

# Decision Notice



Decision 115/2008 Andrew Pattison and the Scottish Legal Aid Board

Information concerning briefings and meetings

Reference No: 200800297

Decision Date: 17 September 2008

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Andrew Pattison requested copies of briefings and other written communications and meetings from the Scottish Legal Aid Board (SLAB). SLAB responded by giving Mr Pattison notice that it was not obliged to comply with the request, as it was estimated that the costs of doing so would exceed £600. Following a review, Mr Pattison remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Commissioner noted that Mr Pattison had actually made two distinct requests for information within a single letter, and he asked SLAB to detail the projected costs of compliance with each of these separately. Following the investigation, the Commissioner found that the projected costs of compliance in each case would exceed £600. He therefore found that SLAB had dealt with Mr Pattison's requests for information in accordance with Part 1 of FOISA. He did not require SLAB to take any action.

## Relevant statutory provisions and other sources

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Freedom of Information (Scotland) Act 2002 (FOISA): sections 1(1) and (6) (General entitlement) and 12(1) (Excessive cost of compliance)

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

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1. On 11 December 2007, Mr Pattison wrote to SLAB requesting the following information:
  - Copies of all written (including electronic) briefings issued between SLAB and the Parole Board for Scotland (PBS) or Criminal Justice Directorate (CJD) (formerly Scottish Executive Justice Department (SEJD)) since 1 January 2006, to include any written communication raising issues of policy or procedure, whether or not issues of parole policy are expressly concerned;



- Full details of all meetings involving the CJD/SEJD or the PBS at which SLAB was represented, having taken place since 1 January 2006, to include the names and designations of those in attendance, dates and locations of meetings (including video conference arrangements), any agendas or minutes reflecting the outcome of such conferences.
2. SLAB wrote to Mr Pattison on 17 January 2008 advising him that it had estimated that the cost of providing the information sought by this request would exceed £600. Consequently, it indicated in terms of section 12 of FOISA that it was not obliged to comply with the request. SLAB went on to note that even if it were to retrieve the information concerned, some of this would be exempt from disclosure under provisions contained in Part 2 of FOISA. It indicated that it may nonetheless be possible to provide some information if Mr Pattison were to narrow his request, thereby reducing the estimated costs of complying with the request.
  3. On 21 January 2008, Mr Pattison wrote to SLAB requesting a review of its decision. In particular, Mr Pattison advised SLAB that he did not accept that the cost of providing the information would cost in excess of £600.
  4. SLAB notified Mr Pattison of the outcome of its review on 21 February 2008. It upheld its original decision in terms of section 12 of FOISA without amendment.
  5. On 26 February 2008, Mr Pattison wrote to the Commissioner, stating that he was dissatisfied with the outcome of SLAB's review and applying for a decision in terms of section 47(1) of FOISA.
  6. The application was validated by establishing that Mr Pattison 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

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7. On 11 March 2008, SLAB was notified in writing that an application had been received from Mr Pattison and invited to provide its comments on the application in terms of section 49(3)(a) of FOISA.
8. SLAB was also asked to provide a detailed estimate of the projected costs of responding to Mr Pattison's request including details of the estimated volume of work involved in completing the request, the type of work that would require to be undertaken and the roles and grades of staff members who would be tasked with this duty. SLAB responded by providing a detailed estimate of the costs that it considered would be incurred in responding to Mr Pattison's request.



9. In further correspondence, the investigating officer noted that Mr Pattison's letter of 11 December had included two distinct information requests, and that SLAB's response appeared to focus on the costs of responding only to the first of these (relating to briefings and other written communications). SLAB was advised that the Commissioner would consider the costs of each of these requests separately to establish whether the prescribed limit of £600 was met in each case. SLAB was asked to provide further submissions identifying the projected costs of responding to Mr Pattison's second request for information (concerning meetings).
10. In response to this request, SLAB provided further submissions detailing the steps that would be required in order to comply with each of the requests, and estimating the cost of compliance with each request separately.

### Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner has considered all of the information and the submissions that have been presented to him by both Mr Pattison and SLAB and is satisfied that no matter of relevance has been overlooked.
12. In refusing to comply with Mr Pattison's information requests, SLAB cited section 12 of FOISA (Excessive cost of compliance). Section 12(1) provides that public authorities are not obliged to comply with requests for information where the cost of complying with that request would exceed the amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Fees Regulations.
13. Consequently, the Commissioner has no power to require the release of information should he find that the cost of responding to a request for information exceeds this amount.
14. 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 in accordance with Part 1 of FOISA. The public authority may not charge for the cost of determining (i) whether it actually holds the information or (ii) whether or not it should provide the information. The maximum hourly rate a public authority can charge for staff time is £15 an hour.
15. Section 12(2) of FOISA allows that the Fees Regulations *may provide* that the costs of two or more separate requests can be aggregated for the purposes of section 12(1). However, no provision allowing the aggregation of requests made by one person is present within the Fees Regulations. This means that each information request should be considered separately for the purposes of establishing whether the prescribed limit of £600 will be met. This includes situations such as that arising in this case where two distinct information requests are made within the same communication.



16. SLAB has advised the Commissioner that it estimates that the cost of locating and providing information which would address Mr Pattison's first request would be £2276.54. In relation to the second request, SLAB estimated a cost of £1404.53.
17. In calculating the estimated costs involved in providing the information requested by Mr Pattison, SLAB identified elements of the work involved that are common to both of the requests and which, in the interests of economy, could be shared between the two elements of the request. The costs from this common work have been apportioned by SLAB and then added to the costs of work that are unique to each element of the request.

#### **Work common to both parts of the request**

18. SLAB explained it had identified that the list of individuals within the organisation who are likely to engage in email exchanges with the PBS or CJD numbers a minimum of 27 people. In addition, a number of senior officers have Executive Assistants who may send or receive email in respect of policy matters from their own mail boxes.
19. SLAB explained that it had undertaken an exercise to estimate the time involved in identifying and extracting information relating to policy matters from among communications to or from the SEJD and PBS email addresses. SLAB noted that, at the same time as checking email records for correspondence to and from the SEJD or PBS, meeting requests from either of those bodies could also be identified.
20. SLAB explained that an exercise to determine how long it would take to check a single inbox for any relevant records over a four month period had taken 15 minutes. It was therefore estimated that the same task covering the period of almost two years required by Mr Pattison's request would take around 90 minutes for each inbox to be checked for relevant communications.
21. SLAB explained that, in respect of its senior officers, the retrieval of the information would be carried out by the Executive Assistants (SLAB grade 4) at an hourly rate of £14.17. In respect of the remainder of the staff, the information would be retrieved by local Administrative Officers on SLAB grade 3 at an hourly rate of £11.40. Using these staff costs and the estimated time for searching each inbox, SLAB estimated the cost of these searches at £564.24. When apportioned between the two elements of the request, this resulted in a common cost to each element of the request of £273.12.

#### **Additional costs relating to the first request**

22. SLAB submitted that, having identified and extracted the information from emails as described above, the information would require to be printed. SLAB estimated that each individual may identify 60 pages for printing. SLAB estimated that the additional costs associated with printing the material totalled £84.12.



23. SLAB explained that it had also undertaken an exercise to estimate the time involved in identifying and extracting information relating to Mr Pattison's request from paper records held by the Chief Executive and four other directors. As a result of this exercise, SLAB estimated that approximately 210 files would need to be searched to identify relevant information within these. SLAB also undertook an exercise to inform estimates of the time required to trawl relevant files to identify and flag pages for copying in response to the request. SLAB estimated that it would approximately 18 minutes to check each file, and a total of 63 hours for Executive Assistants to carry out this search at a cost of £14.17 per hour.
24. SLAB also estimated that the time required to collate and copy the relevant pages from all relevant files would be 52.5 hours. SLAB estimated the staff salary element of this work at the minimum of its grade 1 staff (£7.51 per hour). After adding the costs of photocopying and paper, SLAB estimated the total cost in identifying, extracting and copying the relevant information to be £1919.30.
25. SLAB has also stated that, without undertaking more extensive enquiries, it is difficult to make projections on the effort involved in identifying relevant files of the remaining staff who routinely interact with the PBS or CJD on matters of policy and procedure. However, given that its estimate of cost, at £2276.54, had reached in excess of the prescribed limit of £600, it was considered unnecessary to make further enquiries.

#### **Comments on the cost of the compliance with Mr Pattison's first request**

26. The Commissioner is satisfied that SLAB has provided a reasonable estimate of the costs that would be associated with identifying information requested in Mr Pattison's first request.
27. The Commissioner has noted that this request essentially sought records of any communication between SLAB and the PBS or CJD (formerly SEJD) raising any issue of policy or procedure over a two year period.
28. Given the nature of SLAB's work, the Commissioner accepts that identifying information falling within such a wide ranging request would require searches of both electronic and paper records created by a large number of individuals.
29. The Commissioner accepts that the searches described by SLAB would be necessary in order to identify the relevant information in this case. He accepts that the cost of locating relevant information would therefore exceed the £600 prescribed limit.
30. The cost of providing information in this case would depend upon the amount of relevant communications identified following these searches, and so it is difficult for the Commissioner to assess whether the total cost would indeed reach the level suggested by SLAB. However, the Commissioner is not required to determine the precise cost of complying with an information request. In the circumstances, he is satisfied that the cost of compliance in this case would go beyond the prescribed limit, and so the Board was entitled to refuse to comply with Mr Pattison's request in terms of section 12(1) of FOISA.



### **Additional costs relating to the second request**

31. With respect to this request, the initial search of email records would also allow records relating to meetings to be identified. SLAB has submitted that, as meeting requests may also be received by telephone, all electronic and paper diaries would have to be reviewed and cross checked with information retrieved from email records.
32. SLAB carried out an exercise whereby a number of individuals undertook an exercise to identify relevant meetings for a four month period from electronic and paper diaries. SLAB stated that it had taken an average of 30 minutes to check the records for a member of staff at Chief Executive/Director level and 15 minutes for other members of staff.
33. SLAB indicated that an extrapolation of the time needed to cover identification of meetings held over the two year period from 1 January 2006 to the date of the request indicated investment of 90 minutes of effort for each member of staff at Chief Executive/Director level and 45 minutes for all other staff. However, the Commissioner notes that according to SLAB's own calculations, the correct times to conduct this exercise over a two year period would actually be 180 and 90 minutes respectively.
34. SLAB provided details of the gradings of the staff who would carry out this work. Having taken into account the revised timings noted above, the Commissioner has calculated that the cost of this component of the overall work required is £716.28 (rather than the £358.14 specified by SLAB).
35. SLAB pointed out that, in relation to these meetings, Mr Pattison had also requested information on attendees and their titles, locations of meetings, agendas and minutes reflecting the outcome of these meetings. From the sample exercise carried out, it was established that the Chief Executive had an average of 18 relevant meetings in a four month period which, extrapolated to cover the total period under review, would equate to 108 meetings.
36. SLAB explained that an exercise was carried out to obtain the information required by Mr Pattison for a sample of the meetings which took place. SLAB stated that extraction of the information for four meetings took 30 minutes which, extrapolated to cover 108 meetings, would take 54 hours. The Commissioner notes, however, that since SLAB's calculations suggest that information relating to eight (not two) meetings could be collated each hour, the correct time which should have been calculated for the above task is 13.5 hours.
37. SLAB provided details of the grade of the member of staff who would carry out this work. Having taken into account the revised timing noted above, the Commissioner has calculated that the cost of extracting the required information in relation to meetings attended by the Chief Executive would be £191.30.
38. SLAB also estimated that the cost of printing this information would be £8.09.



39. SLAB pointed out that the final part of this costing related only to an exercise carried out in relation to meetings attended by the Chief Executive. However, given that the estimated cost involved in fulfilling this request had already exceeded £600, it was felt unnecessary to make further enquiries.
40. Having taken account of the costings and other information provided by SLAB, and the adjustments to the calculation noted above, the Commissioner notes that the correct estimate of cost for this request is £1188.79.

#### **Comments on the cost of the compliance with Mr Pattison's second request**

41. The Commissioner is satisfied that Mr Pattison's second request was again wide-ranging, and that it could only be complied with following a thorough search of records of a significant number of members of staff to ensure that all relevant meetings were identified. Once meetings were identified, the particular pieces of information requested by Mr Pattison would need to be collated from various different records relating to these meetings.
42. The Commissioner has revised some of SLAB's cost estimates with respect to this second request in order that the sums match the estimates of time included within its comments. However, he is again satisfied that SLAB has provided a reasonable description of the tasks that would be involved in locating and providing the information requested by Mr Pattison.
43. In the circumstances, the Commissioner is again satisfied that the cost of compliance in this case would go beyond the prescribed limit, and so SLAB was entitled to refuse to comply with Mr Pattison's request in terms of section 12(1) of FOISA.

#### **DECISION**

The Commissioner finds that the Scottish Legal Aid Board (SLAB) acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Mr Pattison. SLAB was not obliged to comply with these requests on the basis that the projected cost of compliance in each case would exceed £600.



## Appeal

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Should either Mr Pattison or SLAB 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 notice.

**Margaret Keyse**  
**Head of Investigations**  
**17 September 2008**



## Appendix

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### 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.

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- (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.

#### 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.