



Decision Notice 076/2023

Complaints about loud music

Authority: Police Service of Scotland
Case Ref: 202200532

Summary

The Applicant asked the Authority for how many “recorded statements” the Authority received since August 2021 in relation to harassment from neighbours playing “loud techno base beat” music.

The Authority stated that complying with the request would exceed the £600 cost limit so it was not obliged to comply. Following an investigation, the Commissioner accepted this.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 47(1) and (2) (Application for decision by Commissioner)

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 30 December 2021, the Applicant made a request for information to the Authority. The Applicant asked for how many “recorded statements” the Authority had received since August 2021 in relation to harassment from neighbours playing “loud techno base beat” music.

2. The Authority responded on 27 January 2022, refusing the request in terms of section 12(1) of FOISA as it considered the cost of complying would exceed the specified limit of £600. The Authority explained that, while incidents are categorised, there is no specific category relating to the type of incident specified in the Applicant's request, meaning it would have to individually review thousands of incident reports.
3. On 13 February 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because she disagreed that it would cost more than £600 for the Authority to comply with her request.
4. The Authority notified the Applicant of the outcome of its review on 11 March 2022, fully upholding its original decision for the reasons previously stated.
5. On 2 May 2022, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated she was dissatisfied with the outcome of the Authority's review because she believed the information could be retrieved from the Authority's systems and should not cost the Authority more than £600 to comply with her request.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 10 May 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently allocated 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 Authority was invited to comment on this application and to answer specific questions. These related to whether the Authority considered the information requested by the Applicant could be environmental information for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), the searches it had carried out and for its cost estimates for complying with the request.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

FOISA or EIRS

10. The Authority was asked to consider whether, given the subject matter, the Applicant's request should have been dealt with under the EIRs.
11. The Authority took the view that the information did not fall within any of the categories of environmental information set out in regulation 2 of the EIRs, but submitted that if it did, it would apply the exception in regulation 10(4)(b) of the EIRs.
12. The Authority explained that it understood that the Applicant's request could be interpreted as relating to noise pollution. However, when considered in the wider context of her previous requests, the Authority was satisfied that the focus of this request was primarily antisocial behaviour rather than noise *per se*.

13. The Commissioner considers the Authority's position reasonable and is satisfied, in the circumstances, that the information requested is not environmental information and that the Authority was therefore correct to respond to the Applicant's request in terms of FOISA.

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 relevant amount prescribed in the Fees Regulations. This amount is currently £600 (see 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 that information would exceed this sum.
15. The projected costs a Scottish public authority can consider in relation to a request for information are, according to regulation 3 of the Fees Regulations, the total costs (whether direct or indirect) it reasonably estimates it will 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, or
 - (ii) whether or not it should provide the information.
17. The maximum hourly rate the authority can charge for staff time is £15 per hour.

The Authority's submissions

18. The Authority confirmed it wishes to continue to rely on section 12 of FOISA.
19. The Authority explained that incidents of the nature described by the Applicant are recorded on its STORM incident reporting system; the purpose of which is to divert officers to incidents based on risk/priority, not to produce highly specific statistics.
20. The Authority noted that incidents are categorised to an extent, but none match the scenario the Applicant has requested information about (e.g., it can search for "noise" but it cannot discern whether that noise is emanating from a neighbour, or it can search for "neighbour dispute" but the results may have nothing to do with noise).
21. The Authority identified the following figures for the first quarter of 2022/2023, any of which could be relevant to the Applicant's request:
 - Complaint – 18,028
 - Disturbance – 20,111
 - Noise – 11,155
 - ASB (where alcohol is reported) – 87
 - Neighbour dispute – 6,209
 - Communications – 9,866
22. The Authority estimated that, for the seven-month period covered by the Applicant's request, it would have to individually review around 18,000 incidents to establish whether the circumstances described matched the criteria in the request.

23. The Authority stated it would take, on average, two minutes to review an incident report, which would amount to around 600 hours of work to comply with the Applicant's request.
24. The Authority explained it therefore considered it would significantly exceed the £600 cost limit under FOISA to comply with the Applicant's request (which would remain the case, even if the period covered by the request was significantly reduced).

The Applicant's submissions

25. In her application to the Commissioner, the Applicant stated that she believed the information could be retrieved from the Authority's systems and that it should not cost the Authority over £600 to do so.

The Commissioner's view

26. The Commissioner acknowledges that the Applicant believes the Authority should be capable of providing the information she requested without exceeding the £600 cost limit under FOISA.
27. However, the Commissioner is required to consider whether section 12(1) of FOISA applies in this case, with regard to the recording systems in use by the Authority, and not with regard to what an Applicant might wish these systems to be capable of.
28. Furthermore, as noted in [Decision 050/2021¹](#) (which involved a different Authority), it is not within the Commissioner's remit to instruct a public authority to change its data recording systems
29. Considering the nature of the STORM incident reporting system used by the Authority, the fact that the information requested does not sit within a defined incident category and the high number of incident reports which would require individual review, the Commissioner is satisfied that the Authority has reasonably estimated the cost of complying with the request as significantly exceeding the £600 limit.
30. In all of the circumstances, therefore, the Commissioner finds that the Authority was correct to refuse the request under section 12(1) as complying would exceed the cost limit.

Decision

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

¹ <https://www.itspublicknowledge.info/decision-0502021>

Appeal

Should either the Applicant or the Authority 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

19 July 2023

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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in 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.