

Decision Notice 050/2021

Taxi or private hire licences and convictions

The Applicant

Public authority: City of Edinburgh Council

Case Ref: 202001385



Scottish Information
Commissioner

Summary

The Council was asked how many taxi or private hire taxi licences it had granted to people who had disclosed criminal convictions from 2017 to 2020 and for details of those convictions.

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); 15(1) (Duty to provide advice and assistance)

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 17 September 2020, the Applicant made a request for information to City of Edinburgh Council (the Council). He asked for the number of:
 - Q1. current taxi or private hire licence holders licensed by the Council:
 - Q2. taxi or private hire licences granted in the 2017/18 financial year to people who have disclosed criminal convictions to the Council:
 - Q3. taxi or private hire licences granted in the 2018/19 financial year to people who have disclosed criminal convictions to the Council:
 - Q4. taxi or private hire licences granted in the 2019/20 financial year to people who have disclosed criminal convictions to the Council
2. The Applicant also asked for (anonymised) details of each conviction.
3. The Council responded on 14 October 2020. It told the Applicant that the number of current licence holders (Q1) was published on its website. It provided the relevant link to the information. The Council also told the Applicant it did not hold information for Q2-Q4.
4. On 19 October 2020, the Applicant wrote to the Council requesting a review of its decision in relation to Q2-Q4. He referred to the Council's response to another almost identical request he had made, where the Council had stated it held the information, but that it would cost too much to provide (section 12 of FOISA).
5. The Council notified the Applicant of the outcome of its review on 16 November 2020. The Council now accepted that it held the information in individual application records, but said it would cost more than £600 to comply with the request.

6. On 20 November 2020, the Applicant applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He explained that he was unhappy that the Council's record keeping system was such that it would cost in excess of £600 to provide the information. He stated that he had received the same information from another Scottish council and argued that the Council should have maintained a record keeping system that could produce the information more cost effectively.

Investigation

7. 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.
8. On 30 November 2020, the Council was notified in writing that the Applicant had made a valid application.
9. 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.
10. Further submissions were received from both the Council and the Applicant.

Commissioner's analysis and findings

11. 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.

Section 12(1) – Excessive cost of compliance

12. 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.
13. 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.
14. The authority may not charge for the cost of determining whether it:
 - (i) actually holds the information requested or
 - (ii) should provide the information.
15. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.

Submissions from the Council

16. The Council told the Commissioner that, for each of the financial years detailed in the Applicant's request, the cost of compliance would exceed the £600 statutory limit. The Council stated that its live licensing system does not record declared criminal convictions and, in order to locate, retrieve and provide the requested information, a manual check of the scanned licence application for each record would be necessary. It was estimated that each check would take on average between six and eight minutes to undertake and then record by conviction type as requested and that a further two minutes would be needed per application for tallying purposes.
17. It would be necessary, the Council submitted, for a Grade 6 Officer to undertake this check given the sensitivity of the information involved. The mid-point hourly rate for a Grade 6 Officer is £15.35. However, allowing for the capped statutory maximum hourly rate of £15 per hour for this required work, and even if the lower estimate of six minutes was used (and the time allowed to tallying were removed) the cost of compliance would be as follows:
 - (i) Year 2017/18: 1,625 applications (£2,437.50)
 - (ii) Year 2018/19: 2,593 applications (£3,889.50)
 - (iii) Year 2019/20: 2,825 applications (£4,237.50)
18. The Council explained that, while it appreciated that the Applicant had intended to structure his request in such a way as to bring down the cost of compliance to within the threshold, it was that case that none of the figures for any of the financial years came within the statutory limit.

Submissions from the Applicant

19. When it was explained to the Applicant by the investigating officer that the cost of providing the information to him was well in excess of the statutory limit, he submitted that he still required the Commissioner to reach a finding on the matter. He did not contest the breakdown of cost figures given by the Council, but was unhappy that the Council's records management system was configured in such a way as to make the searching so time-consuming and therefore expensive.

The Commissioner's findings

20. Given the detailed explanations provided by the Council, and having considered the nature of the work involved, the Commissioner is satisfied in all the circumstances that the Council could not have complied with the Applicant's requests 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.
21. Section 15 of FOISA requires a Scottish public authority, so far as it is reasonable for it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. In its review response, the Council advised the Applicant that it may be able to fulfil his request in relation to part of a year, if he was willing to reduce the scope. The Council provided a worked example of one month's worth of records.
22. The Commissioner is satisfied that the Council satisfied the requirement of section 15 in providing this advice.

23. While the Commissioner recognises that the Applicant is frustrated with the manner in which the Council manages the records covered by his requests, it is not within the Commissioner's remit to instruct a public authority to modernise its record keeping system.

Decision

The Commissioner finds that City of Edinburgh 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.

Margaret Keyse
Head of Enforcement

13 April 2021

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.
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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.
- ...

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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