

Decision Notice



Decision 194/2013 Mr Alan Laing and the Scottish Ministers

The purchase and use of alcohol

Reference No: 201301476

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Summary

On 22 April 2013, Mr Laing asked the Scottish Ministers (the Ministers) for the number of bottles, and value of alcohol, purchased in each financial year since 2007/8, and the value of alcohol owned by the Scottish Government. The Ministers submitted that it would cost more than £600 to provide the information and therefore they were not required to comply with Mr Laing's request (section 12 of FOISA).

The Commissioner accepted this, but found that the Ministers had failed to provide advice and assistance in line with section 15 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 22 April 2013, Mr Laing emailed the Ministers requesting the following information (Mr Laing's numbering):
 - (1) the total number of bottles of (a) wine, (b) whisky, (c) champagne, (d) gin, (e) vodka, (g) any other alcohol owned by the Scottish Government in each financial year since 2007/8;
 - (2) the total value of alcohol bought by the Scottish Government in each financial year since 2007/8;
 - (4) the total value of alcohol owned by the Scottish Government at present.



2. Mr Laing asked the Ministers:

“... that each of the requests above be considered as separate requests under the Act” and

“... to interpret my request for information as widely as possible. To provide as much background and context to my request, I would be grateful if you could provide the actual documents in which information is contained wherever possible.”
3. The Ministers responded on 20 May 2013 as if to a single request. They stated that the costs of locating, retrieving and providing the information Mr Laing requested would exceed the upper limit of £600, and therefore they were not required to comply with the request in line with section 12 of FOISA.
4. On 21 May 2013, Mr Laing emailed the Ministers requesting a review of their decision. Mr Laing did not accept that there was no easily accessible way of determining the amount and value of alcohol purchased and in the possession of the Scottish Government at any one time. Mr Laing did not raise with the Ministers that they had dealt with the request as a single request.
5. The Ministers notified Mr Laing of the outcome of their review on 21 June 2013. The Ministers upheld their previous decision without amendment and also explained that the information was not held centrally but by individual business area, so a Government-wide trawl would be required in order to locate, retrieve and provide it.
6. On 24 June 2013, Mr Laing emailed the Commissioner, stating that he was dissatisfied with the outcome of the Ministers’ review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Laing did not raise with the Commissioner any dissatisfaction with the Ministers’ treating the request as a single request so the Commissioner has not (and is not required to) consider that matter further in this decision.
7. The application was validated by establishing that Mr Laing had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

8. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. These focused on the requirements of sections 12(1) and 15 of FOISA.
9. The Ministers responded on 1 August 2013.



Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both Mr Laing and the Ministers. She is satisfied that no matter of relevance has been overlooked.

Section 12(1) excessive cost of compliance

11. 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 set at £600 in terms of regulation 5 of the Fees Regulations. Consequently, the Commissioner has no power to require the release of information should she find that the cost of responding to a request for that information would exceed this sum.
12. The projected costs that 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 in accordance with Part 1 of FOISA. The authority may not charge for the cost of determining (i) whether it actually holds the information requested or (ii) whether or not it should provide the information. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
13. The Ministers explained that a single search could be undertaken to jointly seek answers to all three of Mr Laing's requests. However, for the reasons outlined below, this would entail a Government-wide trawl, which would incur costs of over £600.
14. On the question of whether the information was held centrally and easily accessible, the Ministers explained why this was not the case. There are no special corporate procedures for the purchasing of alcohol and recording these purchases; any purchases of alcohol would follow normal corporate procurement procedures. These procedures require that goods and services are acquired from an authorised supplier by means of a formal receipted purchase order, or exceptionally for one-off small value procurements, by government procurement card. The Ministers stated that there are no accounts codes in the accounting system used to record purchases of alcohol as separately reportable transactions. Any purchases of alcohol would be subsumed under another heading and would be paid for as incurred.

The Ministers commented that the information requested could only be held on the accounts system in the description of each individual transaction relating to goods and services. This description is derived from whatever information the end user enters in the related purchase order line description. The Ministers explained that purchase order line descriptions do not normally go into the level of detail requested, and to ensure completeness and accuracy of the response to Mr Laing's request would require a trawl of all business areas and a detailed study and breakdown of any hospitality receipts incurred by the Scottish Government within the period from 2007/8.



15. In addition, the Ministers commented that the value of any stock of alcohol is also not held on the accounts system. Information on the alcohol cost element of hospitality and similar events, and on any stock of alcohol, is likely to be held (if at all) locally in individual business areas.
16. The Ministers stated that there are no rules regarding where alcohol is kept. They explained that it was unlikely that alcohol would be purchased and retained on the property, as any supplier for a hospitality event would be expected to provide and deliver the alcohol purchased in time for the event and to then remove and deduct all unused alcohol from the final billing for the event. The Ministers acknowledged that there may, however, be smaller events for which limited alcohol is required, which may be purchased slightly in advance of the date of the event and retained in a locked cupboard until required.
17. In relation to Mr Laing's 'third' request, the Ministers considered that it was likely that no (or hardly any) alcohol was 'owned' by the Scottish Government on the date of his request, but it would be difficult to say so with certainty (i.e. that there was none held centrally somewhere within the Scottish Government). The Ministers contended that alcohol is generally not held on a long-term basis by the Scottish Government as it is only purchased for specific events/dinners, etc. and would in most cases probably be provided by contractors and paid for following the event. But to ensure that this was the definitely the case at the time of Mr Laing's request would require a Government-wide trawl, firstly to identify if alcohol had been purchased for an imminent event or was left over from a previous event and planned to be kept for a future one and then to confirm the purchase price, and therefore value, of that alcohol.
18. The Ministers confirmed that Bute House, as the official residence of the First Minister, does have a "wine cellar", but having checked the wine cellar, the Ministers confirmed that there were no stocks within that facility.
19. In providing an estimation of the costs that would be incurred for locating and retrieving the requested information, the Ministers noted that some divisions will have been involved in arranging a substantial number of events within the time-frame given in Mr Laing's request, whereas some other areas may have been involved in just one or two events, or none at all.
20. In estimating the time to search each division's records, the Ministers explained that it had taken them 30 minutes to search for and locate information relating to one event in one division. Based on this example, the Ministers commented that some divisions would have arranged many events, whilst others, were likely to have arranged no events. So taking an average for each division the Ministers estimated that it would take two hours to search the records of each of its 227 divisions.
21. The Ministers considered that this work could be undertaken by a non-senior member of staff at an hourly rate of £12.94. The Ministers provided the following total estimation of its costs to locate and retrieve the requested information:

$$227 \times 2 \text{ hours} \times £12.94 = £5,874.76$$



22. The Ministers contended that the above costs would not include the additional cost of the time required to consider any exemptions that might apply to the information retrieved, or the costs of the time required to compile all the information provided by Divisions by financial year (for requests one and two) and formulate the information to respond to each of Mr Laing's three requests in the relevant format.
23. The Commissioner is satisfied that in terms of the staff time required to locate and retrieve the information, the Ministers have provided a reasonable estimate of the cost of complying with Mr Laing's requests for information. There may be cases where the searches required to locate the information (or at least the great majority of it) will be more straightforward. In this case, however, considering the way in which alcohol purchases are recorded and accounted for, and the extensive enquiries required to retrieve the information, the Commissioner agrees that the Ministers could not have complied with the request within the £600 limit.
24. Consequently, the Commissioner is satisfied that the Ministers were entitled to rely on section 12(1) of FOISA in relation to Mr Laing's information request, and were under no obligation to comply with the request.

Section 15 Duty to provide advice and assistance

25. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it.
26. The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public authorities under FOISA and the EIRs¹ provides (at 1.9):

"Where the cost of responding to a request made under FOISA will exceed the upper cost limit of £600 or the burden of responding a request under the EIRs would be manifestly unreasonable (and so the authority is not obliged to comply), the authority may again consider what information could be provided below the cost limit, and suggest how the applicant may wish to narrow the scope of their request accordingly."
27. In previous decisions, the Commissioner has referred to the duty under section 15 to advise and assist an applicant where the authority believes section 12 of FOISA is applicable. The Ministers were invited to explain how they had discharged this duty in respect of Mr Laing's request.

¹ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



28. The Ministers accepted that further advice and assistance could have been provided to Mr Laing in order to help him understand why the Scottish Government does not hold or record the information he asked for in a format that would facilitate responding to his request in a simple and concise manner. The Ministers considered that Mr Laing should have been told that, unlike the Scottish Parliament or the UK Parliament there are no official sites such as 'bars' owned or run by the Scottish Government which would require a stock of alcohol to be retained, and that no alcohol is held with the express purpose of storage, ownership value or accrual of such value.
29. The Ministers also accepted that it might have been helpful to explain the process of ordering any alcohol for events through suppliers on a sale or return basis, so that Mr Laing would more easily understand that retention of alcohol is unlikely except on rare occasions. The Ministers submitted that this may have allowed him to re-formulate his request in such a way as to enable a response to be prepared within the cost limit.
30. The Ministers stated that, in view of Mr Laing's professional role, they considered that he was more likely than most to be aware of the workings of the Scottish Government and to be aware that it would be a costly and time consuming exercise to "gain calculations for the majority of the time-period of the current Government".
31. The Commissioner notes the comments made by the Ministers and considers that such explanations could have been provided to Mr Laing in the response to his request (noting that Mr Laing asked the Ministers to provide information in a way that would provide as much background and context to his request as possible). This might have assisted him in submitting a focussed request for (for example) a single Government department. They also had a second opportunity to provide this level of explanation when responding to the review, but did not do so.
32. The Commissioner notes that the Ministers did suggest to Mr Laing that he narrowed the scope of his request, but this was done in the response to the information request, rather than before it was issued, so did not give Mr Laing the opportunity to adjust his request. Also, the Ministers did not provide him with the background information which would have helped him do so. In this respect, the Commissioner finds that the Ministers failed to provide reasonable advice and assistance to Mr Laing, and failed to comply with section 15 of FOISA.
33. The Commissioner does not accept the Ministers' view that Mr Laing, because of his professional role, should have been aware of the workings of the Scottish Government, and how these would affect the response to his information request. The Ministers were incorrect to rely upon assumptions about Mr Laing's knowledge and understanding, in considering whether it was reasonable to provide him with further advice and assistance. Responding to a request under FOISA does not preclude an authority from engaging with a requester, especially if such conversations could help focus a request and lead to the information being disclosed.



34. Consequently, the Commissioner has concluded that the Ministers failed to comply fully with the duty in section 15(1) of FOISA to provide reasonable advice and assistance to Mr Laing in making his request. In view of the background information provided in this decision, which explains how the relevant information is held within the Scottish Government, the Commissioner does not require the Ministers to take any further action in respect of this failure.
35. The Commissioner would also observe that had the Ministers engaged more fully with Mr Laing at the outset, and offered him the explanations set out in this decision, it may well have resulted either in a different request which could have been handled more easily, or in this request not reaching an appeal to the Commissioner.

DECISION

The Commissioner finds that the Scottish Ministers (the Ministers) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mr Laing.

The Commissioner finds that the Ministers were not obliged to comply with Mr Laing's information request, given that section 12(1) of FOISA applied.

However, the Commissioner also finds that the Ministers failed to provide reasonable advice and assistance to Mr Laing on how his request might be reduced in scope, and therefore failed to comply with section 15(1) of FOISA. The Commissioner does not require the Ministers to take any action in relation to this breach.

Appeal

Should either Mr Laing or the Scottish Ministers wish to appeal against this decision, there is an 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.

Rosemary Agnew
Scottish Information Commissioner
4 September 2013



Appendix

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.

...

- (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.

...

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).



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.