

Decision Notice

Decision 116/2018 Mr L and the Scottish Prison Service

Expenses of Prison Governors

Reference No: 201800771

Decision Date: 6 August 2018



Scottish Information
Commissioner

Summary

The SPS was asked for a breakdown of expenses claimed by prison governors over the last three years, including the name of claimant, the amount, the reason for the expense and the date it was incurred. The SPS refused to comply with the request, stating that it would cost in excess of the £600 limit.

The Commissioner found that complying with the request would exceed the cost limit and that the SPS was not obliged to comply with the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance)

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

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

Background

1. On 21 February 2018, Mr L made a request for information to the Scottish Prison Service (the SPS). The information requested was “a breakdown of expenses claimed by prison governors over the past three years. For each expense claimed, please provide name of claimant, amount, reason for expense and date incurred”.
2. The SPS responded on 21 March 2018, informing Mr L that it would cost in excess of £600 to fulfil his request and, therefore, by virtue of section 12 of FOISA, it was not obliged to comply with that request. The SPS provided Mr L with details of how it had reached that conclusion.
3. On 21 March 2018, Mr L wrote to the SPS requesting a review of its decision.
4. The SPS notified Mr L of the outcome of its review on 19 April 2018, upholding its original response without modification. The SPS explained: “our financial records do not require that we record the name of the individual making the claim”.
5. On 3 May 2018, Mr L wrote to the Commissioner, stating that he was dissatisfied with the outcome of the SPS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr L was dissatisfied with the outcome of the SPS's review because he believed that, as a publicly-funded body, the SPS should be able to readily account for its spending, including expenses incurred by those who run Scotland's prisons. Mr L believed that the SPS should have systems in place to retrieve this information quickly and the fact that this appeared not to be the case should not be a barrier to full disclosure.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr L made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SPS was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA it considered applicable to the information requested.
8. The SPS provided submissions in relation to the cost of providing the information requested by Mr L, which are considered below.

Commissioner's analysis and findings

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

Section 12(1) - excessive cost of compliance

10. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information where the estimated cost of doing so would exceed the relevant amount prescribed in the Fees Regulations. This amount is currently set at £600 in terms of regulation 5 of the Fees Regulations. Consequently, the Commissioner has no power to require the release of information should he find that the cost of doing so would exceed £600.
11. The projected costs the public 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, the authority reasonably estimates it is likely to incur in:
 - (i) locating
 - (ii) retrieving, and
 - (iii) providingthe information requested in accordance with Part 1 of FOISA. The maximum rate a Scottish public authority can charge for staff time is £15 per hour.
12. The public 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.
13. The SPS was asked by the Commissioner to explain how it had estimated the cost of complying with Mr L's request.
14. The SPS explained that there are currently 13 public sector prisons and those prisons will have had changes of Governor and/or Deputy Governor in the preceding three years. (To assist, the SPS estimated that there had been changes in perhaps ten of the prisons in the past three years.) The number of individuals who have been Governors or Deputy Governors in the past three years was therefore more than 30.

15. The SPS was asked why it had considered information about Deputy Governors, as Mr L's request referred only to Governors. The SPS replied that it interpreted the request to be for information about those persons with the term "Governor" in the title of their role (i.e. "Deputy Governor"). It stated that this was not unreasonable as (in its view) Mr L clearly understood that such individuals are the most senior in a prison. It also submitted that some Deputy Governors had been Acting Governors in the period covered by Mr L's request.
16. Mr L told the Commissioner that he had intended his request to apply only to Governors - not to Deputy Governors.
17. The Commissioner's view is that the words used in an information request should generally be given their plain, ordinary meaning and that requests should be interpreted in an objective manner. An ordinary and natural reading of "expenses claimed by prison governors" would refer solely to those persons with the title of Governor. In the Commissioner's view, it would be more reasonable to interpret the request to relate only to Governors and Acting Governors. He would expect most applicants wishing information about Deputy Governors to refer to them as such, and that Mr L would have done so, had he intended the information covered by his request to extend to the expense claims of Deputy Governors.
18. In what follows, therefore, the Commissioner has considered whether the cost of providing information about the expenses of Governors and Acting Governors for the last three years would exceed £600. The SPS has stated that 26 individuals have served as Governor or Acting Governor during that period.
19. The SPS explained that its financial systems record all financial transactions, which are coded in relation to expenses claimed by all staff in accordance with SPS policy. The SPS provided an extract of 400 entries relating to expense claims from staff for the month of April 2018. The SPS said that the system on which these records are held was "unable to be interrogated by free text search" – that is, it could not be searched by name of Governor. Although some of the entries contain a Governor's name, the SPS indicated that this was not consistent: there is no requirement to record the name of the claimant, so the ability to identify a claimant from an entry on the database depended on how the person creating the record had chosen to describe it on the system. For this reason, the SPS did not consider that the data in the financial system could be relied upon to identify the information requested by Mr L.
20. The SPS said that information about Governor's expenses will be held on hard copy records, which would have to be extracted from the paper files at each prison. For some individuals, this would involve the interrogation of the hard copy files at more than one prison.
21. Although the SPS said it would not use its financial system to provide the information, it used that system to create a cost estimate. The SPS carried out a keyword search of records from April 2018 to try to identify whether one particular Governor had made any expenses claims in that month. The SPS submitted that it took a senior individual with knowledge of the database and Governors around three minutes to scan 400 entries.
22. The SPS was asked by the Commissioner if time and cost could be reduced by searching a PDF copy of the records, using the search function for this file type so that entries containing the names of the Governors could be quickly located. It was suggested to the SPS that this would save time and therefore cost.
23. The SPS argued that this suggestion was flawed, because the information in the PDF would come from the text fields in the database, and there was no obligation for these entries to

contain the name of the claimant. The SPS reiterated that it “could not be certain that all the expenses claims could be obtained from this analysis and that this is all of the information that is held”. The SPS explained that the name of the individual claiming an expense was not required to be recorded centrally, because any audit would be conducted at the establishment (i.e. prison) level.

24. The SPS also noted that the above search strategy did not take into account the time to locate any expenses paid through payroll. Such expenses would not appear in the PDF sample. The expenses paid through payroll are agreed for a specific period and involve one application (e.g. excess journey allowance for three years). They are different from a claim for travelling, subsistence, incidental or accommodation expenses.
25. The Commissioner accepts that, in order to provide all the information covered by Mr L's request, the SPS would need to extract information from its hardcopy records at each prison. The Commissioner accepts that the information held in the SPS's central financial database would provide an incomplete record. The Commissioner noted that many records in the sample provided to him included the claimant's name, but he accepts that there is no requirement for the name to be included when the data is entered on the system.
26. Having accepted that the SPS would therefore have to extract the information covering the last three years from hardcopy records at each prison, the Commissioner considered whether there was any way in which the time and cost of this exercise could be reduced.
27. The SPS submitted that there was no way to differentiate a Governor's expenses from other staff expenses other than looking through all hardcopy records and extracting and copying the relevant information.
28. Having accepted that a search of the hardcopy records would be required to locate the information covered by Mr L's request, the Commissioner must now consider whether the cost of doing so would exceed £600.
29. The initial response to Mr L referred to more than 6,000 expense claims processed. In its submission to the Commissioner, the SPS referred to 18,000 entries in its financial system. It clarified that the 6,000 claims referred to in its initial response were the number of claims received per year and the 18,000 is the estimated total for the three year period covered by Mr L's request.
30. The Commissioner accepts that, in terms of staff time, the cost of examining around 18,000 hard copy records to identify relevant information for the 26 individuals who have held the post of Governor or Acting Governor would exceed £600. Additionally, the SPS would have to search its payroll system for information about expenses which were paid through that mechanism. (The SPS explained why this additional search would be required, but did not estimate the cost.)
31. In his application to the Commissioner, Mr L stated that the SPS should be able to readily account for its spending, including expenses incurred by those who run Scotland's prisons, and he believed that it should have systems in place to retrieve this information quickly. He argued that, although this appears not to be the case, it should not be a barrier to full disclosure.
32. The SPS commented that Mr L “erroneously suggests that, in light of the responsible position of Governors, that the record of their claims should in some way be more readily identifiable or recorded separately” and that the inability of the SPS to do this is a failure. The SPS stated that it has the ability to record and audit expenditure and the systems in place are the

systems used by all from the most junior of staff to the most senior, including the Chief Executive. It stated that the SPS is subject to the same financial controls and audits as other public bodies and at no point has the need to record information otherwise been recommended.

33. It is not uncommon for organisations to proactively publish the expenses of senior staff, in order to increase transparency and accountability. The SPS has indicated to the Commissioner that it would like to be able to disclose such information. Nonetheless, as stated in previous decisions, the Commissioner's remit extends only to the consideration of whether a Scottish public authority has complied with Part 1 of FOISA (or with the Environmental Information (Scotland) Regulations 2004) in responding to a request. The Commissioner cannot comment on whether or prescribe that a Scottish public authority should record or hold information about expenses or hold it in a way that allows the authority to retrieve it easily. The Commissioner cannot require the SPS to organise or store its information in a way which would permit disclosure under FOISA.

Section 15 - Duty to advise and assist

34. Section 15(1) requires a Scottish public authority, so far as reasonable to expect it to do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. Section 15(2) states that a Scottish public authority which, in relation to the provision of advice and assistance in any case, conforms with the Section 60 Code, is taken to comply with the duty to provide reasonable advice and assistance in section 15(1).

35. The Section 60 Code, which is The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the Environmental Information (Scotland) Regulations 2004¹ provides (at 9.4.3):

“When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been exceeded. Any narrowed request would be a separate new request and should be responded to accordingly.”

36. The SPS submitted that it took reasonable steps to assist Mr L. It explained to him in its initial response that he might narrow his request by reducing the time period covered by the request or by focusing on a particular prison. The SPS listed the most common expenses for which claims are submitted and provided a copy of the policy which sets out what expenses can be claimed by its staff. The SPS submitted that it had demonstrated that:

- (i) Governors are subject to the same policy as all staff;
- (ii) there are no separate recording systems for them; and therefore
- (iii) there is no requirement for a differentiation in treatment.

37. The Commissioner acknowledges that the information which the SPS provided to Mr L will be of some assistance if he wishes to make a narrower request. The Commissioner accepts that the terms of the SPS's response and review response was sufficient to discharge its obligation under section 15 of FOISA to provide reasonable advice and assistance.

¹ <http://www.gov.scot/Resource/0051/00510851.pdf>

However, he remains critical of the SPS's decision to widen the terms of the request to include Deputy Governors without consulting Mr L.

Decision

The Commissioner finds that the Scottish Prison Service complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr L.

Appeal

Should either Mr L or the SPS wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement

6 August 2018

Appendix 1: 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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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

3 Projected costs

- (1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.
- (2) In estimating projected costs-
 - (a) no account shall be taken of costs incurred in determining-
 - (i) whether the authority holds the information specified in the request; or
 - (ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and
 - (b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

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

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