



Scottish Information
Commissioner

**Decision 098/2007 Ms Sandra McGregor and the
Common Services Agency for the Scottish Health
Service**

Request for information on claims of medical negligence

Applicant: Ms Sandra McGregor

**Authority: Common Services Agency for the Scottish Health
Service**

Case No: 200600933

Decision Date: 2 July 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 098/2007 Ms Sandra McGregor and the Common Services Agency for the Scottish Health Service

Request for data on medical negligence claims – section 30(c), section 33(1)(b) and section 36(1) applied – public interest considered

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 sections 1(1)(General entitlement); 2 (Effect of exemptions); 3(2)(a)(i) (Scottish public authorities); 12(1) (Excessive cost of compliance); 17 (Notice that information is not held); 30(c) (Prejudice to effective conduct of public affairs); 33(1)(b) (Commercial interests and the economy) and 36(1) (Confidentiality).

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 regulation 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

Mrs Sandra McGregor (Mrs McGregor) made a series of requests to the Common Services Agency for the Scottish Health Service (CSA) for data relating to medical negligence claims. The CSA responded by refusing to supply the information citing section 36(1) *Confidentiality* as justification for this. Mrs McGregor was not satisfied with this response and asked the CSA to review its decision. The CSA carried out a review and, as a result, notified Mrs McGregor confirming that the information would be withheld and citing additional exemptions (namely section 30(c) and section 33(1)(b)) in support of this. Mrs McGregor remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the CSA had partially failed to deal with Mrs McGregor's request for information in accordance with Part 1 of FOISA. He required the CSA to supply certain data to Mrs McGregor.



Background

1. On 9 March 2006, Ms McGregor wrote to the CSA requesting the following information:
 - a) In each of the last 5 years how many claims of alleged medical negligence have been referred by NHSScotland to the Scottish Health Service Central Legal Office (CLO)?
 - b) In each of the last 5 years how many (or what percentage) of such claims have been settled following an admission of liability before Court proceedings have been raised?
 - c) In each of the last 5 years how many (or what percentage) of such claims have been settled without an admission of liability before Court proceedings have been raised?
 - d) In each of the last 5 years how many (or what percentage) of such claims have been settled after Court proceedings have been raised and with an admission of liability?
 - e) In each of the last 5 years how many (or what percentage) of such claims have been settled after Court proceedings have been raised without an admission of liability?
 - f) In each of the last 5 years how much money has been paid in legal expenses to claimants by NHSScotland?
 - g) In each of the last 5 years how much has been paid by NHSScotland to CLO in respect of 1) legal fees and (2) outlays?
 - h) What are the policies, guidelines and protocols of CLO from the point of view of NHSScotland patients in relation to the management, investigation and, where appropriate, settlement of medical negligence claims intimated to NHSScotland
2. On 14 March 2006, the CSA wrote to Mrs McGregor in response to her request for information. The CSA claimed that the information was exempt by virtue of section 36(1) – solicitor/client confidentiality. The CSA stated that it did not consider that there was any public interest argument which overruled the right of confidentiality between solicitor and client.



3. On 23 March 2006, Mrs McGregor wrote to the CSA requesting a review of its decision. In particular, Mrs McGregor indicated that she did not understand the relevance of section 36(1) but presumed the suggestion was that by providing this information the CLO would be inhibited in the free and frank provision of advice to the NHS. Mrs McGregor indicated that as a member of the public she had an interest in knowing how NHS funds were applied and what policies and protocols were in place in relation to how claims by members of public against the NHS were dealt with. Mrs McGregor indicated that she believed that the public had an interest in knowing what NHS resources were expended on litigation.
4. On 25 April 2006, the CSA wrote to notify Ms McGregor of the outcome of its review. The CSA considered each request and applied the following exemptions to each request for information:
 - Question a) - The CSA advised that section 36(1) applied.
 - Questions b) to e) - The CSA advised that sections 33(1)(b) and 36(1) applied
 - Question f) - The CSA advised that sections 17 and 36(1) applied
 - Question g) – The CSA advised that sections 33(1)(b) and 36(1) applied
 - Question h) – The CSA advised that section 30(c) applied
5. The CSA indicated that Mrs McGregor might wish to seek this information directly from the NHS Boards and enclosed an up-to-date list of NHS boards for this purpose.
6. On 24 May 2006, Mrs McGregor wrote to my Office, stating that she was dissatisfied with the outcome of the CSA's review and applying to me for a decision in terms of section 47(1) of FOISA.
7. The case was allocated to an investigating officer. The application was validated by establishing that Mrs McGregor had only applied to the Commissioner after first seeking an internal review from the authority.

The investigation

8. The officer formally contacted the CSA on 20 June 2006 in terms of section 49(3)(a) of FOISA, asking it to comment on the application as a whole and seeking further information for the purposes of the investigation.
 9. The CSA responded on 13 July 2006. The CSA made submissions in respect of the exemptions it considered applied to the information. I will address these, where relevant, in my analysis and findings below.
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10. Mrs McGregor also set out her detailed submissions on the application of the exemptions cited by the CSA. Again, I will address these, where relevant, in my analysis and findings below.

The Commissioner's Analysis and Findings

11. In its submissions to my office the CSA advised that the Central Legal Office (CLO) was a Division of NHS National Services Scotland and provided an "in house" legal service to NHSScotland. The CSA advised that the CLO was restricted by the Law Society for Scotland (LSS) from working outwith NHSScotland. The CSA advised that the CLO did not receive a central allocation but operated on a cost recovery environment.
12. I consider it helpful to expand on this information and the identity of the bodies referred to throughout this decision notice. NHS National Services Scotland is the common name for the CSA. The CLO is therefore a division of the CSA. NHSScotland is made up of a range of bodies including the individual health boards and special health boards.
13. Mrs McGregor made a series of requests for information and I will consider each request in turn.

Question (a)

14. Mrs McGregor asked how many claims of alleged medical negligence had been referred by NHSScotland to the Scottish Health Service Central Legal Office in the each of the last five years.
15. The CSA provided my office with a table providing a summary of the new medical and dental claims by year which, it advised, had been drawn from the CLO database. The CSA also provided my office with printouts from the database showing the breakdown by Board/Trust and year.
16. The CSA advised that the CLO database did not distinguish between a medical and dental claim. The CSA advised that to identify medical claims would require a manual search being undertaken and that the cost of this search would involve solicitor time amounting to £6056.82.



17. In further correspondence with my office the CSA argued that under the LSS rules, the claim files of the CLO client authorities belonged to the clients and not to the CLO or the CSA. Any work undertaken on, or referable to, a client body file, was chargeable by the CLO solicitors to that client. The CSA advised that the CLO was not funded by the CSA and earned its income from its client bodies on a similar basis to private practice.
18. I will first consider the CSA's submissions in respect of the data relating to medical claims only (as opposed to the summary table providing aggregate figures for dental and medical claims). I understand there to be two strands to the CSA's submissions. The first relates to whether the CSA actually holds the files for the purposes of FOISA and therefore the data they contain. The second relates to the cost of supplying this information.

Information not held

19. I understand that the CSA is suggesting that it does not actually hold the information contained within the files; rather this information belongs to the relevant individual client body. In its submissions to me on this point the CSA referred to the LSS guidelines.
20. FOISA only requires an authority to provide information that it holds at the time of the request. Section 3(2)(a)(i) provides that information is not held by an authority if it is held by that authority on behalf of another person.
21. I have considered the LSS guidelines on ownership of client files *Guidelines on the Ownership and Destruction of Files 2001 (amended 2003)*. These guidelines confirm that ownership of files is not entirely straightforward. The guidelines do, however, set out the material ordinarily owned by the client and the material ordinarily owned by the solicitor, respectively. The former category includes documents produced by the client or produced by the solicitor for the client, notes of meetings and telephone calls which constitute the solicitor's work on behalf of the client as well as written opinions. The latter category includes original letters received by the solicitor from the client.
22. On the basis of this guidance, I am unable to accept in this case that the files and all information they contain belong to the CLO's client bodies or that, in terms of FOISA, all information is held by the CSA on behalf of its client bodies. Further, it seems to me perfectly possible that information within the file belonging to the CLO solicitor (in terms of the LSS guidelines) will indicate whether the claim is dental or medical. In particular, it is likely that the original letter from the client asking the CLO to act on its behalf will include such information. This information will be held by the CSA for the purposes of FOISA. Therefore I would require further information on this point from the CSA before I would be prepared to accept that the information requested by Mrs McGregor in respect of question a) was not held by the CSA for the purposes of FOISA.



23. However, I accept there may be others reasons why this information cannot be supplied by the CSA under FOISA. In particular, I have gone on to consider the costs involved in supplying this information to Mrs McGregor.

Costs incurred in supplying the information

24. It will be recalled that in its original submissions to my office, the CSA stated that a manual search of the files would cost £6056.82. Under section 12(1) of FOISA an authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the prescribed limit. The prescribed limit is set at £600 in the *Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004* (the Fees Regulations).
25. The Fees Regulations set out the costs that an authority can take into account when estimating the charges that would be incurred in complying with a request for information under FOISA.
26. The charges set out by the CSA in its letter to me of 13 July 2006 were not in accordance with the calculations permitted by the Fees Regulations. In subsequent correspondence the CSA advised that it was not seeking to rely on section 12(1).
27. However, due to the terms of section 12(1) I cannot oblige an authority to comply with a request for information where the estimated cost of compliance would exceed £600. As a result, I have, in any event, considered the estimated costs to supply this information in terms of the Fees Regulations. On the basis of the CSA's original submissions I am satisfied that the total estimated costs of examining each file would amount to £569.25. The CSA has also advised that 927 files would need to be retrieved from commercial storage. The CSA advised that this would cost £1854 being the outlay of recovering the files at a rate of £2 per file.
28. The Fees Regulations permit an authority to charge for the cost of retrieving the information requested. However, this retrieval charge seems to me to be particularly high. I accept, however, that the CSA may incur costs in retrieving the information and given that I have accepted that the cost of examining the files would cost £569.25 such retrieval costs would only need to amount to £31 for the upper limit to be reached. In the circumstances, I am reluctant to order release of this information where there is little chance that its supply will cost less than £600.
29. This does not mean that Mrs McGregor may not be able to obtain this information but in order to receive this data she would need to restrict her request. If Mrs McGregor still wishes to receive this information I suggest she liaises with the CSA to enquire as to the best way to proceed.



30. The CSA also supplied my office with a table that provided the aggregated figures for both dental and medical claims for each of the last five years. This information had been extracted from the CLO's database and therefore the projected costs cited above do not apply to this information. The CSA refused to supply this information to Mrs McGregor, however, citing section 36(1) of FOISA. This exemption provides that information in respect of which a claim of confidentiality could be maintained in legal proceedings is exempt information.
31. In its submissions to my office the CSA submitted that the CLO was employed solely to act as solicitors to the NHS bodies in Scotland. Although the solicitors were employed by the CSA they were professionally accountable to their various NHSScotland client bodies. The CSA advised that as a result they did not have the right to, and were precluded by the LSS, from publishing any information relating to the business or affairs of their client bodies without consent. In support of this submission the CSA pointed to my *Decision 78/2005*. The CSA submitted that this requirement was absolute and that any solicitor employed within the CLO would be in breach of the professional rules of the LSS in doing so and thereby would place their entitlement to practice law in Scotland in jeopardy.
32. The CSA stated that information held by the CLO solicitors belonged to the relevant client body from which, or on behalf of which, it had been obtained. The CSA advised that application should properly be made to each body for disclosure of that information by the person requesting that information. The CSA advised that national statistics should be obtained from the Scottish Executive Health Department (SEHD) although it indicated that this information would have been provided by the CLO. The CSA further submitted that it was not entitled to access information, held by the CLO, relating to private legal business of other NHSScotland bodies or the SEHD.

Information held

33. The summary statistics supplied to my office relating to this request were drawn from the CLO database. Therefore I am content that for the purposes of FOISA the CSA holds these summary statistics; having transferred this information from case files to their own database I am satisfied that this information is held by them and not on behalf of their client bodies.



Application of section 36(1) Confidentiality

34. In considering the application of section 36(1) in this case it is worth emphasising the information that Mrs McGregor has requested. Mrs McGregor is seeking the total number of medical negligence claims that have been referred to the CSA over each of the last few years. She has not requested this information to be broken down by health board or special health board. In its submissions to my office the CSA referred to *Decision 78/2005* in support of its contention that communications between a lawyer and client should be protected and that this had been recognised by me. However, that decision concerned correspondence between an individual health board and the CSA, whereas in the current case the information being sought is the aggregated figure for all NHSScotland bodies that have used the CLO's services in respect of alleged medical negligence claims in each of the last 5 years.
35. As I said above, section 36(1) of FOISA exempts information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. One type of communication covered by this exemption is communications between legal adviser and client. For the exemption to apply to this particular type of communication, certain conditions must be fulfilled. For example:
- the information being withheld must relate to communications with a legal adviser.
 - the legal adviser must be acting in his/her professional capacity and the communications must occur in the context of his/her professional relationship with his/her client.
 - the privilege does not extend to matters known to the legal adviser through sources other than the client or to matters in respect of which there is no reason for secrecy.
 - the fact that advice was sought is not necessarily privileged.
36. I understand that the CLO acts on behalf of a range of NHS client bodies. NHSScotland is not the client body; rather the legal entities that make up NHSScotland, such as the health boards and special health boards, are the individual client bodies. While I accept that information in respect of an individual client body might attract legal professional privilege I cannot see how aggregated figures can be regarded in the same way.



37. In its submissions to my office the CSA advised that in conducting its internal review, the panel had considered whether release of aggregated data would constitute a breach of solicitor/client confidentiality. Legal advice supplied to the panel indicated that NHSScotland was the CLO's only client and therefore advice would be sought on this point from the LSS. The advice from the LSS (of which I have a copy) confirmed the duty of confidentiality and stated that it would be inappropriate and improper to volunteer such confidential information in response to a request from a member of the public. The CSA did not supply my office with a copy of the letter that it had sent to the LSS. The letter from the LSS did not refer to freedom of information and so it is not clear whether the duties under FOISA were considered by the LSS.
38. As I said above, my understanding is that NHSScotland is not a legal body as such but rather made up of a number of separate legal entities. In order for there to be a breach of lawyer/client confidentiality, it seems to me, there would have to be a disclosure of client information or disclosure of information that could be connected to that client. However, disclosure of this data in an aggregated form would reveal nothing about the individual client bodies or the number of claims they individually had referred to the CLO. I have also noted that the CSA considers that these figures could be passed on to SEHD for subsequent publication.
39. I do not accept that the aggregated yearly figures would attract a claim of confidentiality in legal proceedings. To take such an approach would, in effect, prevent a law firm from publicising the numbers of actions it had dealt with by any given speciality where that figure reflected an aggregated client figure because to do so would breach client confidentiality.
40. As a result, I do not uphold the application of section 36(1) in respect of the summary table of combined medical and dental negligence claims. I am satisfied that this information is held by the CSA for the purposes of FOISA in that it is retained on its own database. I find that this information should be disclosed to Mrs McGregor.

Questions b) to f)

41. Mrs McGregor requested information (broken down into four different questions) about cases of alleged medical negligence that had been settled and whether this had preceded or followed an admission of liability.
42. The CSA indicated that it would not be possible to produce this information without a senior solicitor reviewing each claim or action which had been settled over the last five years. The CSA advised that this would require the CSA to retrieve files from storage and then examine the correspondence in each case to establish if an admission of liability had been made. The CSA advised that this information was not stored on any database and would require a manual searching of the relevant files.



43. Following correspondence with my office, the CSA advised that the costs would involve £1854 for the retrieval of the files. The CSA further advised that each file would need to be examined for 5 minutes on average at a rate of £15 per hour. There are over 2000 files.
44. There are two possible approaches to Mrs McGregor's requests for information but in both cases the cost of the supply of the information would exceed £600. I have assumed that the files would only need to be retrieved and examined once in order that the CSA could respond to questions b) to f). Therefore, it would seem to me reasonable to consider questions b) to f) as one question or at least parts of one question. However, even if I take such an approach examination of the files alone would exceed the prescribed limit of £600.
45. If I consider questions b) to f) as separate questions then it would be legitimate for the CSA to pass on the retrieval and examination costs in respect of each question, which would quadruple the cost of supplying this information. Either way, I am satisfied that the cost of supplying the information requested in questions b) to f) would exceed £600. The CSA has advised that it is not seeking to rely on section 12(1) of FOISA but given that I am satisfied that the cost of supplying this information would exceed £600 (even without the retrieval costs) I am unable to order disclosure.
46. As I said above, this does not prevent Mrs McGregor from making a further, restricted information request so that the information can be provided within the upper limit. This is a matter which she may wish to take forward with the CSA.

Question g) legal expenses

47. Mrs McGregor asked how much money in the last five years had been paid in legal expenses to claimants by NHSScotland. In its response the CSA submitted that the CLO database did not distinguish between medical and dental negligence claims/actions and a manual exercise would require to be undertaken as in question a). The CSA further advised that it could not distinguish between legal expenses and outlays paid to claimants without a manual exercise being undertaken requiring an individual file review of all settled claims/actions.
48. The CSA supplied my office with a summary table which showed the combined fees and outlays paid for the last five years. The CSA indicated that this information was being withheld under section 36(1).



49. I have already set out my thinking in respect of section 12(1) and even though the CSA is not seeking to rely on this section I have nonetheless felt obliged to take it into account the projected costs. In the circumstances, I am satisfied that a manual search of the files as described above in respect of questions a) to f) would need to be carried out by a suitably qualified member of staff and that given the volume of files to be checked that such an examination would exceed £600.
50. Likewise, I have considered in some detail the application of section 36(1) in respect of information relating to NHSScotland as a whole rather than to the CLO's individual client bodies. I do not consider that figures which are aggregated across the whole of the NHSScotland in this way could be considered to breach client confidentiality. In the circumstances, I do not uphold the application of section 36(1) to the summary record (Record number 6 in the CSA's bundle of documents) and this information should be disclosed to Mrs McGregor.

Question h) legal fees and outlays

51. Mrs McGregor also requested how much had been paid by NHSScotland to the CLO in respect of 1) legal fees and 2) outlays in the last five years. The CSA advised that the CLO did not charge "legal fees" per se but operated on cost recovery. It supplied my office with a table showing the total costs by year for medical and dental claims. The CSA advised that the information was being withheld on the basis of section 36(1) and section 33(1)(b).

Application of section 36(1)

52. I have considered this exemption in some detail above. I do not accept that information in an aggregated form such as in this case would amount to a breach of client confidentiality. Therefore I do not accept that the summary table supplied by the CSA to my office is exempt by virtue of section 36(1).

Application of section 33(1)(b)

53. The CSA also relied on section 33(1)(b) of FOISA to withhold this information. Section 33(1)(b) states that information is exempt if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person (including a Scottish public authority). In further correspondence with my office the CSA submitted that the commercial interests of the CLO reflected the competitive basis on which the CLO is required by Scottish Ministers to conduct its business. The CSA pointed out the CLO was a fee earning enterprise and was not centrally funded. Therefore the client bodies were charged a range of costs for the undertaking of their work. By publishing the rates or costs charged for cases, the CSA argued that there was a risk to the competitive business, by comparison, of the CLO.



54. I have set out my position in respect of section 33(1)(b) in a number of decisions. There are certain elements to section 33(1)(b) of FOISA which an authority needs to demonstrate when relying on this exemption. In particular, it needs to indicate whose commercial interests might be harmed by disclosure, the nature of those commercial interests and how those interests will be substantially prejudiced. Paragraph 72 of the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (the Section 60 Code) indicates that the prejudice caused to a particular interest following release of information should be "real, actual, and of significant substance" before the test of substantial prejudice can be considered to have been met.
55. In this case, I am satisfied that the CLO has commercial interests in that it competes with other law firms for business from the NHSScotland bodies. However, the CSA needs to demonstrate that disclosure of the actual information requested would substantially prejudice those commercial interests. In this case, I fail to see how disclosure would cause this level of harm. The information being sought is the total amount paid to the CLO. This figure will not indicate the individual rates or costs charged for cases or the amount paid by any individual client body. In this case, all that will be revealed is the total amount of legal fees that the CLO has recovered from the whole of NHSScotland in each of the last five years.
56. I do not consider that the CSA has demonstrated how disclosure of this information would substantially prejudice its commercial interests. As a result, I do not uphold the application of section 33(1)(b).
57. In conclusion therefore I do not find that the summary table supplied to my office setting out the total cost recovery for the CSA over each of the last five years is exempt information.
58. I also note that in respect of this question Mrs McGregor did not specify that she was seeking this information only in respect of medical negligence claims. In the circumstances, I do not consider it is necessary to consider the position in respect of information relating only to medical negligence claims.

Question i) policies and procedures

59. Mrs McGregor also requested access to the policies, guidelines and protocols of the CLO, from the point of view of the NHS patients in relation to the management, investigation and where appropriate, settlement of medical negligence claims intimated to NHSScotland.



60. In its original response to Mrs McGregor the CSA relied on section 30(c) to withhold this information. In its submissions to my office the CSA advised that the solicitors within the CLO operated within the practice rules and code of conduct of the LSS. The CSA also provided a document (Record 12) which gave the target set for the CLO by the SEHD. By way of additional background and context, the CSA included at Records 13-23 SEHD letters which provided information on the operation of the Clinical Negligence and Other Risks (Non-Clinical) Indemnity Scheme (CNORIS). The CSA explained that these were the NHSScotland arrangements for risk pooling and claims management.
61. In subsequent correspondence with my office the CSA indicated that it was content to supply Records 12 and 13-23 to Mrs McGregor. The latter documents all appear on the NHSScotland website in any event.

Decision

I find that the CSA partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Mrs McGregor.

I find that the supply of certain information would exceed the prescribed limit of £600 and therefore in accordance with section 12(1) the CSA is not obliged to supply that information.

However, I find that other information is not exempt under section 36(1) or, where relevant, section 33(1)(b).

I therefore require the CSA to provide the following information to Mrs McGregor within 45 days of receipt of this decision notice:

The two summary tables (Q1 and Q7) that appear in the CSA's letter to my office of 13 July 2006

Record 6 (CSA bundle of documents)

Record 12 (CSA bundle of documents)

Records 13-23 (CSA bundle of documents)



Appeal

Should either Mrs McGregor or the CSA 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 of receipt of this decision notice.

Kevin Dunion
Scottish Information Commissioner
2 July 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.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection 1, the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption –
 - (a) section 25;
 - (b) section 26;
 - (c) section 36(2);
 - (d) section 37; and
 - (e) in subsection (1) of section 38 –
 - (i) paragraphs (a), (c) and (d); and
 - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied by virtue of subsection (2)(a)(i) or (b) of that section.



3 Scottish public authorities

- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held –
 - (a) by the authority otherwise than –
 - (i) on behalf of another person
 - ...

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.

17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),if it held the information to which the request relates; but
 - (b) the authority does not hold that information,it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.
- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.



30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

33 Commercial interests and the economy

(1) Information is exempt information if-

...

- (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

36 Confidentiality

- (1) Information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings is exempt information.

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

5 Excessive cost – prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.