

# Decision Notice

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**Decision 137/2018: Mr M and Glasgow City Council**

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**Workforce Pay and Benefits Review**

Reference No: 201800807

Decision Date: 30 August 2018



Scottish Information  
Commissioner

## Summary

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The Council was asked about its Workforce Pay and Benefits Review. The Council failed to respond. Following a review, the Council stated that it would cost in excess of £600 to respond to parts of the request. Following an investigation, the Commissioner agreed with the Council's position and also found that the Council had provided reasonable advice and assistance.

## Relevant statutory provisions

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Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) 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 Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

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1. On 20 February 2018, Mr M made a request for information to Glasgow City Council (the Council). The information requested was:
  - (a) a list of all the information held by the Council regarding its Workforce Pay and Benefits Review (WPBR);
  - (b) a list of all the information regarding the WPBR which the Council had destroyed since the pay scheme was first introduced in 2007;
  - (c) the basis for destroying information given the Council's Vital Records Policy (an extract from which was provided);
  - (d) the date/s on which specific information regarding the WPBR was destroyed;
  - (e) the name and job title of Council officials who authorised the destruction of information regarding the WPBR.
2. On 21 March 2018, Mr M wrote to the Council, requesting a review of its failure to respond to his request. On that same day, the Council asked Mr M to clarify whether the information he wanted related to the creation of the WPBR in its entirety, including its implementation and/or its operation to date, explaining that all of this would cost more than £600 to comply.
3. On 29 March 2018, following further correspondence, Mr M stated that he was not looking for information on the operation of the scheme to date, but rather to its creation (noting that it was implemented by the Council in January 2007). He gave examples of the type of information he was interested in, such as:
  - correspondence or documents relating to the original procurement exercise
  - the Terms of Reference for the WPBR Project
  - the proposed budget for the WPBR Project

- the award of the WPBR contract to Hays HR Consulting
  - written directions given by Council officials to Hays HR Consulting
  - progress and final reports to Council officials from Hays HR Consulting
  - progress and final reports from Council officials to relevant Council committees
4. The Council notified Mr M of the outcome of its review on 13 April 2018. It apologised for its delay in responding to his initial request and stated that it held no information for parts (b), (c), (d) and (e) of his request. For part (a), the Council stated that while it did not hold an actual list of the information, it held information from which a list could be collated. To collate and provide this, however, would cost in excess of £600, so the Council applied section 12(1) of FOISA and refused to comply with the request.
  5. On 11 May 2018, Mr M wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. He stated he was dissatisfied with the outcome of the Council's review because:
    - (i) he did not agree that it would cost in excess of £600 to provide him with the information and
    - (ii) he believed the Council had failed in its duty to respond to him in a helpful manner.

## **Investigation**

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6. The application was accepted as valid. The Commissioner confirmed that Mr M 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.
7. On 31 May 2018, the Council was notified in writing that Mr M had made a valid application and the case was allocated to an investigating officer.
8. 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, including explaining how it had reached the figure it had in relation to the cost of providing the information and whether it considered it had handled the request in a helpful manner.
9. The Council provided the Commissioner with comments on both points.

## **Commissioner's analysis and findings**

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10. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr M and the Council. He is satisfied that no matter of relevance has been overlooked.

### **Submissions from Mr M**

11. Mr M submitted that the Council had failed in its duty to respond helpfully to his information request. He stated that the Council had claimed that it did not possess a ready-made "list" of the information he had requested and was under no obligation to provide any of the information specified in his request.
12. He stated that the Council had admitted that the information existed, either in its archives and/or in open files, but that it would be too costly to retrieve this information. Mr M disagreed

with the Council's position because he felt that if the information did exist in the Council's systems, then logically it must already exist in some kind of catalogued or 'easy to access' format designed to assist with data retrieval. Mr M argued that, if the information was held in an open file (or files) for ongoing operational reasons, the task of responding positively to his request must also be straightforward, as the WPBR information was historic, unique and easy to identify via the relevant Council officials.

13. Mr M was of the view that the Council had made no effort to try and address his request, short of simply saying "no". He argued that the Council could easily identify any information held in its archive and also confirm the nature of the information, without incurring significant costs.
14. He also argued that the same would be true if the information was held in an open file (or files), because a relevant official of the Council could easily identify the nature of the (non-archived) information still held and in use in 2018.
15. Mr M did not accept that providing details of what information was held, in archived or open files, would cost the Council more than £600 and argued that the Council had not provided a convincing explanation for this assertion.
16. It was Mr M's view that the Council was exaggerating the cost of retrieval because the information he had asked for might prove damaging and/or embarrassing to Council officials over their role in introducing what he termed a controversial WPBR pay scheme in 2005/07.

## **Submissions from the Council**

### *Section 12(1) of FOISA – excessive cost of compliance*

17. 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 (regulation 5 of the Fees Regulations). Consequently, the Commissioner has no power to require the disclosure of information should he find that the cost of responding to a request for that information would exceed this sum.
18. 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. 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.
19. The Council submitted that it would cost more than £600 to comply with Mr M's request, due to the information having to be retrieved, collated and compiled in a list format to satisfy his request.
20. The Council submitted that it had considered whether it would be able to create lists in response to Mr M's request. Following consultation with its Corporate HR department, it became evident that the information requested was not held centrally. In order to create a list of the WPBR information, extensive manual searches would be required across different departments within the Council. As Mr M had confirmed that he was seeking information related to the establishment of WPBR in 2006-07, archived files would also have to be searched.

21. The Council noted that Mr M had indicated that the examples he gave of the type of information he was looking for were “illustrative rather than exhaustive”. Therefore, in order to create a list, Council officers would be required to search all records for information relating to the establishment of WPBR. The Council explained that these were historic records and were not indexed. Council officers would be required to search offices across the Council, including its archives. Once relevant information had been identified, a Council officer would then be required to create an index.
22. In order to estimate the projected cost of responding to the request, the Council conducted a sample exercise to assess how long, and therefore at what expense, such an exercise would take. The sample exercise covered files within the Council’s Corporate HR department. These files are stored in approximately 3 metres of filing cabinet space. The files fully utilise the space and comprise the following:
  - Documents stored in titled pockets/wallets within suspension files
  - Documents stored in untitled pockets/wallets within suspension files
  - Loose documents stored within suspension files
  - Documents in lever arch files
  - Documents in poly-pockets.
23. The exercise involved extracting documents from a file, allocating an index number for future identification and retrieval, reviewing the document content to identify its subject, entering the subject details onto an index template document and refiling the individual documents. The request being for a list of information relating to the implementation of WPBR meant that the files reviewed were those holding information in relation to the implementation of WPBR and related subjects. It was not possible to identify the WPBR-specific files without examination, and therefore indexing, of all the files.
24. The time and cost estimates provided by the Council were based on a thirty minute sample exercise. An extrapolation of the sample time and also a visual inspection and assessment of files were used to calculate the time and cost of the exercise.
25. The Council explained that the varying nature of the files meant that some were more straightforward to index than others. For example, lever arch files appeared to have a greater density of related information filed together than individual suspension files. During the thirty minute sample exercise, approximately 1 cm of documents was fully indexed. Extrapolating the sample findings indicated that indexing of 3 metres of documents would take approximately 150 hours (30 minutes x 300 centimetres = 9,000 minutes = 150 hours).
26. However, as stated above, visual assessment of the files suggested that some files would take less time to index, perhaps as little as one third of the time. The Council estimated that this would apply to approximately two thirds of the files. Therefore, completion of the indexing exercise would take approximately 83 hours at a cost of £1,245.
27. The Council submitted that this figure was calculated in accordance with the Fees Regulations. It included the costs which would be incurred in locating and retrieving the information, photocopying and staff time. The staff time charged reflected the true pay scale of the member(s) of staff who would be involved, capped at a ceiling of £15/hour per member of staff.

28. The Council stated that the sample exercise was in relation to one office within the Council and that the information requested might be held across multiple locations within the Council. As such, the estimated total cost would be significantly higher.
29. In calculating the estimated costs, the Council only considered part 1 of Mr M's request, because it did not hold an index of all WPBR information that had been destroyed. The Council took the view that it was not feasible to retrospectively create such a list without having access to the destroyed information. For the avoidance of doubt, the Council stated that it did not retain copies of WPBR information which had been deleted or destroyed since 2007. Without knowing what (if any) information had been destroyed, the Council submitted that it could not confirm the basis of destroying the information, the dates on which specific information was destroyed or the name and job title of Council officers that authorised the destruction of information. In any case, Mr M did not raise the matter of information not held in his appeal to the Commissioner.

*The Commissioner's findings on section 12(1) of FOISA*

30. Taking account of all the circumstances, the Commissioner is satisfied that the Council has provided a reasonable estimate of the cost of complying with Mr M's request for information. Given the nature of the work required in searching, and the fact that the information is not held centrally in one location, and is not readily available without sifting through many files which also contain information not falling within the scope of Mr M's request, the Commissioner accepts (on the balance of probabilities) that it would cost more than £600 to comply with the request.
31. Consequently, the Commissioner is satisfied that the Council was entitled to rely on section 12(1) of FOISA in relation to Mr M's information request, and therefore was under no obligation to comply with the request.

*Section 15(1) of FOISA – duty to provide advice and assistance*

32. Section 15 of FOISA requires a public authority to provide advice and assistance, insofar as it is reasonable to expect it to do so, to someone making (or proposing to make) an information request. Where the cost of complying with a request is likely to exceed the £600 limit, the public authority should consider what information could be disclosed free of charge or within the cost limit, in order to comply with the duty to provide advice and assistance.
33. As noted above, Mr M submitted that the Council had failed in its duty to respond helpfully to his information request because it had "stated that it did not possess a ready-made 'list' of the information requested and was under no obligation to provide any of the information specified in the request".
34. The Commissioner notes that, in its email of 21 March 2018, asking Mr M for clarification of his request, the Council asked him whether the information he wanted related to the creation of the WPBR in its entirety, including its implementation and/or its operation to date: if it was all of this, then it believed it would cost more than £600 to comply.
35. In his email of 29 March 2018, Mr M clarified that he was seeking information relating to the creation of the WPBR and gave examples of the type of information he was interested in, as noted in paragraph 3 above. Mr M stated that he was not looking for information on the operation of the scheme to date.
36. The Council, therefore, confirmed that Mr M only required a list of the information in question, rather than the information itself. It submitted that the process of clarification had been intended to narrow the scope of the request and thus meet its duty to provide advice and

assistance. By requesting clarification from Mr M, the Council considered that it had discharged this duty. It also submitted that it had not intended to imply that it was under no obligation to provide the requested information.

37. The Council also submitted that, with regard to information which might have been destroyed, it provided Mr M with a link to its Records Retention and Disposal Schedule by way of advice and assistance.

*The Commissioner's findings on section 15(1) of FOISA*

38. The Commissioner can understand how Mr M might have inferred that the Council did not consider itself obliged to provide a list of the kind sought by Mr M. Overall, however, the Commissioner accepts that the Council provided Mr M with reasonable advice and assistance in attempting to clarify (and thus narrow) his request.
39. Consequently, the Commissioner is satisfied that the Council complied with its duties under section 15(1) of FOISA in this case.

## Decision

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The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr M.

## Appeal

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Should either Mr M 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**

**30 August 2018**

## Appendix 1: Relevant statutory provisions

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### 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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- (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.

...

#### 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.

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