



Scottish Information
Commissioner

**Decision 199/2007 Mr Paul Hutcheon and the Scottish Parliamentary
Corporate Body**

Rail travel claims from MSPs

Applicant: Mr Paul Hutcheon
Authority: Scottish Parliamentary Corporate Body
Case No: 200700720
Decision Date: 29 October 2007

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 199/2007 Mr Paul Hutcheon and the Scottish Parliamentary Corporate Body

Request for information as to the amount of money claimed by MSPs in first class rail travel over a specific time period – the SPCB relied on sections 12 and 25 of the Freedom of Information (Scotland) Act 2002 (FOISA) in its response to Mr Hutcheon – the SPCB also relied on section 21(8) in response to Mr Hutcheon’s request for a review – Commissioner upheld the SPCB’s reliance on sections 12 and 25 of FOISA

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (General entitlement); 12(1) (Excessive cost of compliance); 21(1), (4) and (8)(a) (Review by Scottish public authority) and 25(1) (Information otherwise accessible)

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 these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Hutcheon submitted information requests to the Scottish Parliamentary Corporate Body (SPCB) for information as to how much MSPs had claimed for first class rail travel from 1 January 2006, and how many separate first class rail tickets each MSP claimed for from 1 January 2006. The SPCB responded by advising Mr Hutcheon that certain of the information that he was seeking was available on the Scottish Parliament’s website, and for that reason it was exempt under section 25 of FOISA.

The SPCB also advised that due to the volume of information that it would have to consider to address the rest of his request, it was relying on section 12 of FOISA, as the cost to the SPCB of providing the information would be in excess of the £600 maximum set out in the Fees Regulations.



Mr Hutcheon was not satisfied with this response and asked the SPCB to review its decision. The SPCB responded to points raised by Mr Hutcheon in his request for a review, but deemed his request for a review to be vexatious.

Mr Hutcheon remained dissatisfied and applied to the Commissioner for a decision.

Background

1. On 10 April 2007, Mr Hutcheon wrote to the SPCB requesting the following information:
 - How much since 1 January 2006 did each MSP claim in first class rail travel?
 - Regarding the first question about first class rail travel, how many separate first class rail tickets did each MSP claim for since 1 January 2006?
2. The SPCB responded on 11 May 2006 and advised Mr Hutcheon that information relating to the amount that each MSP claimed in first class rail travel and the number of separate first class rail tickets each MSP had claimed from 1 January 2006 to 31 March 2006 is available on the Scottish Parliament website and is therefore information which is otherwise accessible under section 25 of FOISA. The SPCB also advised Mr Hutcheon that as it does not hold a central record of the information that he was seeking from 1 April 2006 to 10 April 2007 (the date of his request), it would have to extract and check around 900 payment transactions. To do this would incur excessive costs and so the SPCB relied on section 12 of FOISA for not providing Mr Hutcheon with the information.
3. On 15 May 2007, Mr Hutcheon wrote to the SPCB requesting a review of its decision. Mr Hutcheon commented that the Scottish Parliament website does not give a breakdown or totals for first class travel, and that there was no way of knowing which ticket was for standard class travel and which was for first class travel. Mr Hutcheon also indicated that he believed that the Scottish Parliament was more than capable of providing him with the other information which he was seeking, and he asked that the SPCB look through the paperwork for all of the 900 payment transactions that it had mentioned in its response to his request.
4. On 18 May 2007, the SPCB provided responses to the points raised by Mr Hutcheon in his request for a review. However, it then went on to advise Mr Hutcheon that it considered his request for review to be vexatious, and that it was refusing to carry out a review in accordance with section 21(8)(a) of FOISA.



5. On 21 May 2007, Mr Hutcheon wrote to my Office, stating that he was dissatisfied with the outcome of the SPCB's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Hutcheon had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.
7. On 22 May 2007, the SPCB was notified in writing that an application had been received from Mr Hutcheon and was asked to provide my Office with specified items of information required for the purposes of the investigation. The SPCB responded with the information requested and the case was then allocated to an investigating officer.

The Investigation

8. The investigating officer wrote to the SPCB on 20 June 2007, giving it notice of the application and requesting its comments in terms of section 49(3)(a) of FOISA. In particular, the SPCB was asked to provide a detailed breakdown of the costs that it would incur in responding to part of Mr Hutcheon's request, in order to substantiate its reliance on section 12 of FOISA. The SPCB was also asked to provide guidance as to how the information from 1 January 2006 to 31 March 2006 could be accessed on the Scottish Parliament website.
9. A response was received to this letter on 20 July 2007.
10. Further communication was entered into with the SPCB during August, September and October 2007.

Submissions from the SPCB

11. In its submissions, the SPCB advised that certain of the information that Mr Hutcheon had requested (information relating to rail travel claims made by MSPs between 1 January 2006 and 31 March 2006) was otherwise accessible, as it is available on the Scottish Parliament website. The SPCB submitted that Mr Hutcheon could extract the information that he required by examining the individual receipts available on the website.



12. The SPCB also provided me with an explanation as to why it was relying on section 12 of FOISA in respect of the other information sought by Mr Hutcheon.
13. The SPCB explained that it considered Mr Hutcheon's request for review to be vexatious as the request for review merely repeated the earlier request for information Mr Hutcheon had made, and did not put forward any new, relevant considerations for review purposes. The SPCB also indicated that it did not regard the demand to disaggregate the information as a valid basis for a review. It was the considered opinion of the SPCB that Mr Hutcheon's request for a review could be fairly categorised as a vexatious, obsessive and manifestly unreasonable repetition of a request which attempted to impose an unnecessary additional burden on valuable staff resources.
14. I will consider the SPCB's application of sections 12 and 25 of FOISA, and its contention that the request for review submitted by Mr Hutcheon was vexatious, in my section on analysis and findings below.

Submissions from Mr Hutcheon

15. In his application to me, Mr Hutcheon has clearly outlined why he is dissatisfied with the response that he has received from the SPCB and why, in his view, he should receive the information that he requested.

The Commissioner's Analysis and Findings

16. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Hutcheon and the SPCB and am satisfied that no matter of relevance has been overlooked.

Section 21 – Review by Scottish public authority

17. Section 21 sets out the requirements under FOISA that a public authority needs to comply with when it receives a request for a review from an applicant.



18. The SPCB advised me that it did not carry out a review in response to Mr Hutcheon's requirement for a review under section 20 of FOISA, as it considered the request for review to be vexatious in terms of section 21(8)(a) of FOISA.
19. Having considered the submissions made to me by Mr Hutcheon and the SPCB, including the response dated 18 May 2007 which the SPCB made to Mr Hutcheon's requirement for a review, I consider that, despite the refusal to carry out a review, the SPCB actually carried out a review of Mr Hutcheon's information request. It is apparent from the letter dated 18 May 2007 that the SPCB took into account the points of dissatisfaction which were raised by Mr Hutcheon in his request for review, and in doing so, responded to them. The SPCB stood by its earlier decision as to its reliance on sections 12 and 25 of FOISA. The response made by the SPCB is in line with the requirement set down under section 21(4) of FOISA, which sets out the options available to Scottish public authorities when responding to a requirement for a review from an applicant. As I am satisfied that a review was carried out, I do not intend to consider further whether the SPCB was correct to state that it would not carry out a review on the basis that the request for review was vexatious.
20. I will now go on to consider the SPCB's reliance on sections 12 and 25 of FOISA.

Section 25 – Information otherwise accessible

21. As mentioned above, the SPCB relied on section 25(1) of FOISA for refusing to provide information as to how much each MSP claimed in first class rail travel and how many separate first class rail tickets each MSP claimed between 1 January 2006 and 31 March 2006.
22. The SPCB has submitted that this information is available on the Scottish Parliament website, under the section on MSP allowances, and that Mr Hutcheon can use the information recorded, by way of examining the tickets and receipts submitted by MSPs, to extract the particular detail that he is seeking.



23. In its submissions, the SPCB provided a link to appropriate page on the Scottish Parliament website which provides details of the allowances claimed by MSPs. This part of the Scottish Parliament website is a searchable database which allows claims forms, receipts and travel tickets submitted by MSPs to be examined. The database allows this information to be accessed for all MSPs or for individual MSPs. Having carried out a search of the database, I am satisfied that it is possible to determine what expenses individual MSPs and all MSPs have claimed for rail travel between 1 January 2006 and 31 March 2006. I am also satisfied that by examining the rail tickets which have been submitted by the individual MSPs it is possible to ascertain whether the standard of travel which has been claimed is standard class or first class.
24. As a result, I am satisfied that the SPCB was correct to rely on section 25(1) of FOISA in relation to the information requested by Mr Hutcheon for the period 1 January 2006 to 31 March 2006.

Section 12 – Excessive cost of compliance

25. Section 12 of FOISA provides that a Scottish public authority need not comply with a request for information if the authority estimates that the cost of complying with the request will exceed the amount set out in the Fees Regulations (currently £600).
26. The projected costs that the public authority can take into account in relation to the request for information are, according to regulation 3 of the Fees Regulations, the total costs, whether direct or indirect, which the public authority reasonably estimates it will incur in locating, retrieving and providing the information requested. The public authority may not charge for the cost of ascertaining whether it actually holds the information or whether or not it should provide the information. The maximum hourly rate a public authority can charge for staff time is £15 an hour.
27. The SPCB has advised me that the cost of providing the information Mr Hutcheon has requested from 1 April 2006 to 10 April 2007 would be £747.66. This is based on the need to examine a total of 961 records. The examination of these records and the identification, extraction and recording of the relevant information, together with the collation of this to respond to Mr Hutcheon would require the input of five members of staff and a total of 51 and a half hours work.



28. The SPCB provided me with some information as to the breakdown of the hourly rates that it is charging for staff time. In the case of three of the staff members involved in identifying, extracting, recording and collating the relevant information, the SPCB claimed the maximum hourly rate of £15. From the submissions that have been provided to me by the SPCB, I accept that this is reasonable in the circumstances. I am also satisfied from the submissions that have been provided by the SPCB in respect of the other staff that would be involved that the total cost claimed by it is reasonable.
29. I am therefore satisfied that the cost of providing information from 1 April 2006 to 10 April 2007 for each of the requests made by Mr Hutcheon would exceed the prescribed limit laid down in the Fees Regulations. I am satisfied that the costs which the SPCB have considered are reasonable and that they are costs which it is entitled to consider when estimating the projected costs of compliance. As a result, I am satisfied that the SPCB has relied on the terms of section 12 correctly.

Decision

I find that the Scottish Parliamentary Corporate Body (SPCB) was entitled not to comply with Mr Hutcheon's information requests on the basis that, firstly, part of the information he sought was exempt under section 25(1) of FOISA and, secondly, it would cost the SPCB more than £600 to provide him with the remainder of the information he requested.

Appeal

Should either Mr Hutcheon or the SPCB 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 notice.

Kevin Dunion
Scottish Information Commissioner
29 October 2007



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.

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.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless the 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.

(...)

- (4) The authority may, as respects the request for information to which the requirement relates-
 - (a) confirm a decision complained of, with or without such modification as it considers appropriate.
 - (b) substitute any such decision for a different decision; or
 - (c) reach a decision, where the complaint is that no decision has been reached.

(...)



- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
 - (a) the requirement is vexatious;
 - (...)

25 Information otherwise accessible

- (1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

The 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.

