



Scottish Information  
Commissioner

**Decision 002/2007 Mr Jock Meikle and the Scottish  
Executive**

*Procurement of vessel for the Scottish Fisheries Protection Agency*

**Applicant: Mr Jock Meikle  
Authority: Scottish Executive  
Case No: 200502989  
Decision Date: 9 January 2007**

**Kevin Dunion  
Scottish Information Commissioner**

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## Decision 002/2007 Mr Jock Meikle and the Scottish Executive

### *Request for tender documents, correspondence between Ministers and background information relating to the procurement of a vessel for the Scottish Fisheries Protection Agency*

#### Relevant Statutory Provisions and Other Sources

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

Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 regulations 3 and 5.

#### Facts

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Mr Meikle requested from the Scottish Executive (the Executive) all the tender documents submitted for the procurements of vessels for Caledonian MacBrayne (CalMac) and the Scottish Fisheries Protection Agency (SFPA) which were concluded in late 2005. Mr Meikle also requested all correspondence between Ministers and the rationale behind which tenderers should be given the job. In addition, Mr Meikle requested information about which Minister made the final decision.

The Executive explained that it did not hold information relating to the CalMac vessel procurement and withheld the remaining information under section 30(b)(i) of the Freedom of Information (Scotland) Act 2002 (FOISA).

Mr Meikle agreed to pursue information relating to CalMac separately but requested the Executive review its decision with regard to the remainder of his request.

The Executive upheld this decision on review and cited further exemptions in withholding the information requested.

Mr Meikle was dissatisfied with the outcome of the Executive's internal review and applied to the Commissioner for a decision.



During the investigation the Executive advised that the cost of providing this information would, in relation to part of the request under consideration in this decision, exceed the limit of £600 prescribed in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) and therefore that it was not required to comply with the requests by virtue of section 12(1) of FOISA.

After investigation, the Commissioner found that the Executive had dealt with Mr Meikle's request in accordance with Part 1 of FOISA. The Commissioner concluded that the cost to the Executive in dealing with Mr Meikle's request would be in excess of £600.

## Background

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1. On 19 August 2005 Mr Meikle requested by letter from the Executive (through the First Minister) information relating to the recent procurement of a CalMac ferry and an SFPA vessel. Mr Meikle specifically requested:  
  
*"...the tender documents from all tenderers for the recent Calmac ferry and shipping protection ships and all correspondence between Ministers and the thinking process about which tenderers should be given the job. Also which Minister made the final decision?"*
2. The Executive replied to Mr Meikle's request on 13 September 2005. In its response the Executive divided Mr Meikle's request into four separate requests:
  - All tender documents submitted for the recent Calmac ferry and SFPA vessels;
  - all correspondence between Ministers;
  - the thinking process about which tenderers should be given the job; and
  - which Minister made the final decision.
3. The Executive explained that it did not hold the tender documents relating to the new CalMac vessel and suggested Mr Meikle contact CalMac directly on this matter. With regard to the SFPA vessel, the Executive explained that although a preferred bidder (whose name it provided to Mr Meikle) had been identified no contract had been awarded at that time of his request.



4. The Executive decided that the public interest lay in the financial interests of the Executive and the commercial interests of the tenderers being protected and withheld the tender documents on this basis. However, the Executive highlighted that some information relating to the tenders would be made available once a contract had been awarded, in line with the relevant guidance on procurement and FOI.
5. The Executive also withheld all correspondence between Ministers relating to the award of contract under section 30(b)(i) of FOISA, arguing that the public interest in maintaining this exemption outweighed that in disclosing the information. In relation to the remaining questions it referred only to the CalMac procurement, reiterating that these were matters for the company.
6. Mr Meikle was dissatisfied with this response and submitted a request for review by e-mail on 15 September 2005. He requested that the Executive provide him with further reasoning behind its application of the public interest test in withholding information.
7. Mr Meikle also acknowledged the Executive's statement that it did not hold the information he had requested relating to the CalMac procurement and agreed to pursue CalMac separately.
8. The Executive responded to Mr Meikle's request for review on 14 October 2005. The Executive confirmed that it held tender documents relating to the SFPA vessel procurement and withheld this information under sections 33(1)(b) and 33(2)(b) of FOISA.
9. With regard to Mr Meikle's request for all correspondence between Ministers relating to the award of this contract, the Executive confirmed its reliance on section 30(b)(i) of FOISA in withholding the information and cited further exemptions, namely sections 30(b)(ii), 33(1)(b), 33(2)(b) and 30(a) of FOISA.
10. With regard to the "thinking process about which tenderers should be given the job" the Executive interpreted this as being wider than correspondence between Ministers, embracing the flow of information between officials and between officials and Ministers. The Executive confirmed that it only held this information with regard to the SFPA vessels and withheld this information on the same grounds as above (sections 30(a), 30(b)(i), 30(b)(ii), 33(1)(b) and 33(2)(b) of FOISA).
11. With regard to Mr Meikle's request for details of which Minister made the final decision, the Executive stressed that although a preferred bidder had been identified the final decision to award the SFPA contract had not yet been made. In addition, the Executive cited section 30(a) in withholding further details of Ministerial involvement, on the basis that in law any relevant ministerial act would be a collective act of the Scottish Ministers.



12. In relation to all exemptions cited, the Executive considered the public interest and in each case concluded that it favoured the maintenance of the relevant exemption.
13. Mr Meikle contacted this Office on 2 November 2005, stating his dissatisfaction with the outcome of the Executive's review. In his letter, Mr Meikle argued that the public interest lay in the reasoning behind the award of the contract being transparent and in allowing examination as to whether Ministers weighed up all the information and options before placing the order in Poland.
14. The case was then allocated to an investigating officer and the application validated by establishing that Mr Meikle 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 his request.

## The Investigation

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15. A letter was sent to the Executive on 13 December 2005, giving notice that an appeal had been received and an investigation into the matter had begun. The Executive was invited to comment on matters raised by the applicant and on the application as a whole, in accordance with section 49(3) of FOISA. In particular, it was asked to provide copies of the information withheld, along with detailed analysis of its application of the relevant exemptions.
16. The Executive replied on 23 January 2006 enclosing its statements on the case and supporting documentation.
17. In its response to my Office the Executive provided a summary document about the procurement process which it hoped might facilitate settlement of the case "given the complexities and the volume of documents concerned".
18. My investigating officer provided Mr Meikle with a copy of this document. Following consideration Mr Meikle indicated that he was not satisfied that this document fulfilled the requirements of his original request.
19. On 14 September 2006, my investigating officer contacted the Executive seeking its submissions on the cost of complying with the element of Mr Meikle's request relating to the "thinking process" underlying the award of contract and how this would be calculated. This had not been raised by the Executive, but it appeared from examination of the details provided in its submissions that the issue of cost might be relevant to Mr Meikle's request.



20. As a consequence of its calculation of the projected costs of complying, which it submitted to the investigating officer on 10 October 2006, the Executive considered that section 12 of FOISA applied to Mr Meikle's request.

## **The Commissioner's Analysis and Findings**

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21. 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 Meikle and the Executive and I am satisfied that no matter of relevance has been overlooked.

### **Background Information**

22. At the time of Mr Meikle's request the tendering process for the SFPA vessel was incomplete. On 4 August 2005 the Executive had announced a Polish company called Remontowa as the "preferred bidder" for the vessel, but the contract had not been awarded at that stage.
23. There was considerable public interest in the outcome of the tendering exercise as there were concerns over the order book status of a Scottish yard (Fergusons of Port Glasgow) which was bidding for the order. There was a local campaign to safeguard the future of Fergusons by securing orders for new ships. In addition, a formal complaint had been lodged with the EU by Fergusons, alleging payment of unfair/illegal subsidies to Remontowa (which following investigation was not upheld).

### **The thinking process about which tenderers should be given the job-application of section 12 of FOISA**

24. In its submissions to my Office the Executive explained that it was compiling a detailed summary setting out the processes behind the award of this and related SFPA contracts, to facilitate public understanding of the process and EU procurement requirements. This would be made available on the Executive's website once complete and Mr Meikle would be provided with a copy.



25. The Executive interpreted this element of Mr Meikle's request as an explanation of the processes involved and considered that this summary document should now satisfy part of his request. The Executive argued that this summary document, which is available at <http://www.sfpa.gov.uk/procurement.asp?ID=1>, provided an overview of the "thinking processes" which should be of greater assistance in providing Mr Meikle with the understanding he required than access to the whole range of voluminous and complex documents. While it was not provided within the relevant timescales for complying with Mr Meikle's request for information or his request for review, I accept that this was a genuine attempt to provide advice and assistance in relation to the request for the purposes of section 15 of FOISA.
26. The Executive highlighted that if Mr Meikle considered the document insufficient that it would be willing to provide my Office with copies of all the relevant internal documentation.
27. In light of the above, my investigating officer provided Mr Meikle with a copy of the document described above and requested his comments. Mr Meikle, in his response to my Office indicated that this paper did not satisfy this element of his request.
28. On 14 September 2006, my investigating officer contacted the Executive again seeking its submissions on the cost of complying with this element of Mr Meikle's request and how this would be calculated. This had not been raised by the Executive, but it appeared from a description of the information withheld that it might be relevant to the request.
29. Where the estimated cost to a Scottish public authority of complying with an information request is more than £600, the authority is not required to comply with the request (section 12 of FOISA and regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations)).
30. As a public authority cannot be required to comply with an information request where the cost of doing so would be more than £600, I cannot require a public authority to release information where I am satisfied that the £600 cost threshold will be exceeded.
31. The Executive responded to my Office on 10 October 2006 and concluded that the cost in dealing with this element of Mr Meikle's request would exceed the £600 limit.
32. The Executive provided a detailed breakdown of costs that would be incurred by three separate departments in collating the data required to comply with Mr Meikle's request.





33. Firstly, the Ferries Division estimated that it would require 3 days work from an employee on B1 pay scale (£17,000-£22,791) to provide its input into the response. This would equate to £333 (with the hourly rate capped at £15 an hour), with an additional copying cost of £5. The resulting cost to the Ferries Division would be £338.
34. The information required from the Manufacturing Policy Branch of the Enterprise and Industry Division was estimated to require 4 days work at the maximum rate of £15 an hour for a member of staff employed at B1 level. An additional copying charge of £15 would be incurred, resulting in a total divisional cost of £465.
35. The greatest part of the work necessary to identify relevant papers fell to the SFPA. The SFPA project team co-ordinating the procurement exercise maintained a file of papers relating to the procurement. Due to the ongoing nature of the procurement, however, a number of emails had not reached the file at the time of the request. The Executive submits that SFPA's procurement manager would have had a substantial task of collating these to complete the record. The time estimated for the SFPA to comply with Mr Meikle's request was estimated at 4 days work at £15 per hour, with an additional photocopying cost of £92. The total cost incurred by SFPA would therefore be £542.
36. The Executive has therefore concluded that the cost in complying with this element of Mr Meikle's request would result in a cost to it of £1345.
37. I am satisfied having reviewed the detailed breakdown provided by the Executive that it has provided a reasonable estimate of the projected cost of complying with this element of Mr Meikle's request and that the projected cost would exceed the £600 threshold.
38. I am also satisfied that this was but one element of a single request for information. Given the nature of the request, it would be wholly artificial to break it down into its constituent parts for the purposes of considering whether section 12 applies and therefore I must conclude that section 12 of FOISA applies to the whole request. Consequently, I must conclude that the Executive was entitled to decline to comply with Mr Meikle's request on the basis that section 12 applied to it and therefore I cannot require the Executive to release the information requested, even assuming it is not exempt under any of the provisions in Part 2 of FOISA.
39. In the circumstances, I am not required to consider the Executive's application of any of the exemptions in Part 2 of FOISA to the information withheld. Indeed, given that Mr Meikle may chose to make a further (narrower) request for this information, it would be inappropriate for me to comment on the Executive's reliance on the exemptions at this stage.





## **Decision**

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I find that the Scottish Executive acted in accordance with Part I of the Freedom of Information (Scotland) Act 2002 (FOISA) in refusing to respond to Mr Meikle's request for information. I find that section 12(1) of FOISA constitutes appropriate grounds for refusal in the circumstances of this case.

## **Appeal**

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Should either Mr Meikle or the Executive wish to appeal against the Commissioner's 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 notice.

**Kevin Dunion**  
**Scottish Information Commissioner**  
**9 January 2007**



## APPENDIX

### Relevant Statutory Provisions

#### 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.

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

#### *Projected costs*

- 3 (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.



*Excessive cost – prescribed amount*

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