



Scottish Information
Commissioner

**Decision 117/2007 Mr Wilson and Motherwell
College**

*Request for information relating to a dispute between Mr Wilson and
Motherwell College*

**Applicant: Mr Wilson
Authority: Motherwell College
Case No: 200600624
Decision Date: 19 July 2007**

**Kevin Dunion
Scottish Information Commissioner**

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Decision 117/2007 Mr Wilson and Motherwell College

Request for information relating to a dispute between Mr Wilson and Motherwell College – withheld on the basis of section 12(1) – excessive cost of compliance – failure of duty to provide advice and assistance to applicant

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) (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 these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002

Facts

Mr Wilson made a number of requests for information relating to a dispute which had arisen between himself and Motherwell College (the College). The College responded by giving Mr Wilson notice that it was not obliged to respond to his requests for information, as to respond to the requests would cost over £600. Mr Wilson was not satisfied with its response. The College upheld its initial response on review. Mr Wilson remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the College had failed to deal with Mr Wilson's requests for information in accordance with Part 1 of FOISA in that it had failed to provide him with reasonable advice and assistance and had wrongly refused to deal with all but one of his requests on the basis of excessive costs.



Background

1. On 29 December 2005, Mr Wilson wrote to the College and made 21 separate requests for information relating to an ongoing dispute between the College and himself.
2. On 23 January 2006, the College informed Mr Wilson that to respond to his requests for information would exceed the prescribed amount of £600 set out in the Fees Regulations and that, under section 12(1) of FOISA, it was not obliged to respond to his requests. It should be noted here that the College arrived at its estimate of charges applicable to Mr Wilson by aggregating the cost of responding to his 21 requests for information.
3. On 28 January 2006, Mr Wilson wrote to the College requesting a review of its decision. In particular, Mr Wilson requested that the College reconsider the cost of responding to his requests.
4. On 22 February 2006, the College wrote to notify Mr Wilson of the outcome of its review. In the main, the College upheld its original decision; however, it disclosed some information to Mr Wilson on the basis that it constituted personal data relating to him under the terms of the Data Protection Act 1998.
5. On 9 March 2006, Mr Wilson wrote to my Office, stating that he was dissatisfied with the outcome of the College's review and applying to me for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Wilson had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request.
7. The case was allocated to an investigating officer and on 6 April 2006 the College was given notice under section 49(3)(a) of FOISA that an application had been received from Mr Wilson and the College was required to provide my Office with specified items of information for the purposes of the investigation.



The Investigation

8. In its response dated 19 April 2006, the College provided the investigating officer with a breakdown of the cost of responding to Mr Wilson's requests (cost estimate 1).
9. The investigating officer wrote again to the College on 1 June 2006, noting that it had stated in cost estimate 1 that to respond to Mr Wilson's first request would cost between £525 and £675. Given that the College had a duty to respond to a request costing £525, but not to a request costing £675, the Officer then requested that the College provide an exact estimate of the cost of responding to that request. The investigating officer also asked for further details of the process of locating, retrieving and providing the information which Mr Wilson had requested.
10. The College responded on 13 June 2006, specifying that it estimated Mr Wilson's first request for information to cost £600 exactly, and provided some information about the process it used to arrive at that figure. It provided my office with slightly more detailed information relating to the process it anticipated using to locate, retrieve, and provide the information which Mr Wilson requested.
11. In response, the investigating officer pointed out that, under the Fees Regulations, Scottish public authorities are unable to aggregate the charges for responding to separate requests for information made by the same individual. The investigating officer therefore requested that it provide my office with a revised estimate of charges for responding to Mr Wilson's request detailing the estimated cost of responding to each of Mr Wilson's 21 requests for information.
12. In its response of 28 July 2006, the College maintained that the Fees Regulations allowed it to aggregate the charges for responding to Mr Wilson's request. It provided detailed arguments to support its view.
13. The College provided me with samples of the documents requested by Mr Wilson on 19 October 2006.
14. There followed further correspondence between the College and my office relating to the aggregation of charges for responding to Mr Wilson's requests for information. The correspondence culminated in the College providing my office with a revised estimate of the charges for responding to Mr Wilson's requests for information (cost estimate 2) on 23 October 2006.



15. Cost estimate 2 contained a detailed analysis of the College's estimated charges for responding to Mr Wilson's request for information. This estimate provided significantly higher charges for responding to each of Mr Wilson's requests for information, with charges of over £1000 estimated for responding separately to three of Mr Wilson's 21 requests.
16. The Investigating Officer contacted the College on 17 January 2007 and 21 February 2007 requesting further comments in relation to cost estimate 2, particularly in relation to the difference in projected charges between cost estimates 1 and 2, the College's definition of "reading time" as set out in cost estimate 2, and the seniority of the individuals required to respond to Mr Wilson's request. The College provided detailed responses to those communications and raised a number of issues relating to the estimates. However, it maintained that its estimate of fees was correct.
17. On 2 April 2007 the College was asked for further comments relating to cost estimate 2. My office did not receive a response, and so on 25 May 2007 the College was issued with an information notice under section 50 of FOISA, requiring it to respond to the points raised in the letter of 20 April 2007 by no later than 8 June 2007.
18. The College responded to the information notice timeously and the investigation progressed. The College explained that it had failed to receive a copy of the letter to it dated 20 April 2007 and so could not respond to that letter. It stressed that it had met all other deadlines in relation to the case.
19. In its response to the notice sent under section 50 of FOISA, the College accepted my view on a number of points relating to its interpretation of the Fees Regulations. It also provided my office with a revised estimate of charges (cost estimate 3) which took account of the points which had been made. Cost estimate 3 drastically reduced the charges estimated to be payable by Mr Wilson and found that the provision of only 1 request (request number 17) would cost in excess of £600.
20. Following the College's response to the information notice, the investigating officer corresponded with both Mr Wilson and the College relating to their interpretation of Mr Wilson's requests. Both parties made detailed submissions on this point which I will address in my analysis and findings.
21. During the investigation, Mr Wilson also provided my office with detailed comments he had made relating to the dispute with the College. While the comments and submissions from Mr Wilson are not all relevant to the investigation under FOISA, I have considered them in order to ascertain what information Mr Wilson wished to acquire from the College



The Commissioner's Analysis and Findings

22. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Mr Wilson and the College and I am satisfied that no matter of relevance has been overlooked.
23. Before I go on to discuss the issues raised by Mr Wilson's application, I would like to set out the scope of my investigation. In this case, I will look only at whether the College was correct in estimating that it would cost over £600 to respond to each of Mr Wilson's requests for information. I will also discuss issues raised by the methods used by the College to estimate the cost of responding to Mr Wilson's requests.
24. I have ultimately found that the College was only correct in estimating that to respond to one of Mr Wilson's requests for information would cost over £600. I also wish to address the manner in which the College responded to Mr Wilson's requests for information.

The manner in which the College responded to Mr Wilson

25. It appears to me that the College misinterpreted a number of provisions in the Fees Regulations in estimating the cost of responding to Mr Wilson's requests. This led to some discrepancies in the College's first two estimates of the cost of responding to Mr Wilson.
26. The College aggregated the cost of responding to Mr Wilson's 21 requests for information. FOISA does not currently allow Scottish public authorities to aggregate one or more requests for information made by the same person. Although section 12(2)(a) of FOISA permits the Scottish Ministers to make regulations which would allow a public authority to aggregate the costs of responding to more than one request from the same person, no such regulations have been made. While Mr Wilson may have put all 21 requests for information in the same letter, the requests are not interconnected (although Mr Wilson may want the information for the same purpose) and I therefore consider that they should each be treated as a separate request for information.
27. The College also included the cost of determining whether it held certain information which Mr Wilson requested in calculating costs. However, regulation 3(2)(a)(i) of the Fees Regulations makes it clear that a public authority must not charge an applicant for the time taken to determine whether it holds the information requested.



28. The College also argued that it was entitled to include in its cost calculations the time spent reading a document if that time was also spent redacting or removing exempt information from the document. The College has maintained that the costs charged for reading time does not include the actual cost of considering whether the information should be released, in line with regulation 3(2)(a)(ii), but has argued that reading the document is a necessary part of providing a document.
29. It is clear that the Fees Regulations permit public authorities to charge for the cost of providing information. However, I do not accept that the term “providing” can be taken to include reading time of the documents. Instead, I consider that reading time is necessarily a part of considering whether a person is entitled to receive information. The Fees Regulations make it clear that no charge can be made for doing this.
30. What I do accept is that public authorities may charge for the purely administrative task of redacting documents. This may involve deleting sections from an electronic record or using a black marker pen to redact information from a physical record (and then, where necessary, copying the redacted version to ensure that no redacted information can be read). While I appreciate that it may be difficult for public authorities to estimate, firstly, what time will be spent considering whether an exemption should apply and, secondly, what time it will take to actually carry out those redactions (particularly where the same person will carry out both tasks), it is necessary for them to attempt to do so, given what the Fees Regulations say about what can and cannot be charged for. In any event, I note that the College was able to amend its estimates for responding to Mr Wilson’s requests in line with this approach.

The College’s revised estimate of charges

31. A great deal of correspondence was exchanged between my office and the College in relation to these points. This significantly delayed the progress of my investigation. However, towards the end of the investigation, the College accepted the points set out above and on 6 June 2007 provided me with cost estimate 3 which took account of these issues.
32. Cost estimate 3 showed that the College claimed that only one of the requests (request number 17) which Mr Wilson had made would cost in excess of £600. The College accepted that it would charge under £600 for each of the remaining 20 requests for information. As is set out below, I have accepted the College’s revised submission that to respond to request number 17 would cost over £600. However, in light of the charges estimated in cost estimate 3, I have required the College to respond to Mr Wilson’s remaining 20 requests for information in line with FOISA.



Section 15 of FOISA

33. Even if the College had been correct to refuse to deal with Mr Wilson's information requests on cost grounds, this does not remove a public authority's duty of responding to a request for information in line with the other provisions of FOISA, such as section 15 of FOISA in its response
34. Section 15 requires authorities to provide reasonable advice and assistance to a person who has made a request for information. Section 15(2) of FOISA indicates that if a public authority conforms with the guidance set out in the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 (commonly known as the Section 60 Code) then it is to be taken that the authority has complied with the duty imposed upon it by section 15(1) of FOISA. Similarly, paragraph 6 of the Section 60 Code sets out that where there is a significant departure from the approach to the provision of advice and assistance as set out in the code, an authority may be breaching its duties under section 15 of FOISA.
35. Paragraph 1 of Annex 3 of the section 60 Code states that, in line with their general duties to provide advice and assistance, authorities should consider how best to provide information in the most cost effective way. In paragraph 14 of Annex 3, it goes on to stipulate that authorities should consider what information could be released free of charge or below the prescribed amount (£600).
36. It is clear that communications between Mr Wilson and the College broke down to some extent during the process of Mr Wilson's request. In investigating Mr Wilson's application, I could see no evidence that the College considered whether information could be provided to Mr Wilson under the prescribed amount. Additionally, where Mr Wilson's requests appeared to be unclear or repetitive, the College does not appear to have attempted to clarify what information Mr Wilson was looking for. As I have set out above, the College wrongly aggregated the cost of responding to Mr Wilson's requests and did not appear to recognise that one of Mr Wilson's requests was for information available in its own publication scheme.
37. For the reasons set out above, I am satisfied that in this case the College has breached section 15 of FOISA in the manner of its response to Mr Wilson's requests.
38. However, the College did ultimately accept my position relating to the fees chargeable for responding to requests for information and sent a revised copy of its estimate of fees on 6 June 2007, which took account of that position. In this estimate, the College significantly reduced its estimate of the amount it would cost to respond to Mr Wilson's requests for information, after having corrected the errors which had been identified during the investigation.



39. Because the College accepted my interpretation of the Fees Regulations, and revised its estimate of fees to take that into account, I do not require it to take any action as a result of its breach on this occasion.
40. I shall now go on to consider whether the College was correct to refuse to respond to Mr Wilson's 17th request for information on the basis of section 12(1) of FOISA.

Section 12(1) of FOISA: Excessive cost of compliance

41. As already noted, section 12 provides that a Scottish public authority need not comply with a request for information if the authority estimates that the cost of compliance will exceed the amount set out in regulation 5 of the Fees Regulations. The limit set by the Fees Regulations is currently £600.
42. The projected costs that the public authority can take into account are set out in regulation 3(1) of the Fees Regulations and are the total costs, whether direct or indirect, which the public authority reasonably estimates it will incur in locating, retrieving and providing the information requested.
43. In the revised estimate of fees (cost estimate 3, which I am satisfied complies with the Fees Regulations), the College estimated that to respond to Mr Wilson's 17th request would cost £661. Mr Wilson had requested copies of all assessments and outcomes of manual handling assessments carried out by the College from 1987 to the date on which he made his request, with outcomes listed along with the identity of the officer in charge of the assessment, and the staff and College Departments involved. I can appreciate that here, Mr Wilson made a request for a very large amount of information, and that to provide Mr Wilson with copies of all of that information would cost a significant amount.
44. Having examined in some detail the breakdown of charges applied to Mr Wilson's 17th request, I am satisfied that the revised estimate of charges provided to me by the College is an accurate estimate of the cost. I am therefore satisfied that the cost of responding to this particular request exceeds the maximum amount set down in regulation 5 of the Fees Regulations.
45. In cost estimate 3, the College accepted that responding to Mr Wilson's remaining 20 requests for information would cost, in each case, under £600. Therefore it has accepted that in its initial response to Mr Wilson's requests, in stating that to respond to these requests would cost in excess of £600, the College did not correctly apply section 12(1) of FOISA. As a result, I require the College to respond to the remaining 20 requests for information in line with the provisions of FOISA.



Decision

I find that Motherwell College (the College) failed to deal with Mr Wilson's requests for information in accordance with Part 1 of FOISA in that it breached the provisions of section 15 of FOISA in responding to Mr Wilson.

I find that the College was correct to apply section 12(1) of FOISA to Mr Wilson's 17th request. However, I find that the College failed to comply with Part 1 of FOISA in the manner in which it responded to the 20 remaining requests made by Mr Wilson. Given that to respond to each request would cost less than £600, I find that the College breached section 12(1) of FOISA in refusing to respond to these requests on cost grounds.

I therefore require the College to respond to the 20 remaining requests. I am required to give the College at least 42 (calendar) days to provide the information to Mr Wilson. In this case, I require it to respond to Mr Wilson within 45 (calendar) days of receipt of this decision notice.

Appeal

Should either Mr Wilson or the College 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
19 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.

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).

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.