

Decision Notice 034/2021

Inverness: number of incidents, retained crew and standby appliances

Applicant: The Applicant

Public authority: Scottish Fire and Rescue Service

Case Ref: 202000268



Summary

SFRS was asked for a range of information relating to the Inverness based fire service, including the number of incidents, retained crew, and standby firefighting appliances.

SFRS provided information in response, but stated that some of the information was not held.

The Commissioner investigated and found that SFRS had partially complied with FOISA in responding to the request. He found that the information was not held for two of the three parts of the request, but accepted that SFRS would incur excessive costs to provide the information requested in one part of the request. He required SFRS to provide advice and assistance on narrowing the scope of one part of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 10(1) (Time for compliance); 12(1) (Excessive costs of compliance); 15 (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 21(1) (Review by Scottish public authority)

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 15 November 2019, the Applicant made a request for information to Scottish Fire and Rescue Service (SFRS). The information requested was:
 - a. the number of incidents attended by the Inverness based Fire & Rescue Service for the last 24 months.
 - b. the number of occasions where the Inverness based crews were “back-filled” by a retained crew as a result of the Inverness based crews attending an incident for the last 24 months.
 - c. the number of occasions when a standby firefighting appliance was necessary due to the non-availability, for whatever reason, the principal appliances were not available due to breakdown, maintenance or other duties.
2. SFRS did not respond to the request.
3. On 19 December 2019, the Applicant emailed SFRS requesting a review of its decision on the basis that it had not responded to the request.
4. SFRS notified the Applicant of the outcome of its review on 11 February 2020. It apologised for the late response and provided responses to each part of the request, as follows:
 - a. SFRS gave the Applicant the number of times Inverness based appliances were turned out, but explained that more than one unit can be at a single incident and therefore the figure did not reflect the number of incidents.

- b. SFRS notified the Applicant that it did not hold the information.
 - c. SFRS provided the number of standby incidents but explained that it does not record the reasons for the standby cover.
5. On 23 February 2020, the Applicant applied for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of SFRS's review because he considered the responses to parts a) and c) of his request to be ambiguous and he was not satisfied that SFRS did not hold information in relation to part b) of his request.

Investigation

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 19 March 2020, SFRS was notified in writing that the Applicant had made a valid application.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. SFRS was invited to comment on this application and to answer specific questions. These related to how information was held, searches conducted and explanations as to why SFRS could not provide the Applicant with the specific information requested. SFRS responded to the questions raised.
9. Aspects of SFRS's submissions were clarified during the investigation. SFRS indicated that it did hold information in relation to part b) of the request, but explained that it would cost in excess of £600 to respond. It therefore sought to rely on section 12 of FOISA. The Applicant was provided with an opportunity to comment on this development during the investigation.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and SFRS. He is satisfied that no matter of relevance has been overlooked.
11. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it.
12. The information to be given is that held by the authority at the time the request is received, as defined in section 1(4). If no such information is held by the authority, section 17(1) of FOISA requires it to give the applicant notice in writing to that effect.
13. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded

information is (or was, at the time the request was received) actually held by the public authority.

Part a) – number of incidents attended

14. The Applicant considered that the information provided to him was ambiguous and questioned whether it reflected the number of incidents or the number of appliances attending incidents: for example, did one appliance attend 4735 incidents or did three appliances attend 1578 incidents?
15. SFRS explained that it has a *national* Operations Control (OC) system, which is used together with dynamic risk assessments to determine which appliances should/could attend an “incident type”. This could be, for example, small property fires, large property fires, road traffic collisions, motorway response. This system, it submitted, cannot extract data for a particular station based on incident.
16. The OC system takes into consideration where all other resources (appliances) currently are, and their capability, to ensure efficient cover across the whole of Scotland.
17. Various appliances from one particular station can be turned out to different incidents at the same time, some within their local area and some out with. More than one appliance from a station can also be at a single incident and therefore the figure supplied to the Applicant is not the figure for the number of incidents, but is the number of times appliances that have been “turned out” from the station.
18. Even though an Inverness appliance was turned out, this does not mean it was an Inverness area incident it attended.
19. An incident can be received in many forms (e.g. from a mobile). Incident details are communicated to station printers, a visual display at the printers and mobile data terminals on appliances. All of the information is held/recorded within the OC system which crews can only view when at station. There is nothing specifically held on stations used to respond to incident.
20. SFRS provided the Commissioner with extracts of its Control Operating Procedures which provide the foundations for, and facilitate the formulation of, appropriate mobilising and communication criteria to be adopted by SFRS.

The Commissioner’s conclusions

21. The Commissioner notes that the Applicant has been provided with the number of times an appliance has been turned out from Inverness station, not the number of incidents. Although the Applicant may have had a reasonable expectation that SFRS recorded the number of incidents attended by the Inverness based Fire & Rescue Service, the investigation has not identified the specific information sought.
22. The Commissioner notes that, in 2013, SFRS was established following the merger of Scotland's eight regional fire and rescue services¹. Having considered the explanation provided by SFRS, he notes that the OC system is focussed on deploying appropriate resources (on a national level) to an incident and this is the focus of its system.

¹ <https://www.gov.scot/policies/fire-and-rescue/>

23. The Commissioner's decision is on the basis of the actual information requested. He has taken a reasonable interpretation of the request, allowing for the fact that the Applicant would have been unlikely to know exactly how information is recorded by SFRS.
24. Having considered the response provided to the Applicant by SFRS and the submissions during the investigation, the Commissioner is satisfied that SFRS provided the Applicant with the information it holds. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities, that SFRS does not hold the specific information requested by the Applicant regarding the number of incidents attended by the Inverness based Fire & Rescue Service.
25. The Commissioner is therefore satisfied that SFRS did not hold the specific information requested (section 17(1) of FOISA).

Part b) – 'back-filled' by a retained crew

26. The Applicant did not accept that SFRS was unable to identify when retained firefighter crews "turn out" to relieve or support full time crews. The Applicant considered that SFRS must be aware of when they pay retained crews.
27. SFRS submitted that retained personnel are paid an annual retainer, disturbance payment per call out and an hourly rate for work undertaken. After an incident, the Officer in Charge logs the number of hours worked against each crew member and submits it to finance where it is uploaded to the payroll/personnel system which calculates the pay.
28. SFRS explained that retained crews may cover their own or another area. OC would divert the best placed appliance to attend an incident.
29. The Officer in Charge logs the number of hours worked against each crew member, but does not record any location details about the incident. The Officer in Charge inputs the Incident Number from the OC system into a Retained Duty Recording System, but no location is recorded. These two systems are separate.
30. SFRS provided screen shots of its systems to support its submission.
31. The investigating officer noted that one of the screen shots contained a station name. SFRS was questioned on this matter. In response, it submitted that, to extract the requested information from its systems, it would need to:
 - insert each retained station [into the Retained Duty Recording System] which could potentially support Inverness (individually);
 - determine how many standby incidents they attended during the time requested (two years); and
 - look up each of these incidents on the OC system and ascertain whether they were actually on standby to cover Inverness station or for another station.
32. Following a further request to SFRS by the investigating officer, it provided a breakdown of the estimated costs that would be likely to incur in the identifying and providing the requested information.
33. SFRS explained that, when a fire station requires support of any type (including retained crew), a standby incident is created in the OC. SFRS stated it would have to search and identify the requested information in each of the standby incidents for the time period in question. It estimated that it would take 20 minutes to complete this task for each of the 155

standby incidents falling in scope of the request. Therefore, this would equate to over 51 hours of staff time, and at a cost of £15 per hour, would bring the total cost to over £775, which is in excess of the appropriate limit prescribed within the fees limit allowed in the Fees Regulations.

34. SFRS therefore considered section 12(1) of FOISA did not oblige it to comply with this request.

The Commissioner's conclusions

35. SFRS initially told the Applicant it did not hold information for this part of this request. During the investigation, it confirmed it did hold the information (meaning its original response breached section 1(1) of FOISA), but argued that it was not obliged to comply with the request because of the costs involved.
36. Where the cost of complying is estimated to be more than £600 (regulation 5 of the Fees Regulations), the public authority is not obliged to comply with the request (section 12(1) of FOISA).
37. In determining the projected costs of responding to a request, a public authority is allowed to take account of the total costs, whether direct or indirect, which it reasonably estimates it is likely to incur in locating, retrieving and providing the information (regulation 3 of the Fees Regulations).
38. The Commissioner notes that retained crew are paid a disturbance payment per call out, but that the systems used by SFRS do not require a location of the incident to be recorded against each disturbance payment. The system used to record this work is not linked to the OC system.
39. As noted above, the screen shots provided by SFRS did contain a station name. In response to further questions, SFRS confirmed it held and could search for the requested information; however, doing so would incur excessive costs. SFRS has provided an estimate of time and cost to provide this information.
40. Having considered how SFRS holds the requested information, the Commissioner is satisfied that SFRS would have to review each of the 155 standby incidents falling within the requested time period, and consider whether the incident in question contained information as to whether the Inverness based crews were "back-filled" by a retained crew.
41. The Commissioner is also satisfied that SFRS's estimate of the time to consider each standby incident is reasonable.
42. As the Commissioner is satisfied that it would cost SFRS more than £600 to comply with part b) of the request, he is satisfied that SFRS is not obliged to comply (section 12(1) of FOISA).
43. Section 15 of FOISA requires a Scottish public authority, as far as is reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
44. Where section 12(1) is engaged, the need for advice and assistance is crucial to the process of refining requests: a requester will not necessarily know how information is structured with a given authority, or the volume of information held in relevant systems, when framing a "narrowed" request, unless the authority advises them accordingly.

45. As section 12(1) was raised during the investigation, the Commissioner requires the SFRS to provide the Applicant with advice and assistance, allowing him to submit a “narrowed” request, should he wish to do so, in light of the explanations detailed above.

Part c) – standby firefighting appliances

46. The Applicant questioned the terminology used in the response to this part of the request. He queried whether a “standby incident” by SFRS’s definition was when a principal appliance is unavailable, other than when attending another incident.

47. SFRS explained that a “standby incident” (or cover) means cover for a station for reasons such as, but not limited to:

- the normal station appliances out at an operational incident or covering another station, and/or
- possibly an appliance requiring urgent maintenance, and/or
- the station’s operational personnel attending training either on or off site.

48. For example, if there is a large incident which Inverness are attending, OC will use the system and dynamic risk assessments to determine if a standby appliance is required. If this is the case, then a standby incident is created for the station on the system.

49. Therefore, SFRS stated that it was possible to determine that 155 standby incidents were created to cover Inverness over the period requested.

50. The reason for creating a standby incident is not recorded, and the standby incident may remain open the whole time the Inverness station requires cover, regardless of what it is used for.

51. The standby incident relates to cover for a station and SFRS does not record the reason for the standby, just that it has occurred.

52. SFRS stated that a standby incident covers the whole station not one appliance, so there is not one to one correlation between appliance and incident.

The Commissioner’s conclusions

53. SFRS record the number of standby incidents, but this relates to the entirety of a station, not to a single appliance. Furthermore, the reasons for the standby cover are not recorded in OC. Consequently, SFRS can provide the Applicant with the number of standby incidents, but not how many appliances or the reason why the standby incident was created.

54. Again, the Commissioner’s decision is on the basis of the actual information requested. He has taken a reasonable interpretation of the request, allowing for the fact that the Applicant would have been unlikely to know exactly how information is recorded by SFRS.

55. Having considered the response provided to the Applicant by SFRS and the submissions during the investigation, the Commissioner is satisfied that SFRS provided the Applicant with the information it holds. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities, that SFRS does not hold the specific information requested by the Applicant regarding the number of standby appliances.

56. The Commissioner is therefore satisfied that SFRS did not hold the specific information requested (section 17(1) of FOISA).

Handling of request/timescales

57. The Applicant complained about SFRS's lack of response to his initial and requirement for review within the statutory timescales.
58. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to qualifications which are not relevant in this case.
59. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, again subject to qualifications which are not relevant in this case.
60. It is a matter of fact that SFRS did not provide a response to the Applicant's request for information (15 November 2019) and requirement for review (19 December 2019) until 11 February 2020, thereby missing the 20 working day deadline for each one. SFRS acknowledged these failures in its review outcome of 11 February 2020, in which it also apologised to the Applicant for overlooking his requirement for review of 19 December 2019.
61. SFRS was asked to comment on its breach of timescales in this case. It told the Commissioner that the failure was due to human error; the case was accidentally closed off, so there was no alert to the request being outstanding. SFRS said that it has put administrative checks in place and carried out refresher training to try and ensure this does not happen again.
62. In the circumstances, the Commissioner must find that SFRS failed to comply with section 10(1) and 21(1) in this case.

Decision

The Commissioner finds that Scottish Fire and Rescue Service (SFRS) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that, by correctly notifying the Applicant, under section 17(1) of FOISA, that it did not hold the information requested in parts a) and c) of the request, SFRS complied with Part 1.

However, by incorrectly advising the Applicant, that it did not hold the information falling within scope of part b) of the request, SFRS failed to comply with section 1(1) of FOISA. However, the Commissioner is satisfied that it would cost SFRS more than £600 to comply with the request. This means that SFRS is not obliged, under section 12(1) of FOISA, to comply with part b) of the request.

The Commissioner also finds that SFRS failed to adhere to the timescales set out in sections 10(1) and 21(1) of FOISA.

The Commissioner requires SFRS to provide the Applicant with advice and assistance in line with section 15 of FOISA to help him submit a narrowed request in respect of part b), should he wish to do so, by **29 April 2021**.

Appeal

Should either the Applicant or SFRS 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.

Enforcement

If SFRS fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that SFRS has failed to comply. The Court has the right to inquire into the matter and may deal with SFRS as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

15 March 2021

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.

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) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.
...

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 respects that case, to be taken to comply with the duty imposed by subsection (1).
...

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.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

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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