Decision Notice

Decision 200/2013 Mr Giuseppe De Santis and Aberdeen City Council

Nationality/ethnicity data for housing benefit claimants

Reference No: 201301235
Decision Date: 12 September 2013

www.itspublicknowledge.info

Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610

Summary

On 16 April 2013, Mr De Santis asked Aberdeen City Council (the Council) for details of the nationality or ethnicity of the city's housing benefit claimants. The Council advised Mr De Santis that it was not required to comply with his request, because the cost of doing so would exceed the specified limit of £600. After investigation, the Commissioner accepted this was correct.

Relevant statutory provisions

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

Background

1.   On 16 April 2013, Mr De Santis wrote to the Council requesting the nationalities or ethnicities (whichever was available) of the city's housing benefit claimants.

2.   The Council responded on 18 April 2013. It estimated the cost of locating, retrieving and providing this information to exceed £600. Consequently, it gave Mr De Santis notice that, by virtue of section 12(1) of FOISA, it was not obliged to comply with his request. The Council explained that information on nationality was collected on housing benefit claim forms, but not transferred to its IT system, so each individual form would have to be looked at. It explained the work that would be involved.

3.   The Council invited Mr De Santis to contact it, to discuss ways in which his request could be refined so that some information could be provided within the cost limit.

4.   On 21 April 2013, Mr De Santis wrote to the Council requesting a review of its decision. In particular, Mr De Santis stated that he believed the information should be online (and in any event, readily available).

5.   The Council notified Mr De Santis of the outcome of its review on 21 May 2013, upholding its original decision.

6.   On 22 May 2013, Mr De Santis wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.

7.   The application was validated by establishing that Mr De Santis made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

8.   The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). In particular, the Council was asked to respond to specific questions, with a view to justifying its reliance on section 12(1) of FOISA.

9.   The investigating officer also spoke to a member of staff from the Council's Equalities Team.

Commissioner's analysis and findings

10.   In coming to a decision on this matter, the Commissioner considered the relevant submissions, or parts of submissions, made to her by both Mr De Santis and the Council. She is satisfied that no matter of relevance has been overlooked.

Section 12(1) - excessive cost of compliance

11.   The Council submitted that it was not obliged to comply with Mr De Santis' request because doing so would cost in excess of £600. Section 12(1) of FOISA provides that a Scottish public authority is not obliged to comply with a request for information if the authority estimates that the cost of doing so will exceed the amount set in the Fees Regulations for that purpose (currently £600). The Commissioner has no power to require the disclosure of information should she find that the cost of responding to a request exceeds this amount.

12. The projected costs that the public authority can take into account in relation to the request for information are, according to regulation 3 of the Fees Regulations, the total costs (whether direct or indirect) the authority reasonably estimates it will 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 or (ii) whether or not it should provide the information. The maximum hourly rate a public authority can charge for staff time is £15 an hour.

13. The Council submitted that it did not hold the requested information in a way which was easy to report on. It explained that, while a claimant's nationality was asked for on the housing benefit claim form, it was not recorded on the IT system it used for assessing claims. The Council stated that there was no legislative requirement for it to record the information in such a way.

14. The Council went on to explain that in order to provide the information requested, each individual claim form would need to be looked at by a member of staff. There were approximately 15,000 current housing benefit claims. The Council estimated that it would take approximately two minutes per form to check and record the information at a cost of £10.40 per hour in staff time. The retrieved information would then need to be collated and presented in a meaningful format, the Council submitted, which it estimated would take an additional two hours. The total estimated cost of compliance, therefore, would be £5,220.80.

15. All of the above was explained to Mr De Santis in responding to his request. During the investigation, the Council confirmed that it required the nationality information for certain eligibility checks, but did not collect information on the nationality or ethnicity of claimants for statistical or any other purposes. Consequently, the information was held only on the scanned claim forms (for as long as it was required) and not in any other format from which it could readily be extracted.

16. The investigating officer spoke to a member of staff in the Council's Equalities Team, who confirmed that the nationality information obtained from housing benefit claimants was not passed on to the Equalities Team for recording and monitoring. She said that the Council was working towards getting all Council departments to channel equalities statistics through one portal (the Equalities Team) for ease of collation, which would hopefully make such requests less expensive to respond to in future.

17. Mr De Santis stated that other councils had provided him with this information, although he also acknowledged that two had declined to do so under section 12(1) of FOISA. He believed the Council should be able to provide the information readily.

The Commissioner's conclusions

18. The Commissioner would emphasise that it is not within her remit to compel public authorities to collate and store their data in a specific, readily retrievable format, whatever benefit there may be in doing so. However, she is pleased to note the steps being taken to channel equalities statistics through a single point.

19. In this case, the Commissioner has considered the Council's submissions. Given the purposes for which the information is collected, the Council's submissions on the way in which it is held appear reasonable. The time and hourly rate allowed for the work also appear reasonable in the circumstances.

20. In all the circumstances, the Commissioner is satisfied that identifying, locating and providing the information to Mr De Santis would incur costs in excess of £600. Therefore, she accepts that the Council was entitled to rely upon section 12(1) of FOISA in relation to Mr De Santis' request for information.
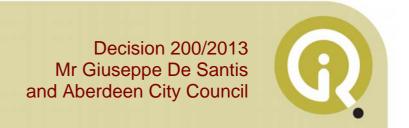
Section 15 – the duty to advise and assist

21. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person who has made, or proposes to make, a request for information to it. The Scottish Ministers' *Code of Practice on the discharge of functions by Scottish Public Authorities under FOISA and the Environmental Information Scotland Regulations 2004* includes guidance that, where section 12(1) applies, public authorities "may consider what information could be provided below the cost limit, and suggest how the applicant may wish to narrow the scope of their request accordingly."[1]

22. The Council invited Mr De Santis to contact it to discuss ways in which his request could be refined so that some information could be provided within the cost limit. The Commissioner is satisfied that in doing this the Council discharged its duty under section 15 of FOISA.

23. Although Mr De Santis did not take this invitation up at the time it was made, he could still do so.

DECISION

The Commissioner finds that Aberdeen City Council complied with the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr De Santis.

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[1] See paragraph 1.9 in Part 2 of the Code at http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf

Appeal

Should either Mr De Santis or Aberdeen City Council 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 after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement
12 September 2013

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.
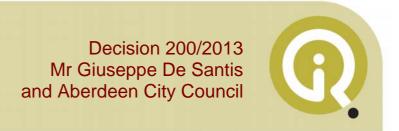
…

(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.