



Scottish Information  
Commissioner

<b>Decision 029/2006 Mr T and Aberdeen City Council</b>
<i>Request for information concerning individual's contact with Council</i>

**Applicant: Mr T**  
**Authority: Aberdeen City Council**  
**Case No: 200502320**  
**Decision Date: 20 February 2006**

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

Kinburn Castle  
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## Decision 029/2006 Mr T and Aberdeen City Council

***Request for information concerning Ms R's contact with the Council – projected costs over £600 - no obligation to comply with request – section 12(1) of FOISA and the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 applied – offer to supply information under £600 – fees notice issued under section 9 of FOISA***

### Facts

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Mr T requested any information held by Aberdeen City Council (the Council) regarding a named individual's (Ms R) involvement with the Council and social work and all documents which relate to Ms R and her visits to Aberdeen schools. The Council advised Mr T that the request had been refused on the basis that the cost of complying with the request exceeded the prescribed level. The Council advised that it might be possible to provide information if Mr T was more specific in this request. Mr T responded by stating he required all information up to £600. The Council issued a fees notice for the cost of £50. Mr T subsequently advised the Council that he would not pay £50 and he required all information up to £600. The Council responded by stating that it would be contrary to its policy to provide the information free of charge. Mr T appealed to the Scottish Information Commissioner.

### Outcome

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The Commissioner found that the Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in dealing with Mr T's request for information.

### Appeal

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Should either the Council or Mr T wish to appeal against this decision, there is a right to 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 18 April 2005 Mr T wrote to the Council and requested the following information:
  - Any information held by the Council regarding Ms R's involvement with the Council and social work and all documents which relate to Ms R and her visits to Aberdeen schools.
2. The Council responded to this request on 29 April 2005. It advised that Mr T's request had been refused on the grounds that the estimated cost of complying with his request exceeded the prescribed level. An Excessive Cost of Compliance Notice was enclosed in respect of the information. The Notice stated that the estimated cost of complying with the request for information had been calculated as in excess of £900 based on the costs of searching for information in Social Work files alone.
3. The Council went on to state that it might be possible to provide Mr T with information about a specific event or element of Ms R's involvement in work relating to Mr T's own family if he could provide the Council with a more specific request.
4. Mr T wrote to the Council on 19 May 2005 indicating that he required all information up to £600.
5. On 30 May 2005, the Council responded to Mr T advising that the charge for providing information costing £600 was £50. The Council issued a fees notice to this effect. The notice stated that 40 hours data retrieval/redaction of personal information could be provided at £15 per hour. It stated that the first £100 was free to the applicant and 10% of the remaining £500 would cost Mr T £50.
6. Mr T wrote again to the Council on 13 June 2005. He stated that the Council had first said that it did not hold information regarding Ms R and now it did. Mr T said that he would not pay £50 and required the information requested to be released up to the cost of £600.
7. The Council responded to Mr T's letter on 28 June 2005. The Council referred to a previous request from Mr T (of 5 January 2005) in which he had sought the timetable for Ms R showing attendance at the Quarry Centre, one of its fieldwork offices, for 3 months prior to September 2000. On that occasion, the Council had advised that it did not hold the information requested and a notice to that effect had been issued. The Council advised that Mr T had now made a new and different request regarding Ms R's contact with schools and social services.



8. The Council indicated that since Ms R was not a Council employee, and therefore possessed no documented work pattern, supplying this information would involve an extensive search through files across social work and education services in the Council's three neighbourhood areas. The Council confirmed that Mr T's request had been refused on excessive cost grounds.
9. The Council went on to explain the fees notice that had been issued to Mr T and how the charge to him of £50 had been calculated in line with the fees regulations (Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004) (the Fees Regulations).
10. The Council advised that it would be contrary to Council policy to supply the information requested to Mr T without charge as demanded in his most recent letter of 13 June 2005.
11. On 30 June 2005 Mr T wrote to my Office indicating that he considered the Council to be using a stalling tactic. He asked me to intervene on this matter. The case was then allocated to an Investigating Officer.

## **Investigation**

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12. To be accepted as a valid application under section 47(1) of FOISA the applicant must first have made a request for review to the authority. After reviewing the papers in this case, it was considered that Mr T's letter to the Council of 13 June 2005 was a request for review in that he had refused to pay the fee of £50.

### **Scope of the investigation**

13. Mr T had challenged the charge of £50 for the supply of the information requested. Therefore, the assessment of the fees charged by the Council became the focus of this investigation.
14. In subsequent correspondence, Mr T advised that he wished my Office to investigate the response from the Council that all information regarding Ms R's visits to the Quarry Centre was routinely destroyed and also to investigate the inconsistencies in the responses he had received from the Council regarding Ms R.
15. Mr T's request for information relating to Ms R's visits to the Quarry Centre had been the subject of an earlier application to my Office which he had subsequently withdrawn. Therefore this matter was outwith the scope of this investigation.



16. The Investigating Officer contacted the Council on 27 September 2005 advising that an investigation into the matter had begun and inviting its comments on the issues raised by Mr T. At this stage, the Council was advised that the investigation would focus on the issue of fees but might also consider the way in which the Council had handled the request for information.
17. At Mr T's request, the investigation also addressed his belief that the Council had provided him with inconsistent responses to this requests for information relating to Ms R.

### **Cost of providing the information requested**

18. The Council was asked to provide a detailed breakdown of how the projected costs had been calculated.

### Council's submissions

19. The Council responded to this request on 21 October 2005. The Council advised that it had not considered Mr T's letter of 13 June 2005 to be a request for review. Rather, it saw it as a stage in the process whereby Mr T might be brought to accept that he should tailor his request to the provisions of FOISA. The Council went on to state that it considered Mr T's letter of 30 May 2005 to be an implicit acknowledgement of the validity of the fees calculation.
20. However, the Council enclosed a detailed breakdown of how the projected costs in this matter had been estimated for the purposes of issuing an excessive cost of compliance notice. It advised that the Assistant Quality Development Officer had spent three hours going through the T files to discover what information was available on Ms R that could be released. The Council had identified 21 files the subject of which Ms R might have had contact with. The Council advised that these files would have to be searched and information redacted and collated in the same way. The Council provided evidence to support its view that a minimum of 21 files would need to be searched.
21. The Council submitted that Ms R was not an employee of the Council. It indicated that Ms R had further advised that personal information about her activities should not be released. As a result, the Council believed that any information extracted from the Council's files would require redaction.
22. The Council advised that the projected costs for locating, retrieving and redacting information for the current year and for the social work element alone would be 63 hours at £15 per hour.
23. The Council advised that no costs for photocopying were included in this calculation, but might be held to be a significant addition.



24. The Council indicated that Mr T also required all information about contact with schools. It advised that this information might be held in individual pupil record files and would have to be redacted. The Council indicated that no attempt had been made to quantify the cost of this as it was evident that the cost of compliance was already above the prescribed limit.

#### Subsequent correspondence

25. Subsequent correspondence between the Council and my Office addressed a number of issues concerning the calculation of the projected costs by the Council.

#### *Costs for redaction*

26. The Council was asked to confirm how it had calculated the costs for redaction. It was pointed out that an authority could charge for the physical act of deleting or excising information from a document but could not charge for deciding whether the information should be released or not.
27. The Council confirmed that the costs were for extracting and redacting the information requested by Mr T from the files which had been identified as those most likely contain it.

#### *Charge for staff costs*

28. The Council was also asked to justify its charge of £15 per hour given that Annex 3 to the *Scottish Ministers' Code of Practice on the Discharge of Functions under the Freedom of Information (Scotland) Act 2002* (the Section 60 Code) makes it clear that the rate of £15 per hour is an upper limit.
29. The Council advised that the files were sensitive files which, under Council policies, could only be accessed by relatively senior personnel; that is, the social worker in the case or their line manager. Accordingly, the Council advised that the cost per hour ranged from approximately £13.62 to £20.35 upwards. In support of this statement, the Council forwarded a copy of the *Case Recording Policy of the Social Work Service*. The Council advised that the files could not be searched by secretarial or administrative staff because the system was a practitioner data entry system.
30. In subsequent correspondence, the Council confirmed that the range in hourly charge reflected the fact that social workers might be of different grades and that in some cases the line manager might be required to undertake the searching in the absence of the social worker.
31. In further correspondence, the Investigating Officer sought information about the practitioner data entry system and also asked whether the Assistant Quality Development Officer was a practitioner given she had carried out the initial search of the T files.



32. The Council explained that different levels of access to CareFirst (the Social Work Case Recording Information system) are given to different levels of staff. For example, social workers in Criminal Justice would not be given access to Looked after Children modules. Child Care social workers would not have access to criminal justice modules, home care modules etc. However, some social workers have access to all information held in order to carry out their duties; for example, the Out of Hours team.
33. The Council advised that the Assistant Quality Development Officer is not a practitioner. However, this Officer does have authorised access to the system in order to undertake tasks associated with her role. For example:
  - a) development, implementation, monitoring and review of social work case recording;
  - b) development and implementation of thematic social work and multi-agency case auditing and
  - c) investigation and responding to complaints on behalf of and as requested by the Chief Social Work Officer.
34. The Council advised that the Assistant Quality Development Officer is paid on the lower part of the Social Worker scale.

#### *The calculation of 3 hours*

35. The Council was asked to provide an explanation as to why it would take 3 hours to consider each file. The Council reaffirmed that this was the time it had taken to go through the T's own file. The Council indicated that this time did not include the estimated costs for redaction. The Council submitted that even if the other files were not quite as bulky they would still all require some redaction. Therefore the calculation of projected costs was regarded as adequate.

#### **Inconsistencies in Council responses**

36. Mr T had also asked me to address his belief that the Council had responded inconsistently to his requests for information relating to Ms R.
37. Mr T was of the view that in response to his request of 5 January 2005, (referred to above in paragraph 7) the Council had intimated that it did not hold any information about Ms R whereas in respect of his request of 18 April 2005 the Council had indicated that it did.

#### Council's submissions





38. I sought comments on this point from the Council. The Council supplied me with copies of the correspondence relating to Mr T's original request of 5 January 2005 and compared it with the subsequent correspondence of 18 April 2005 and 29 April 2005. The Council indicated that it was clear from the correspondence that the requests were quite different on each occasion.
39. Mr T's request of 5 January 2005 requested the past timetable of Ms R's visits to the Quarry Centre three months prior to 19 September 2000. The Council advised Mr T in a letter of 26 January 2005 that it did not hold this information as it is routinely destroyed every evening. As a result, the Council issued an Information Not Held Notice. Mr T's request of 18 April 2005 sought "any information held by the council regarding Ms R's involvement with the council and social work and all documents which relate to Ms R and her visits to Aberdeen schools."

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

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40. Mr T declined to pay the £50 charge required by the Council to supply the information requested. He also complained about the inconsistencies in the responses he had received from the Council when seeking information about Ms R. Therefore this investigation focussed on two aspects. I will address each aspect in turn.

### **Projected costs in supplying information requested**

41. Mr T had requested all information about the contact that Ms R had had with the Council and with Aberdeen schools. The Council calculated the projected costs in respect of part of this request and concluded that the supply of this information alone would cost more than £600.
42. Under section 12 of FOISA and regulation 5 of the Fees Regulations, an authority is not obliged to comply with a request for information where the projected costs for supplying that information exceeds the prescribed limit of £600.
43. In this case, the projected costs were based on the files of individuals with whom the Council considered Ms R might have had contact. The Council submitted that the files would need to be searched to retrieve this information. The Council advised that where the files contained information relevant to Mr T's request it anticipated that some of this information would be personal data which would need to be redacted.





44. Given the nature of the work carried out by Ms R, I am satisfied that the 21 files identified by the Council would need to be searched to identify information relevant to Mr T's request. I also accept that these types of files will contain personal information which is likely to require redaction.
45. I am also satisfied that given the size, content and nature of the files the estimated time of 3 hours for retrieval and redaction of information is reasonable. I find this particularly persuasive given that this was the time taken to search the T's own file.
46. The Council has advised that a social worker or line manager would be required to search the files and carry out any necessary redactions. Mr T's own file was searched by the Assistant Quality Development Officer who has access to the data practitioner entry system by virtue of her role. The Council confirmed that the Assistant Quality Development Officer is paid on the lower part of the Social Worker scale. I am satisfied that the files concerned are accessible by specific members of staff and that this in line with Council policy.
47. In all the circumstances, I consider the projected costs as calculated by the Council to be reasonable. Even at the lowest rate per hour the projected costs would be £858. The Council has also made it clear that the projected costs are only in respect of a proportion of the information requested by Mr T.
48. When the Council offered to supply information to Mr T under the cost threshold, he advised that he sought all information under £600. As a result, the Council issued a fees notice for £50. The fees notice set out how this amount had been calculated and referred to the Fees Regulations. The Fees Regulations state that when supplying information under FOISA no charge can be made for the first £100 of projected costs. Thereafter the authority can charge 10% of the projected costs up to an upper limit of £600.
49. Therefore, it was reasonable for the Council to charge £50 for the supply information up to the cost of £600. While an authority is not obliged to charge for information supplied under FOISA (and may choose not to do so) an authority is perfectly entitled to make such charges. I have no powers to instruct an authority to provide information free of charge.
50. I am satisfied that the projected costs for supplying Mr T with the information he requested exceed the £600 threshold. Therefore the Council was under no obligation to comply with the information request. The fee of £50 the Council charged Mr T for the supply of information under £600 was calculated in accordance with the Fees Regulations.

#### Inconsistencies in the responses by the Council



51. Mr T also complained about the inconsistencies in the responses he believed he had received from the Council to his requests for information about Ms R.
52. The Council supplied me with copies of both requests. It is clear that the two requests are quite different. The Council's response to the first request simply advises that it does not hold the type of information requested by Mr T (that is, her timetable for the time period specified). It does not state that it holds no information relating to Ms R.
53. Therefore I find no inconsistency in the responses received by Mr T in respect of his two requests for information concerning Ms R.

## Decision

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I find that Aberdeen City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to Mr T's request for information.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**20 February 2006**