Mr Robertson was not held by it due to the limitations of its current management information and ledger systems. As a result, with its letter of 24 May 2006, the Council provided Mr Robertson with a notice under section 17 of FOISA, stating that the information was not held by them. The Council's Review Panel instructed the senior management team for the service concerned to review record keeping and associated systems in an effort to improve performance in this regard.



5. Mr Robertson was dissatisfied with this response and applied to the Scottish Information Commissioner for a decision on 30 June 2006. Mr Robertson believed that the Council held the information and considered it in the public interest for information relating to the expenditure of public funds by elected representatives to be released. In his application, Mr Robertson commented that he wrote to every local authority in Scotland and Aberdeen City Council was the only authority unable to supply him with the information.
6. This case was then allocated to an investigating officer and the application validated by establishing that Mr Robertson had made a request for information to a Scottish public authority and had applied for a decision only after asking the authority to review its response to his request.

## The Investigation

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7. A letter was sent to the Council on 18 July 2006, in terms of section 49(3)(a) of FOISA, giving notice that an appeal had been received and that an investigation into the matter had begun. The Council was invited to comment on matter raised by the applicant and on the application as a whole. The Council was also asked to provide:
  - full details of the steps taken to establish whether or not the Council held the information requested;
  - details of the processes required to locate the information requested, including details as to how the information sought by Mr Robertson is recorded and managed by the Council, how this would be retrieved and the time and skills that would be required to do this;
  - an indication of the costs that would be incurred by the Council to provide this information.
8. The Council responded in full on 17 August 2006.



## Commissioner's Findings and Analysis

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9. FOISA gives a general right of access to recorded information held by a Scottish public authority. It does not oblige an authority to create new information where this does not already exist. Therefore, this investigation focussed on whether the Council held the information requested by Mr Robertson.
10. It should also be noted that it does not fall within my remit to assess whether authorities should (or should not) hold particular information, nor can I require authorities to acquire or create information in order to respond to requests.

### **The application of section 17 – Notice that information is not held**

11. As indicated above, the Council has sought to rely on section 17 of FOISA in not providing the detailed breakdown of the taxi expenses incurred by councillors in 2005 to Mr Robertson.
12. Section 17 of FOISA provides that where a Scottish public authority receives a request for information which it does not hold, the authority must issue a notice advising the applicant that it does not hold the information.
13. However, I note that the Local Authorities Etc. (Allowances) (Scotland) Regulations 1995 (the Allowances Regulations) require Councils to keep a record of payments made to councillors and to publish the information for the preceding year by no later than 1 June. By virtue of regulation 28(1), every local authority shall keep a record of the payments made by it in accordance with any scheme made pursuant to the Allowances Regulations.
14. These regulations further stipulate that the record shall specify in relation to each payment:
  - the name of the recipient; and
  - the amount and nature of the payment
15. In light of the obligations outlined above, the investigating officer contacted the Council and requested clarification on how payments to councillors are recorded by the Council and whether taxi fare expenses fell into this category.
16. The Council clarified that if a councillor pays for a taxi and claims reimbursement, this cost will be reported in its annual statutory report which appears in the Press.



17. However, the Council also has an account with a local taxi firm and any usage by councillors goes to a corporate financial code and does not show against individual councillors. The Council explain that the majority of journeys falling into this category are when councillors are invited to civic events. In such instances, councillors often share taxis and the Council states that it would not represent best value to investigate each account and allocate costs to each councillor.
18. Furthermore, the Council states that although there is one official taxi firm used by councillors, often councillors used other firms in the course of their council business.

### **The searches carried out by the Council**

19. The Council submit that on receipt of the request from Mr Robertson, it examined the various financial codes for different types of travel. The Council stated that it became apparent that the level of detail sought by Mr Robertson was not readily available from the financial management systems and the Council sought other means to obtain the information.
20. The Council explained that there was no one specific code for councillors when using taxis in the course of their Council business. Some councillors used different codes and in some cases councillors were interchanging codes.
21. In addition, the Council's financial systems did not identify who had undertaken the journey, as the identity of those who had undertaken the journey was held separately. The Council was therefore unable to rely solely on the financial codes to collate the information.
22. It also became clear to the Council that some journeys were unaccounted for. The Council stated that the only way to identify these journeys is to check through each invoice that appeared under the different code and cross reference each code to the councillor in question. Due to the nature of the codes used the Council would be required to search through hundreds of individual invoices.
23. It is clear from the submissions made by the Council that an extensive data extracting exercise would be required to provide the detailed breakdown requested by Mr Robertson. However, I am not satisfied, given the statistical nature of the information sought by Mr Robertson, the Council's ability to provide yearly total figures and the statutory obligations outlined above, that this complex extraction exercise is sufficient in itself to determine that the information is not held by the Council.
24. I therefore find that the Council acted inappropriately in determining that it did not hold the information requested by Mr Robertson.



### **Should the information be released?**

25. I note that Mr Robertson specifically requested the Council to review its response relating to the detailed breakdown for the year 2005.
26. I will therefore consider whether the Council should provide Mr Robertson with this specific information.
27. In terms of section 12(1) of FOISA, 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 would exceed an amount prescribed by regulations made by the Scottish Ministers. Regulation 5 of the Fees Regulations states that the amount prescribed for the purposes of section 12(1) is £600.
28. As part of its submissions to my Office, the Council provided an estimation of the costs that it would incur to provide the information by councillor per year.
29. The estimate provided by the Council was based on the costs that would be incurred to check through the invoices from one taxi firm. The Council submitted that it would be required to search through the individual invoices from each of the ten taxi firms used by the Council to collate the information requested by Mr Robertson.
30. For this sample firm there was an average of 10 invoices per week, which over a period of a year would equate to 520 invoices. Given that each of these invoices is held on a database, and is arranged by date of receipt; the Council stated that it would be required to print off and photocopy each invoice and place them in order. Thereafter the invoices would be checked against a code to which it had been allocated, and also checked against the records of each councillor.
31. The Council estimate that it would require 5 minutes checking/matching time for each invoice. This exercise would be carried out by a senior officer at a rate of £15 per hour, resulting in a staff cost of £649.50 per taxi firm.
32. The Council considers that, as there is a senior officer who is a dedicated Freedom of Information officer within the Finance section with access to all of the relevant information systems, this would be best placed member of staff to deal with the request.
33. The Council submit that a senior officer's post attracts an hourly rate of £17.33. Regulation 3(2)(b) of the Fees Regulations, however, provides that in estimating projected costs the cost of staff time should not exceed £15 per hour per member of staff. The Council therefore charged the maximum allowable rate of £15 per hour under the Fees Regulations.



34. In addition, the Council stated that it would charge for photocopying at a rate of 10 pence per A4 sheet. This would equate to an estimate of £52 per taxi firm.
35. I am not satisfied that photocopying is a necessary expense that should be incurred by the Council in responding to Mr Robertson's request. Mr Robertson requested the total taxi expenses incurred by each councillor, not copies of the invoices. I therefore consider that the additional cost of photocopying the invoices would be a cost incurred unnecessarily.
36. Nevertheless, the Council estimates that the projected cost that would be incurred to provide Mr Robertson with the information he requested covering the period of one year would be £6495 (excluding the photocopying charge).
37. It is clear from the estimations provided by the Council that the cost of providing the information to Mr Robertson would significantly exceed the £600 prescribed limit as defined by the Fees Regulations.
38. I therefore conclude that the Council is not obliged to comply with the request as the cost of doing so would exceed the prescribed limit of £600.
39. However, I am pleased to note that, as a result of the review panel hearing, the senior management team for the service concerned has been instructed to review record keeping and associated systems in an effort to improve performance in this regard.
40. The Council has also provided an apology to Mr Robertson and accepts the information could not be provided due to the limitations of its current management information and ledger systems.

#### **Technical breaches of FOISA**

41. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days from the receipt of the request to comply with the request for information.
42. I am satisfied that the Council failed to respond to Mr Robertson's request within the timescales set out in section 10(1) of FOISA.
43. In addition, I find that the Council failed to comply with the requirements of Part 1 of FOISA in that it failed to advise Mr Robertson of his right to ask for a review of the decision or about his right to apply to me for a decision, as required by section 19 of FOISA in its initial response of 1 March 2006. Despite this, Mr Robertson did ask for a review and made an application to me and so was not prejudiced by this failure.
44. I therefore do not require the Council to take any action as regards these technical breaches of FOISA.





## Decision

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I find that Aberdeen City Council (the Council) 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 Robertson's request. The Council therefore acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA), and in particular with section 12(1), in not supplying the information to Mr Robertson.

However, I am pleased to note the Council's statements that it intends to review record keeping and associated systems in an effort to improve performance in this regard.

I also find that the Council failed to comply with Part 1 of FOISA in its application of section 17, in determining that the information requested by Mr Robertson was not held.

I also find that the Council breached Part 1 of FOISA in failing to respond to Mr Robertson's original request within the requisite timescales set out in section 10(1) and in failing to advise him of his rights to review etc contained in section 19.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**30 October 2006**



## APPENDIX

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### 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.

##### **10 Time for compliance**

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-
  - (a) [...]the receipt by the authority of the request

##### **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.

##### **17 Notice that information is not held**

- (1) Where-
  - (a) a Scottish public authority receives a request which would require it either-
    - (i) to comply with section 1(1); or
    - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
  - (b) the authority does not hold that information,



it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

(2) Subsection (1) is subject to section 19.

(3) [...]

## **19 Content of certain notices**

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars-

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(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.

## **The Local Authorities Etc. (Allowances) (Scotland) Regulations 1995**

### **28 Records of allowances**

- (1) Every local authority [...] shall keep a record of the payments made by it in accordance with any scheme made pursuant to these Regulations.
- (2) Every authority [...] to whom any of sections 45 to 49A of the 1973 Act applies shall keep a record of the payments made by it by virtue of any of those sections.
- (3) A record kept pursuant to either of the preceding paragraphs shall specify in relation to each payment-
  - (a) the name of the recipient; and
  - (b) the amount and nature of the payment.
- (4) [...]
- (5) [...]