

Decision Notice 082/2022

Ratepayers not in receipt of rates relief

Applicant: The Applicant

Public authority: Dumfries and Galloway Council

Case Ref: 202101212



Scottish Information
Commissioner

Summary

The Council was asked for a list of ratepayers who do not get any rates relief. The Council considered that extracting the information for the request would cost more than £600 and, therefore, that it was not obliged to comply with the request. The Commissioner agreed.

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 8 July 2021, the Applicant made a request for information to Dumfries and Galloway Council (the Council). It asked for a list of ratepayers that do not get any relief now.
2. The Council responded on 2 August 2021 by providing the Applicant with a list of premises with no reliefs currently applied.
3. Later that day, the Applicant wrote to the Council requesting a review of its decision. It noted that the list did not include the name of the ratepayers and asked for the list to be resent *with* ratepayer names.
4. The Council notified the Applicant of the outcome of its review on 11 August 2021. The Council explained that it could not disclose the names of sole traders as the names were personal data and exempt from disclosure. The Council stated:

In order to differentiate between sole traders and limited companies, a member of staff would be required to go in to each individual record to determine this. The spreadsheet we provided you in our response includes 2466 records. Even if it were to only take 1 minute to go in to each individual record this would equate to approximately 41 hours. At £15 per hour this would equate to £615, this is in excess of the £600 limit.

5. The Council therefore argued that it was not obliged, under section 12(1) of FOISA, to comply with the request.
6. The Applicant queried the review outcome on 11 August 2021, stating:

There is a very simple formula within excel which can identify limited companies purely from the name so it would take less than one hour in total to remove anything that is a private individual so I can't see why you would not do this.
7. The Council replied on 12 August 2021 advising the Applicant that:

Unfortunately, there is no guarantee that just because the word 'Limited' is included within the ratepayer field that it is in fact a limited company, it could just form part of the name.

8. On 26 September 2021, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. The Applicant stated that:

This Council are refusing to supply information which would be very simple to do and would take less than an hour to provide. This involves the inclusion of the ratepayer name where this is a limited company. I have advised them of a simple excel formula that can be used to extract only limited companies.

Investigation

9. 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.
10. On 2 November 2021, the Council was notified in writing that the Applicant had made a valid application.
11. 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 how the Council had calculated that it would cost over £600 to provide the Applicant with the information.

Commissioner's analysis and findings

12. 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.
13. In its correspondence with the Council and its subsequent application to the Commissioner, the Applicant has not queried whether the Council was correct to advise it that the names of sole traders were exempt from disclosure. The investigation therefore focusses on the issue of cost and whether the names of the sole traders could be redacted from the list without the Council incurring excessive costs.

Section 12(1) – Excessive cost of compliance

14. Section 12(1) of FOISA 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 amount prescribed in the Fees Regulations. This amount is currently set at £600 (regulation 5). 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 would exceed that sum.
15. The projected costs the 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.
16. The authority may not charge for the cost of determining whether it:
- (i) actually holds the information requested or
 - (ii) should provide the information.

17. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

Submissions from the Council

18. The PA explained that its records are held electronically and stated:

While it is possible for us to draw information regarding liable parties from our database system iWorld into i.e. an Excel document and filter this information using key words such as Limited and Ltd as [the Applicant has] suggested, it is not possible to be certain that a company is a Limited company from this information alone. Unfortunately, there is no guarantee that just because the word 'Limited' or 'Ltd' is included within a company's name that it is in fact a limited company. The word "Limited" could just form part of the name. Therefore, to ensure that we do not disclose personal information and breach Data Protection regulations we would need to check each line on the Excel document against the documentation provided when liability was established. This information is held within our document imaging system Civica W2.

19. The investigating officer asked the Council how long it would actually take to extract the necessary information from each record and suggested that the Council may wish to conduct a sample search to ascertain the timescale. The Council responded that an officer undertook a sample search based on a sample of 10 records (rows within the Excel document) to ascertain the timescale. It took an average of 1 minute 54 seconds to check each account against the document imaging system Civica W2. Based on this timescale, it would mean checking all 2,466 records would take 78 hours, which even assuming the Council tasked a band 5 member of staff to conduct the search (paid £12 per hour) it would cost £936.
20. The Council stated that therefore, in accordance with section 12 of FOISA, it was refusing the request as it would exceed the cost limit.
21. The investigating officer asked the Council to provide a copy of the spreadsheet column headings to determine whether there were other columns in the spreadsheet – such as “company registration number” – which might help indicate whether the body was a company or sole trader. The Council provided a copy of the column headings, but it was clear, after further clarification from the Council as to the meaning of some of the columns, that there was nothing else to indicate whether a body was a company or a sole trader.

Submissions from the Applicant

22. The Applicant reiterated that, in its view, there was a very simple formula within excel which could identify limited companies purely from the name, so in its view it should take less than one hour in total to remove anything relating to a private individual. Therefore the Applicant did not accept the Council's reliance on section 12 of FOISA.

The Commissioner's findings

23. While the Commissioner notes that the Applicant is of the view that a formula could be used that could ascertain the information required by simply checking the names of the organisations, he cannot accept this as a viable solution. As a data controller, the Council is required to act in line with the UK General Data Protection Regulation and Data Protection Act 2018. It is therefore required to protect the personal data it holds and only to disclose it where it is lawful to do so.
24. The Commissioner accepts that, even if the Council could, within the costs limit, disclose all rate-payer names with “Limited/Ltd.” in their title, it would not be sufficient to protect the

personal data of sole traders, given the possibility that a mistake during data input could mean that “limited/ltd” appears in error the name of a sole trader. The Commissioner also notes that some companies are exempt from the requirement to have a name ending with “limited” – section 60 of the Companies Act 2006 – or may in fact be unlimited companies which might lead to names of companies being redacted when they could be disclosed. These points strengthen the arguments put forward by the Council that responding to the request would take more than just simply disclosing anything with “limited/ltd” in the title.

25. Given the explanations provided by the Council, the nature of the work involved and the need to protect personal data, the Commissioner is satisfied in all the circumstances that the Council could not have complied with the Applicant’s request 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 Dumfries and Galloway Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant 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.

Daren Fitzhenry
Scottish Information Commissioner

21 May 2022

Appendix 1: 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.
...
- (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.

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