



Scottish Information  
Commissioner

**Decision 073/2005 Mr F and the City of Edinburgh Council**

*Request for information relating to the number of incoming workers housed by the Council between January 2003 and January 2005*

**Applicant: Mr F**  
**Authority: City of Edinburgh Council**  
**Case No: 200502195**  
**Decision Date: 13 December 2005**

**Kevin Dunion**  
**Scottish Information Commissioner**

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## **Decision 073/2005 – Mr F and City of Edinburgh Council**

### **Request for information relating to the number of incoming workers housed by the Council between January 2003 and January 2005 – section 17 information not held – section 12 excessive cost of compliance**

#### **Facts**

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Mr F asked the City of Edinburgh Council for the number of incoming workers that were housed by the Council between January 2003 and January 2005.

The Council initially replied that it did not hold this information. After reviewing its decision, the Council stated that it held the data in an un-collated format, but would be unable to provide the information requested, since it would cost in excess of £600. Mr F was dissatisfied with this response and applied to the Scottish Information Commissioner for a decision.

#### **Outcome**

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The Commissioner found that the City of Edinburgh Council would have incurred costs in excess of the £600 limit set by regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) in complying with Mr F's request. It therefore applied section 12 (1) of the Freedom of Information (Scotland) Act 2002 (FOISA) correctly in withholding the information on the grounds of excessive cost, and complied with Part 1 of the Act in that respect.

He also found that the Council complied with Part 1 of the Act in substituting a different decision for their original decision upon review, in terms of section 21(4)(b) of FOISA.

Finally, however, he found that the Council failed in its duty to provide advice and assistance under section 15 of the Act and paragraph 20 of the Section 60 Code of Practice, in that Mr F was provided with a misleading direction to another source of information and the explanation he was given for not being provided with the information he requested was not clear and detailed enough to provide an accurate representation of the situation.

He did not require the Council to take any remedial steps in response to this decision.



## Appeal

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Should either Mr F or the City of Edinburgh Council wish to appeal against my 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 of receipt of this notice.

## Background

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1. On 2 March 2005, Mr F e-mailed the City of Edinburgh Council ('the Council') asking for the number of incoming workers that had been housed by the Council between January 2003 and January 2005. He also asked that this figure should be broken down into month and district.
2. The Council responded to Mr F's request by letter dated 2 March 2005. This response stated that the Council was unable to supply the information requested, since it did not hold it. In making this refusal, the Council justified the lack of information by citing that the Housing Scotland Act 2001 did not allow authorities to make a distinction of applicants applying for housing.
3. The refusal notice also quoted text which the Council claimed was from the Housing Scotland Act itself, including the following point:

"In allocating houses held by them for housing purposes, local authorities and RSLs shall take no account of whether an applicant is resident in their area if the applicant:

  - (i) is employed or has been offered employment in the area; or
  - (ii) wishes to move into the area to seek employment and the landlord is satisfied that this is the applicant's intention..."

There was no indication which part of the Act this was from.
4. Mr F asked for the Council to review its decision on 9 March 2005. In his request for review, Mr F maintained that the Council did hold the information that he sought, by citing several web documents from the Council website showing that the Council was aware of, and had made special provision for, workers moving into Edinburgh. These were:
  - page 8 of the City Housing Strategy Document 2002;



- a housing application information leaflet concerning the Essential Incoming Worker's Priority; and
  - a section of another information leaflet about applying for housing which stated that applications from people who did not live or work in Edinburgh would be considered if the applicant was looking for work in Edinburgh and could provide proof of a need to move there.
5. The Council reviewed its decision and responded on 22 March 2005. It confirmed that it was still unable to provide Mr F with the information he requested, but acknowledged that its response to his initial request had not fully explained the reasons for this refusal.
  6. It stated that the Council had access to a number of data sources that allowed it to create reports of the kind Mr F had referred to, including external consultants and agencies such as the Scottish Executive. It therefore confirmed that the Council held the raw data to which Mr F had referred, but stated that it had neither an obligation nor a requirement to collate the data in the manner he had requested on an ongoing basis. Accordingly, a response to his request would necessitate analysis of all the relevant raw data, which would be a significant undertaking as there was a large amount of statistical information involved. Accordingly, the Council stated that providing the information requested would cost in excess of £600, and as a result refused Mr F's request under section 12 of FOISA
  7. The Council also endeavoured to help Mr F by directing him to the City Housing Strategy documents contained on the Housing section of the Council website, which it said contained some of the 'relevant statistical data'. No links to specific data on the Council website were provided. It also suggested that Mr F might be able to obtain further statistical information from the Scottish Executive.
  8. On 4 July 2005, Mr F appealed to the Scottish Information Commissioner for a decision regarding the handling of his request for information.
  9. The case was allocated to an investigating officer.

## **The Investigation**

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10. The applicant's request was validated by establishing that he had made a request for information request to a Scottish Public Authority and had appealed to me only after requesting the authority to review its response to his request.



11. On 21 July 2005 the investigating officer contacted the Council to request comments from it on Mr F's concerns about the handling of his request. The Officer also requested an estimate of the cost of providing the information to the applicant, including a breakdown of the cost components, an analysis of the procedure involved in converting the raw data into the requested information, and an indication of how much information could be provided up to the £600 limit.
12. The Council responded on 10 August 2005, saying that before May 2003 it operated a points system for housing individual applicants, and employment was one of the criteria for awarding points. Therefore, historically, it would have kept some manual data as to whether people were being housed for employment reasons.
13. In May 2003, the Council adopted a new system, whereby applicants were housed on a first come first served basis, and all applicants were now treated equally, regardless of their reasons for moving to Edinburgh. Therefore, there was no requirement for applicants to state why they were seeking accommodation in Edinburgh, and even though some applicants chose to advise the Council why they were seeking accommodation, the Council did not have complete data which would allow it to provide Mr F with the relevant statistics he requested.
14. The Council stated further that the data it did hold was contained manually in paper files. This would identify how many individuals were "incoming" to Edinburgh in total during the relevant period, but could not be used to establish for certain if people were incoming workers or incoming for another reason.
15. Nevertheless, the Council estimated that the number of files covering the period of January 2003-January 2005 was around 6000, and a review of these would take approximately 5 minutes per file, equating to 500 hours of work. The total cost of reviewing these would be £7500 at £15 per hour. Further analysis to create the required statistics would add to the cost, and given the incomplete nature of the data the outcome could never be wholly accurate.
16. With regard to the websites cited by Mr F as evidence, the Council noted that he appeared to have accessed parts of the Council website, possibly from a search engine, that were out of date or deleted. It checked the website, and confirmed that it was not possible to access out of date material directly through the Council website.
17. A search of the Council website in October 2005, confirmed that this was the case, but it also confirmed that it was still possible to access the out of date websites concerning the Essential Incoming Workers Priority and the old leaflet regarding applying for a house, via an Internet Search Engine.



18. The Council also provided a sample of a manual housing file for a Council property, and a copy of the EdIndex housing application form on request, along with further comments in respect of cost breakdown and some answers to technical points concerning the handling of Mr F's request for information. These will be addressed in subsequent points of this decision.

## **The Commissioner's Analysis and Findings**

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19. In his application for a decision from me, Mr F stated that he was dissatisfied with the way in which the Council had refused access to the information. This arose from the Council changing its position from stating it did not hold the information, to stating it did hold the information but refusing access on the grounds that the cost of collating the information would exceed £600, therefore relieving the Council of the obligation to release it under section 12 of FOISA. He was also of the opinion that the Council had chosen to ignore the evidence he had provided from its own website in his request for a review of their decision.
20. I will first consider whether the Council was at fault by stating initially that they did not hold the information requested, but upon review, then stated that they did hold it.
21. Under section 21 (4) (b) of FOISA the Council may substitute a different decision for its original decision. In this respect, the Council was entitled to state upon review that it actually held the information requested, despite the statement in its initial response to the contrary. Furthermore, this also entitled the Council to refuse access on the grounds of any of the exemptions and conditions set out in the Act, if there were grounds for doing so. I therefore find that the Council handled Mr F's request correctly in this regard. I will now turn to the issue concerning the cost of providing the information requested by Mr F. The main factors to consider in this are the location of information relevant to Mr F's request and the processes that would be involved in locating and collating the information into the format requested by him.
22. In a subsequent statement to the investigating officer, the Council explained it had always maintained 2 systems of information relating to housing: a computer based one for holding information about applicants, and a paper file based system for holding information about the properties and the tenancies relating to them.



23. Prior to May 2003, the Council operated a points system for allocating housing to applicants, which took their employment status into account. Furthermore, this system included a priority category for “Essential Incoming Workers”. It would therefore be necessary for applicants to state what employment they had; if they wished to be treated as a priority case, they would also have to state if they were coming to live in the city for work purposes.
24. The computer system that contained this information was phased out and migrated into the current housing database in May 2003, the time that the allocation system changed.
25. Since May 2003 the Council has only collected information from applicants via the EdIndex housing application form, which forms the basis of its current housing database. This consists of 114 questions, none of which ask directly if the applicant is moving to Edinburgh for work purposes.
26. Question 95 of the form asks applicants about their employment status, but this is a voluntary question, and does not have to be answered. Therefore, whilst the Council may have some information about whether an applicant is working or not, this will not be complete.
27. There is also no question in the EdIndex form that asks explicitly if an applicant lives outside Edinburgh, or for the reason that the applicant is wishing to move to the city.
28. I am therefore satisfied that the current housing database contains no information that could be searched and collated to provide the information that Mr F requested.
29. In addition to these systems, paper files have been maintained for every Council property before and after May 2003. These contain wide and extensive details about the tenancies associated with the properties. The Council sent the investigating officer a sample of one of these files, which contained a wide range of documentation about the upkeep and tenancies of one Edinburgh property covering 1988 to 2005. Since properties will be kept by the Council for a considerable period of time, spanning several tenancies each producing substantial amounts of documentation, I am satisfied that this was a representative sample of the files held by the Council. Upon inspection, it was clear that the breadth of information contained within the files held by the Council will vary widely and that they have not been ordered in a structured manner or indexed to allow information to be located easily. Furthermore, the files themselves cover properties and have not been restricted to particular date periods.



30. Therefore, whilst it is entirely possible that these files might contain details about incoming workers between January 2003 and January 2005, a search for this information would necessitate searching through all of the property files held by the Council, and would take a considerable amount of time, given that the Council owns and manages approximately 25,400 properties throughout Edinburgh. Even then, there is no guarantee that this information would provide an accurate number of the incoming workers for the period.
31. In a revised statement to the investigating officer, the Council estimated that the total number of files involved in a search of these would be approximately 23,000, and that this would take 1916.5 hours to complete, using an optimistic review time of 5 minutes per file. Using the maximum allowable rate of £15 per hour, the total cost of this exercise would be £28,750, which far exceeds the £600 limit set by regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations).
32. Given the evidence laid out above, I am satisfied that the cost of locating and retrieving the information required to provide an answer to Mr F's request would indeed exceed the limit specified in the Fees Regulations. I am also satisfied that the information is not structured in such a way as to make it possible or helpful to make part of the information available below the £600 threshold.
33. I am therefore satisfied that there would be excessive cost in complying with Mr F's request for information.

#### **Technical points concerning the handling of the request**

34. During the investigation, a study of the correspondence between the Council and Mr F raised several points regarding the technical handling of his request. These included:
  - In their response to Mr F's initial request the Council had not cited section 17 of FOISA when stating that it did not hold the information requested, but cited the Housing (Scotland) Act instead;
  - The Council directed Mr F to publications on its website that it stated held "statistical information", but did not provide a link to the relevant section containing this;
  - The Council did not provide a breakdown of the cost of providing the information requested by Mr F to prove that this would exceed the cost limit set out in the Fees Regulations.



35. The Council provided explanations as follows
- It was not obliged to cite section 17 of FOISA in stating it did not hold the information requested, but had simply to advise that that was the case. The reference to the Housing (Scotland) Act was provided to assist Mr F in understanding the reasons for not holding the information. The reference to the Housing (Scotland) Act was simply an effort to assist Mr F's understanding of the position.
  - By citing the publications as sources of "statistical information", the Council said it was directing him to other sources of information that might be useful. However, it accepted that the use of the term "statistical information" was possibly misleading, considering that these sources did not contain any information of that nature.
  - The Council considered that it was not obliged to provide a cost breakdown to Mr F, given that it would be difficult to provide an accurate estimate. It therefore considered that it was sufficient to advise that any effort to provide him with the information would exceed the £600 limit.
36. In handling requests, every authority has a general duty under section 15 of FOISA to advise and assist the applicant in order to help them, as far as is reasonable, to gain access to the information requested. In addition, paragraph 20 of the Section 60 Code of Practice on the Discharge of Functions by Public Authorities under FOISA states that 'authorities should always be flexible in offering advice and assistance taking into account the circumstances of each individual case'. In this respect, a level of initiative is to be expected on the part of authorities to ensure that communications with applicants are clear enough to explain why authorities have reached their decisions and how they are using the Act.
37. Regarding the Council's obligations under the Act, I accept that there is no explicit requirement to cite section 17, or to provide a breakdown of costs of providing information when this exceeds £600. Nevertheless, I would judge that the provision of both these pieces of information would be entirely within the spirit of flexibility set out in the Section 60 Code of Practice, and would have provided greater assistance to the applicant in understanding the legal basis for refusing his application under FOISA.
38. In providing references to other sources of information, it is implicit that the duty to provide advice and assistance extends to ensuring that these are correct. In respect of the Council's directions to statistical data on its website, it is clear that no effort was made by the Council to check if this source was correct before advising Mr F. Upon verification the Council confirmed that this was misleading and it follows that the direction did not provide an appropriate level of assistance to Mr F.



39. The explanation that was provided to Mr F as to why he could not have access to the information that he requested was also unhelpful. The full reasons for this have been detailed above, and this should have been made clear to Mr F at the point of review.
40. Indeed, had Mr F been informed upon review that the websites that he referred to were out of date, and then been given full details about why he could not be provided with the information he requested, the Council would have been seen to provide far more assistance than in the responses he actually received.
41. Accordingly, I find that the Council failed to provide appropriate assistance under the duty set out in section 15 of FOISA in that it provided Mr F with misleading information and did not provide him with an account that was clear and detailed enough to explain why he could not be given access to the information that he requested.



## Decision

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I find that the City of Edinburgh Council would have incurred costs in excess of the £600 limit set by regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 in complying with Mr F's request for information on the number of incoming workers that were housed by Edinburgh City Council in the period January 2003 – January 2005. It therefore applied section 12 (1) of the Freedom of Information (Scotland) Act 2002 (FOISA) correctly in withholding the information on the grounds of excessive cost, and complied with Part 1 of the Act in that respect.

I find that the Council complied with Part 1 of the Act in substituting a different decision for their original decision upon review, in terms of section 21(4)(b) of FOISA.

I find that the Council failed in its duty to provide advice and assistance under section 15 of FOISA and paragraph 20 of the Section 60 Code of Practice, in that Mr F was provided with a misleading direction to another source of information and the explanation he was given for not being provided with the information he requested was not clear and detailed enough to provide an accurate representation of the situation.

I do not require the Council to take any remedial steps in response to this decision.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**13 December 2005**