

Decision Notice

Decision 160/2017: Mr Ashcroft and New College Lanarkshire

Research conducted and fund spending

Reference No: 201700742

Decision Date: 27 September 2017



Scottish Information
Commissioner

Summary

The College was asked for information relating to a staff member's internet searches and for organisations the College had provided funds to. The College responded, indicating that it considered the requests to be vexatious.

Following an investigation, during which she received further submissions, the Commissioner found that complying with the requests would exceed the cost limit and the College was not obliged to comply.

Relevant statutory provisions

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

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 3 (Projected costs) and 5 (Excessive cost - prescribed amount)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.

Background

1. On 4 November 2017, Mr Ashcroft wrote to New College Lanarkshire (the College), stating that he was a class representative for a particular College course. In relation to the College's spending from the bursaries of individual students, Mr Ashcroft asked for receipts, invoices and stock levels for equipment, tools and consumables purchased for a specific course. Following clarification, the College provided the information it held.
2. On 14 January 2017, Mr Ashcroft wrote to the College and made reference to a letter the College had sent to his local MSP (which had explained that the College's technician had spent a considerable amount of time researching suitable suppliers to obtain the equipment and tools for the course in question). Mr Ashcroft made a number of requests for information, again relating to the purchase of equipment and tools, and the College's contractual and legal obligations regarding providing value for money. This included the following request:

Please send me a copy of the technicians research of suitable suppliers including a complete internet history of any searches done during this research. (please do not pick and choose, i will need all of it, i will decide what is viable or not if you do not mind, as the first Freedom of info data set you sent me last year, was not what i asked for and not fit for purpose) (sic)
3. On 2 February 2017, the College responded to the other parts of Mr Ashcroft's request. In relation to the request in paragraph 2 above, however, the College advised that it considered the request to be vexatious in terms of section 14(1) of FOISA.

4. The College explained that it had already provided him with the information regarding the cost of tools and equipment and had explained its legal obligations and accountability for the use of public funds. In that context, it considered the request to be disproportionate and unjustified. Given the information already provided, it did not consider the level of disruption, in terms of the work and costs required to meet this aspect of the request, to be in the public interest.
5. On 11 February 2017, Mr Ashcroft wrote to the Council and commented that he was upset that his request had been deemed vexatious. He stated that the people he represented, agreed that there had been a lack of transparency, and that the people of Lanarkshire had come together to obtain the information. He commented that his plan was to engage with 30 parents from his student base and hand in separate requests for information, to which he expected further “unfounded” reasons for not responding. Mr Ashcroft also requested:
a list of all organizations, charities, businesses or groups that [the College] has provided funds too so far for the year Aug 2016 until the end of the academic year 2017 june.
To clarify i would like a list that provides company name and companies house registration number and a total amount of £’s please, this is for the whole of [the College]. (sic)
6. The College responded on 21 February 2017, stating that it considered his request of 11 February 2017 to be vexatious in terms of section 14(1) of FOISA. The College explained that it had already provided the financial information requested and explained its internal processes and its relationships with those charged with funding the College and auditing its finances. It stated that it considered the continuing tone, language and content of Mr Ashcroft’s emails (which is not repeated in full in this decision) indicated a pattern of behaviour that amounted to a desire to pursue an argument, rather than obtain information in the spirit of FOISA.
7. The College further explained that even if the request had not been considered to be vexatious, the cost of complying would exceed the £600 cost limit set under section 12(1) of FOISA, explaining that it engaged with over a thousand suppliers and other service providers on an annual basis and complying with the request would require a significant amount of information to be extracted manually.
8. On 22 February 2017, Mr Ashcroft wrote to the College, requesting a review of the College’s responses. He explained that he required the information requested to disprove the terms of the letter the College had sent to his local MSP. Mr Ashcroft explained that he disagreed that his requests were vexatious.
9. The College notified Mr Ashcroft of the outcome of its review on 16 March 2017. The College provided further explanation of its handling of Mr Ashcroft’s requests and maintained that requests under consideration in this decision were considered vexatious. It also maintained that the cost of responding to the request of 11 February 2017 would exceed the cost limit under section 12(1) of FOISA.
10. On 24 April 2017, Mr Ashcroft wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Ashcroft stated he was dissatisfied with the College’s response to his requirement for review, and explained why. In effect, he disputed the application of sections 12(1) and 14(1) of FOISA.

Investigation

11. The application was accepted as valid. The Commissioner confirmed that Mr Ashcroft made requests for information to a Scottish public authority and asked the authority to review its responses to those requests before applying to her for a decision. Having considered the content of Mr Ashcroft's requirement for review of 22 February 2017, the Commissioner finds that this can only be considered as expressing his dissatisfaction with the College's response to the requests it considered to be vexatious. As such, the Commissioner's investigation is limited to the two requests outlined above.
12. On 23 June 2017, the College was notified in writing that Mr Ashcroft had made a valid application. The case was allocated to an investigating officer.
13. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The College was invited to comment on this application and answer specific questions, with specific reference to the requirements of sections 12(1) and 14(1) of FOISA.
14. The College responded with submissions to the effect that it considered the requests to be vexatious under section 14(1) of FOISA. It further submitted that its main consideration in deciding that the requests were vexatious was the cost of complying, accepting that it may have been better to have responded to Mr Ashcroft's requests under section 12(1) of FOISA.
15. Mr Ashcroft did not accept that the provision of the information requested would exceed the cost limit, stating that he believed the information should be readily accessible for audit purposes.

Commissioner's analysis and findings

16. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to her by both Mr Ashcroft and the College. She is satisfied that no matter of relevance has been overlooked.
17. As noted above, while providing submissions as to why it considered the requests to be vexatious, the College submitted that it would perhaps have been better to respond to Mr Ashcroft in terms of section 12(1) of FOISA, as cost of responding was the most significant driver in concluding the requests were vexatious. Having considered all of the submissions by the College, the Commissioner will determine first whether section 12(1) applies.

Section 12(1) – excessive cost of compliance

18. Section 12(1) 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 she find that the cost of responding to a request for that information would exceed this sum.
19. 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.

20. The College submitted that section 12(1) applied to those parts of Mr Ashcroft's requests it had considered to be vexatious. It argued that the cost of locating, retrieving and providing that information would exceed the £600 cost limit.
21. Mr Ashcroft provided submissions to the effect that the College should be able to extract the information requested from its systems, as this would be collated for the College auditors, and disagreed that the cost would be excessive.
22. The College explained that to identify and locate the information requested on 14 January 2107 would involve extracting the technician's available internet history from its web filtering software.
23. The College submitted that the software used by the College operates automatically and stores the URL (Uniform Resource Locator) data relating to individual users' use of the internet. It explained that the software does not record the actual "pages" visited, but records the URL of every object on a page with an attached URL, with each URL being recorded separately. It submitted, therefore, that it would not be a straightforward process to identify individual pages viewed or the actual searches performed.
24. The College explained that the data search would return every URL on a page, rather than just those clicked or viewed in detail by the technician, and that to determine what aspects of the technician's search history or wider internet use might relate to Mr Ashcroft's specific request would require each URL to be visited and checked.
25. The College explained that a reasonable period of time for the technician to be engaged in sourcing equipment for an academic year would be 6 months. The College provided the Commissioner with an example that, over a period of 6 months, the web history for the technician in question ran to some 65,861 URL's. The College explained that in order to extract the information requested would require each URL to be viewed.
26. The College submitted that it had calculated each page would take two minutes to review, giving a total time to review the individual pages of 131,722 minutes, or 2,195 hours. It advised that even using the basic hourly rate for an ICT technician of £12.42 (before any on-costs), this would amount to a cost of at least £27,000 [£27,266.45].
27. In relation Mr Ashcroft's request of 11 February 2017, for the list of charities, businesses or groups to which the College provided funds over the specified period, with Companies House numbers, the College again submitted that the cost of complying would exceed the prescribed limit.
28. The College explained that to supply the information requested would require it to run monthly reports which would show supplier codes, purchase order numbers, invoice numbers and transaction amounts, along with a full supplier list. It estimated that to do this would take approximately five hours to consider each monthly report. The College submitted, therefore, that for a 12 month period the time involved would be 60 hours.
29. The College further explained that to identify the Company Number of each supplier, it would need to manually review the scanned or paper invoices held by the finance function. It considered that it would take approximately five minutes per supplier to work between the transaction/supplier report and the electronic scanned invoices to locate the last payment, check for a Company Number and then enter this Company Number on the transaction /

supplier spreadsheet. It explained that with at least 1,000 suppliers, this would equate to 5,000 minutes or 83 hours.

30. The College submitted that the estimated time of 143 hours to provide Mr Ashcroft with the information requested, taking the basic hourly rate of a Finance Assistant of £11.47 (before on-costs), would cost a total of £1,640.21.
31. The Commissioner notes, however, that at the time Mr Ashcroft made his request (11 February 2017) the College would only hold 6 months' data, from August 2016 to January 2017. Taking account of this, she considers that the time required would equate to approximately 113 hours, or a total cost of £1296.11.
32. The Commissioner has considered these submissions carefully. Taking account of all the circumstances, she is satisfied that the College has provided a reasonable estimate of the cost of complying with Mr Ashcroft's requests for information. Given the nature and content of the work required, the Commissioner accepts that neither of the requests under consideration in this decision could have been responded to within the £600 limit.
33. Consequently, the Commissioner is satisfied that complying with each of Mr Ashcroft's requests would exceed £600. As such, the College was not obliged, under section 12(1) of FOISA, to comply with these requests.
34. Given that the Commissioner is satisfied that the College was not obliged to comply with the requests as the cost would exceed the cost limit, she is not required to (and will not) go on to consider whether section 14(1) of FOISA also applies.

Decision

The Commissioner finds that New College Lanarkshire complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr Ashcroft.

Appeal

Should either Mr Ashcroft or New College Lanarkshire 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
Acting Scottish Information Commissioner

27 September 2017

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.

...

- (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.

...

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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