



Scottish Information
Commissioner

**Decision 006/2007 MacRoberts and the Scottish
Executive**

*Correspondence concerning the provision of parking facilities at
Scottish airports*

Applicant: MacRoberts

Authority: Scottish Executive

Case No: 200501338, 200501339, 200501340 & 200501341

Decision Date: 17 January 2007

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
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Decision 006/2007 MacRoberts and the Scottish Executive

Correspondence concerning the provision of parking facilities at Scottish airports – information withheld – section 29(1)(a) – sections 30(b)(i) and (ii) – consideration of the public interest – Commissioner found the Executive to have acted in breach of Part 1 of FOISA, although some items had been appropriately withheld

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 sections 1(1) (General entitlement); 2(1) (Effect of exemptions); 17(1) (Notice that information is not held); 29(1)(a) (Formulation of Scottish Administration policy etc.); 30(b) (Prejudice to effective conduct of public affairs).

The full text of each of these provisions is reproduced in Appendix 2 to this decision. The Appendix forms part of this decision.

Facts

MacRoberts (a firm of solicitors) made four requests for correspondence between the Scottish Executive and BAA plc, Scottish Airports Limited, Edinburgh Airport Ltd and Glasgow Airport Ltd relating to the provision of parking facilities at any Scottish airport. The Scottish Executive (the Executive) responded to these requests by providing some of the requested information but withholding other relevant items on the grounds that they were exempt from disclosure. After seeking an internal review, MacRoberts asked the Commissioner to consider the Executive's handling of each of these requests.

The Commissioner found that the Executive had acted in breach of Part 1 of FOISA in its handling of each information request under consideration. The Commissioner required disclosure of a number of items, having concluded that these were not exempt from disclosure. He found that some information had been correctly withheld, however. The Commissioner also concluded that no relevant information was held in relation to one of the information requests under consideration.



Facts

1. On 1 January 2005, MacRoberts solicitors made a series of ten separate requests for information to the Scottish Executive. This decision is concerned with four of these requests, which sought the following:
 - a) All correspondence dated between 1 January 2001 and 31 December 2004 between the Scottish Executive and **BAA plc** or anyone acting on their behalf relating to the provision of parking facilities at or for any Scottish airport, including off-site long-stay parking (case reference: 200501338).
 - b) All correspondence dated between 1 January 2001 and 31 December 2004 between the Scottish Executive and **Glasgow Airport Ltd** or anyone acting on their behalf relating to the provision of parking facilities at or for any Scottish airport, including off-site long-stay parking (case reference: 200501339).
 - c) All correspondence dated between 1 January 2001 and 31 December 2004 between the Scottish Executive and **Edinburgh Airport Ltd** or anyone acting on their behalf relating to the provision of parking facilities at or for any Scottish airport, including off-site long-stay parking (case reference: 200501340).
 - d) All correspondence dated between 1 January 2001 and 31 December 2004 between the Scottish Executive and **Scottish Airports Ltd** or anyone acting on their behalf relating to the provision of parking facilities at or for any Scottish airport, including off-site long-stay parking (case reference: 200501341).

In this decision, I will refer to the 4 requests above as (a)-(d) respectively. When referring to individual cases, I will also make reference to the airport or company with which requested correspondence was exchanged.

2. In subsequent communications with the Executive, MacRoberts confirmed that these requests for information should not be considered as relating to the airports owned and operated by Highlands and Islands Airports Ltd. Instead, MacRoberts confirmed that the requests should be interpreted as referring (when mentioning “any Scottish airport”) only to Edinburgh, Glasgow, Aberdeen and Prestwick airports.



3. The Executive responded to each of requests (a)-(d) in separate letters, each dated 2 February 2005. In each case, the Executive confirmed that it held relevant information. The factual content of one letter was provided in response to requests (c) and (d), although this letter actually pre-dated the period specified in MacRoberts' requests. The Executive refused to supply other relevant correspondence on the grounds that the exemptions in sections 29(1), 30(b)(i), 30(b)(ii), 36(1) and 38(1)(b) of FOISA applied. The Executive concluded that the public interest in maintaining the relevant exemptions outweighed the public interest in the disclosure of the information withheld.
4. On 28 February 2005, MacRoberts sent a series of emails requesting reviews of the Executive's responses to each of the requests (a)-(d). In each case, MacRoberts asked the Executive to expand on the process by which the refusal was reached, and to explain why, in relation to each piece of information withheld, such withholding was in the public interest.
5. The Executive notified MacRoberts of the outcome of its reviews in relation to (a)-(d) in four separate letters dated 26 March 2005. In each case, the Executive's original decision was upheld in full.
6. MacRoberts then made a series of applications for decision by me concerning the Executive's handling of requests (a)-(d). MacRoberts' applications questioned the Executive's application of the various exemptions relied upon. MacRoberts also indicated that they considered the public interest to favour disclosure in each case, as it would enhance public scrutiny of the Executive's decision making process.
7. MacRoberts' four applications for decision were received by the Commissioner on 8 April 2005 and allocated to an investigating officer. Each case was then validated by establishing that MacRoberts had made a valid information request to a Scottish public authority (i.e. the Executive) under FOISA and had appealed to me only after asking the Executive to review its response to the request.

Investigation

8. The four cases to which this decision relates were investigated together, along with six further related cases. Two of these six cases were resolved informally, and the other four were the subject of a separate decision, 228/2006.



9. The investigating officer formally contacted the Executive on 28 April 2005 in terms of section 49(3)(a) of FOISA. The Executive was asked to comment on the 10 applications from MacRoberts that were being investigated together. The Executive was asked to provide copies of information withheld in response to each of the requests under consideration, and to provide details of its reasoning when judging that the various exemptions applied.
10. In communications with my Office, the Executive explained that a large number of documents had been identified in response to these 10 requests and that there would be practical difficulties in providing these. A schedule detailing relevant documents was provided.
11. The investigating officer visited the Executive in June 2005 in order to view relevant files and documents on site and to discuss the cases with staff in the Executive's FOI Unit and Aviation Policy Branch. In the course of this visit, it became clear that in order to respond to the full series of 10 related requests made by MacRoberts, the task undertaken by the Executive had involved reviewing a large number of files and had identified a large number of relevant documents.
12. Given the volume of information concerned, the investigating officer sought to achieve a partial settlement between the two parties. Through the narrowing of the scope of the requests for information by MacRoberts and the disclosure of further relevant information by the Executive, it was possible to resolve two related applications (concerned with correspondence between the Executive and Aberdeen and Prestwick airports) informally.
13. On 21 June 2006, the investigating officer wrote to the Executive asking it to confirm whether or not it believed the cost of responding to MacRoberts' information requests would exceed the £600 prescribed amount specified in regulation 5 of the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. This is the amount prescribed for the purposes of section 12(1) of FOISA, which states:

“Section 1(1) [of FOISA] 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...”



14. It is my understanding of section 12(1) that I have no power to require the release of information should I find that the cost of responding to the relevant request exceeds £600. A Scottish public authority can submit at any point prior to the issue of a decision by me (including during the course of an investigation) that the cost of supplying information that has been requested would exceed the £600 limit and, in the circumstances of this case, I considered it appropriate to determine whether section 12(1) of FOISA might prevent me from ordering disclosure of the information requested by MacRoberts.
15. The Executive's response confirmed that with respect to requests (a)-(d) it did not believe that the cost of compliance would exceed the £600 threshold. My decision on these requests will therefore address fully the question of whether the Executive has applied exemptions appropriately to information withheld by the Executive.
16. Following the receipt of this confirmation, the investigating officer asked the Executive in October and November 2006 to conduct further searches of relevant files in order to confirm what information was held that fell under the scope of requests (a)-(d). These requests were prompted by the observation that some information that had initially been identified under these requests was actually not relevant (having pre-dated the time period specified in the requests) while some relevant documents had not been identified in the Executive's initial searches of the files. As a result of the searches requested by my office, a number of additional items were identified in the course of my investigation.
17. The Executive was also asked to confirm which exemptions in Part 2 of FOISA were judged to apply to each item, and the reasons for this application.
18. In its submissions to my Office, the Executive confirmed that it actually held no relevant information in relation to request (b) (correspondence with Glasgow Airport Ltd). Items that had originally been identified as relevant to the request were, on further consideration, identified as falling outwith the scope of the request on the grounds that either
 - a) The relevant correspondence predated the time period specified within the request, or
 - b) The correspondence had actually been exchanged with BAA rather than Glasgow Airport Ltd.
19. The Executive's submissions also confirmed that on reflection it was now willing to disclose a number of items to MacRoberts. This included a number of items of correspondence between the Executive and BAA plc, and all relevant correspondence with Edinburgh Airport Ltd and Scottish Airports Ltd.



20. The table overleaf lists the items identified by the Executive as relevant to requests (a)-(d) following these further reviews. The “Executive position” in the right hand column states for each item under consideration any exemptions judged to apply by the Executive at the end of the investigation process. This column also confirms which items the Executive concluded could now be disclosed.
21. A second version of this table, which confirms my decision as it relates to each item, is appended to this decision notice as Appendix 1.



Case 200501338 – correspondence with BAA		
Item	Description	Executive position
1	Email exchange	Exempt: 30(b)(i) & 30(b)(ii)
2	Email	Exempt: 30(b)(i)
3	Email	Not exempt – release
4	Email and briefing note	Exempt: 30(b)(i)
5	Emails	Exempt: 30(b)(ii)
6	Letter and covering email	Exempt: 30(b)(ii)
7	Email and attached correspondence	Exempt: 30(b)(ii)
8	Email	Exempt: 30(b)(ii)
9	Minute and correspondence	Exempt: 30(b)(i) & 30(b)(ii)
10	Emails	Exempt: 30(b)(i) & 30(b)(ii)
11	Email and letter	Exempt: 30(b)(i) & 30(b)(ii)
12	Emails and letter	Exempt: 30(b)(i) & 30(b)(ii)
13	Emails and attached correspondence	Not exempt - release
14	Letter enclosing newsletter	Not exempt – release
15	Letter	Exempt: 29(1)(a), 30(b)(i) & 30(b)(ii)
Case 200501339 – correspondence with Glasgow Airport Ltd		
No relevant item. Those previously identified either pre-dated the time period specified in the request or should have been identified as correspondence with BAA plc (specifically items 2 – 4 listed under case 200501338).		



Case 200501340 – correspondence with Edinburgh Airport Ltd		
Item	Description	Executive position
1	Email	Not exempt – release
2	Draft letter	Not exempt – release
Case 200501341 – correspondence with Scottish Airports Ltd		
Item	Description	Executive position
1	Letter and newsletter	Not exempt – release
2	Fax and news release	Not exempt – release

The Commissioner’s analysis and findings

22. This decision is concerned with 4 distinct but related applications. I will first set out my findings on request (a) before briefly turning to requests (b)-(d). I have accepted the Executive’s judgements as to documents falling outwith the scope of the requests.

Request (a) – 200501338 – correspondence with BAA plc

23. In this case, a total of 15 items of correspondence have been identified by the Executive as relevant to the request for information.

24. Of these 15, the Executive is now willing to disclose three (items 3, 13 and 14), and so I will not consider these further. However, given that the Executive has not claimed that any exemption applies to these in its submissions, I conclude that it acted in breach of section 1(1) of FOISA by failing to provide these to MacRoberts when first responding to this request. Copies of these three items should now be supplied to MacRoberts.

25. I note that item 14 duplicates item 1 in case 200501341 (understandably given that the letter is on paper headed BAA Scotland, but with an address for Scottish Airports Ltd) and so only one copy of this needs to be provided to MacRoberts in response to this decision.



26. I now turn to the remaining items that the Executive believes to be exempt from release. These are items 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 15.
27. The Executive's submissions confirmed that each of these items was considered exempt under either or both of sections 30(b)(i) and (ii). The Executive has also stated that item 15 is exempt under the terms of section 29(1)(a). In each case, the Executive has concluded that the public interest in maintaining the relevant exemptions outweighs the public interest in the disclosure of the information.

Section 29(1)(a)

28. The Executive has applied this exemption only to item 15. This is a letter from BAA plc to the Executive concerning draft airport byelaws.
29. Section 29(1)(a) of FOISA states that information is exempt information if it relates to the formulation or development of Scottish administration policy.
30. In this case, the Executive has stated that the letter from BAA relates to the formulation of the Scottish Ministers' policy on the airport byelaws, and in particular whether or not these byelaws should be confirmed.
31. Under section 63 of the Airports Act 1986, an airport operator is entitled to make byelaws for regulating the use and operation of the airport and the conduct of all persons while within the airport. Such byelaws may only come into force following their confirmation by (for Scottish airports) the Scottish Ministers.
32. Before confirming any proposed byelaws, the Ministers must take steps to give public notice of the proposed byelaws and afford the opportunity for representations to be made about these. The Scottish Ministers must have regard to any such representations and may then make the byelaws in the form proposed by the airport operator or in that form with such modifications as they think fit.
33. In this context, I agree that the process of determining whether or not the Scottish Ministers should confirm byelaws proposed by an airport operator is a process of policy formulation.
34. I also accept that the information contained in item 15 relates to the formulation and development of this policy, in that it contains BAA's comments on representations received in relation to its proposed byelaws. Both these representations and BAA's responses to them would inform the Ministers' final policy on this matter (which has since been reached and the proposed byelaws confirmed).



35. I therefore conclude that the Executive correctly applied the exemption in section 29(1)(a) of FOISA to item 15 (in its entirety). Having reached this conclusion, I will not consider the application of the exemptions in sections 30(b)(i) and (ii) in relation to this item in what follows below.
36. Section 29(1)(a) is a qualified exemption, and so the public interest test contained in section 2(1)(b) of FOISA must be considered before reaching a final conclusion on whether the information falling under its scope should be disclosed. However, before considering the public interest as it relates to this case, I will first consider the application of the exemptions in section 30(b)(i) and (ii).

Sections 30(b)(i) and (ii)

37. The Executive has submitted that each remaining item that it considers exempt in case 200501338 is exempt under either or both of sections 30(b)(i) and 30(b)(ii) of FOISA.
38. The exemptions in sections 30(b)(i) and 30(b)(ii) concern prejudice to effective conduct of public affairs and state that information is exempt information if its disclosure under FOISA would, or would be likely to, inhibit substantially the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation respectively. Both exemptions are subject to the public interest test laid down by section 2(1)(b) of FOISA.
39. In applying the exemptions under sections 30(b)(i) and 30(b)(ii) of FOISA the chief consideration is not whether the information constitutes advice or views (although that may well be relevant), but whether the release of the information would inhibit substantially the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation.
40. The Executive's guidance to its staff on the application of section 30(b) of FOISA (<http://www.scotland.gov.uk/Resource/Doc/1066/0022045.pdf>) points out that the word "inhibit" suggests a suppressive effect, so that communication would be less likely to be made, or would be made in a more reticent or circumscribed fashion, or would be less inclusive.
41. The guidance also provides examples of the kind of questions that could be considered when taking into account the possible effects that disclosure might have on the provision of advice or the exchange of views:
 - would it make it more likely that the person offering the advice will be unwilling to do so in the future? Would it inhibit that person or any other from offering unwelcome advice?
 - would it make it more likely that the person being advised will not ask for advice in future?



- would it have a similar inhibiting effect on other people in future?
- would it make it more likely that advice will be given that is materially different because of the possibility of disclosure?
- will it make people less likely to engage in discussion (oral or written) as part of the deliberative process or would it distort or restrain that discussion?
- would it result in pressure being brought to bear on officials to provide particular advice?

The Executive's submissions on sections 30(b)(i) and 30(b)(ii)

42. The Executive's submissions on the application of these exemptions in this case stated that the documents concerned related to the free and frank provision of advice and/or exchange of views for the purposes of deliberation on various subjects relating to airport parking and byelaws, including the Executive's response to a petition to the Scottish Parliament (PE 528) relating to access to public roads at Scottish airports.
43. The Executive stated that it believed that exchanges of this nature would be jeopardised if such correspondence was considered suitable for release while the issues were still relevant to the development of current policy. It also suggested that Executive officials and BAA staff would feel constrained from offering full and frank advice on future occasions if they were concerned that their comments would be made public in such circumstances.
44. The Executive has also pointed out that it relied upon good working relations with stakeholders and a continuing open avenue of communication with them. The Executive indicated that it believed that such open avenues would be endangered should such correspondence be disclosed during the period of relevant policy development.

Conclusions on the application of section 30(b)(i)

45. The Executive has applied the exemption in section 30(b)(i) to items 1, 2, 4, 9, 10, 11, 12 and 15. I will not consider the application of this exemption to item 15 as this has already been judged to be exempt under section 29(1)(a).
46. In considering the application of any exemption, I must always look at the actual information withheld, not the category of information to which it belongs or the type of situation in which the request has arisen. In other words, I must consider whether the disclosure of *that information* would, or would be likely to, in all the surrounding circumstances, have the substantially



47. I have reviewed the content of each item listed in paragraph 45 above. These documents include correspondence on a range of subjects including BAA's proposed airport byelaws; the Scottish Parliament public petitions committee's consideration of petition PE528, and other matters.
48. I have concluded that the exemption in section 30(b)(i) of FOISA has been incorrectly applied in relation to each item listed in paragraph 45. In reaching this view, I have noted that the exchanges in these documents do not, in my opinion, reveal or relate to the soliciting or provision of advice between BAA and the Executive (or other parties). The relationships between the parties to the correspondence do not appear (in these documents) to be such that either party should be considered to be advising the other. In these circumstances, I am unable to accept that the disclosure of these items would be likely to have a substantially inhibitive effect on the free and frank provision of advice.
49. Having reached this conclusion, I find that items 2 and 4, which the Executive has submitted were exempt on the grounds of the application of section 30(b)(i) only, should now be supplied to MacRoberts.

Conclusions on section 30(b)(ii)

50. The Executive has applied the exemption in section 30(b)(ii) to items 1, 5, 6, 7, 8, 9, 10, 11, 12 and 15. Again, I will not consider the application of this exemption to item 15 as this has already been judged to be exempt under section 29(1)(a).
51. Once again, I must consider the actual information contained in these documents, and not just the context in which it was created and exchanged. I have carefully reviewed the content of each item listed above.
52. As noted above, the correspondence identified in this case relates to a range of topics. In these documents, information, comment and views are exchanged between parties, and the likely effect of disclosure of this will be relevant to my consideration of section 30(b)(ii).
53. Although I have concluded that the relationship between BAA and the Executive is not (in the documents listed in paragraph 45) an advisory one, it is clear that the information sharing between these two parties in some cases involves a free and frank exchange of views.
54. I accept that the disclosure of the correspondence in item 1 would be likely to inhibit substantially the future free and frank exchange of views between BAA and the Executive for the purposes of deliberation. This document contains exchanges of a type that I agree would be less likely to take place in such a manner in future should these items be disclosed now.
55. I therefore conclude that the Executive correctly applied the exemption in section 30(b)(ii) to the correspondence in item 1.



56. I have concluded that the Executive wrongly applied this exemption to the remaining items 5, 6, 7, 8, 9, 10, 11 or 12.
57. In reaching this conclusion, I have noted that much of the correspondence between BAA and the Executive (or enclosed with this) relates to the Scottish Parliament's consideration of petition PE 528. Although the Executive and BAA's correspondence concerning PE 528 is not already available in the public domain, I have found references to various contents of these in the official report of meetings of the public petitions committee. I am of the view that exchanges between the Executive and BAA that relate to the process and substance of each party's engagement with this committee can be disclosed without raising the likelihood of substantial inhibition to the free and frank exchange of views between them in future.
58. As I have concluded that no exemption applies to the items listed in paragraph 56 above, I now require these to be disclosed to MacRoberts.

Consideration of the public interest

59. Sections 29(1)(a) and 30(b)(ii) are both qualified exemptions. This means that where they are judged to apply, a public authority must go on to consider the public interest test contained in section 2(1)(b) of FOISA. This requires consideration of whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosing the information. If the two are evenly balanced, the presumption should always be in favour of disclosure.
60. Having concluded that item 1 is exempt from disclosure under section 30(b)(ii) and item 15 is exempt under section 29(1)(a), I must now turn to consider whether the public interest in disclosing these documents is outweighed by the public interest in maintaining these exemptions.
61. The comments of both MacRoberts and the Executive made no distinction between the public interest as it relates to these two exemptions, and so I will summarise these submissions first before going on to set out my conclusions on the balance of public interest (which apply equally to both exemptions).
62. The Executive's submissions have emphasised the public interest in high-quality policy and decision making, and the need for officials to be able to consider all options and to debate these fully and rigorously. It indicated that officials' candour in doing so would be affected by their assessment of whether the content of their discussions would be disclosed in the near future (when it might undermine or constrain the Government's view on settled or developing policy).



63. The Executive also indicated there was a strong public interest in ensuring that, where necessary, advice in areas on ongoing policy development could take place in a non-public arena, to enable rigorous and frank debate about the merits or demerits of alternative courses of action without fear that such consideration would be examined out of context. It emphasised the importance of working on the best advice available, with full consideration of all the options (however unpalatable).
64. MacRoberts' application to my office in this case indicated their belief that the relevant information should be disclosed as it would enhance public scrutiny of the Executive's decision making process and its accountability to the public. MacRoberts also indicated that disclosure would contribute to the effective oversight of the use of public funds.

Conclusions on the public interest

65. Both parties' submissions on the public interest in this case were made in very general terms. However, the competing interests they suggest to be at stake are, crudely, the Executive's perceived need for policy development and discussions to proceed in private, as opposed to the public's need to scrutinise decision making.
66. I have concluded that the public interest in the maintenance of the exemptions applying to items 1 and the main letter in item 15 outweighs the public interest in the disclosure of the information in each case.
67. I have reached this conclusion following consideration of some specific aspects of this case. For example, given the statutory relationship between BAA and the Scottish Ministers for the purposes of making airport byelaws, it is in the public interest that these two parties are able to engage in full and frank discussions.
68. Having concluded that disclosure of items 1 and 15 would be likely to inhibit such future exchanges, I agree that there is a strong public interest in maintaining the section 29(1)(a) and 30(b)(ii) exemptions in relation to the information in them.
69. While disclosure of these documents would shed further light on the relationship between the Executive and BAA, and (particularly in the case of document 15) on the process of approving airport byelaws, I do not consider there to be an overriding public interest tipping the balance of public interest in favour of disclosure for either document.
70. Therefore, I conclude that the balance of the public interest favours the maintenance of the exemptions under sections 29(1)(a) and 30(b)(ii) of FOISA and consequently that items 1 and 15 were withheld by the Executive in accordance with Part 1 of FOISA.



Request (b) – 200501339 – correspondence with Glasgow Airport Ltd

71. In this case, the Executive initially indicated to MacRoberts that relevant information was held and that this was exempt from disclosure under FOISA.
72. However, the investigation by my office has confirmed that actually no relevant information was held by the Executive. Items that were initially identified either proved to be correspondence with BAA plc (concerning Glasgow airport) or were dated before the time period specified in the information request.
73. Where requested information is not held by a public authority, that authority should, under the terms of section 17 of FOISA, issue a notice confirming that that the information is not held. Therefore, in this case I have found that the Executive failed to comply with Part 1 of FOISA by failing to issue a notice in terms of section 17 in response to MacRoberts' request for information.

Requests (c) and (d) – 200501340 and 200501341 – correspondence with Edinburgh Airport Ltd and with Scottish Airports Ltd

74. In both of these cases, the Executive initially responded by providing some information (which actually fell outwith the scope of the requests because it pre-dated the time period specified within it) but withheld other relevant pieces of correspondence on the grounds that these were exempt.
75. Following further searches requested by my Office, only two items were found to fall under the scope of each of these requests. In each case, the Executive judged that these items could be disclosed, and no longer sought to rely upon any exemption.
76. I can see no reason for any of these items being considered exempt from disclosure at the time when the requests were first received by the Executive.
77. I have therefore found that in each of these two cases, the Executive acted in breach of Part 1 (and specifically in breach of section 1(1)) of FOISA by failing to provide the relevant correspondence to MacRoberts. The items identified as relevant to these requests should now be supplied to MacRoberts.

Decision

This Decision notice relates to four separate applications for decision by me. I set out my decisions in turn below under each of the case reference numbers used by my office.



My conclusions and any steps required in relation to each item under consideration in this decision are summarised in the table appended to this document. This table (Appendix 1) forms part of this decision notice. In order to comply with the requirements of FOISA, I require the steps set out below and in this table to be taken within 45 days of the receipt of this decision notice.

200501338 (correspondence with BAA plc)

I find that the Scottish Executive (the Executive) failed to comply with the requirements of Part 1 of the Freedom of Information (Scotland) Act 2002 in its responses to MacRoberts' request for information.

I found that the Executive correctly applied the exemption in section 30(b)(ii) to item 1 and, and the exemption in section 29(1)(a) to item 15. I find that the public interest in maintaining these exemptions outweighed the public interest in disclosing the information. The Executive therefore acted in accordance with Part 1 of FOISA when withholding these items in response to MacRoberts' request.

However, I have found that the Executive failed to comply with the requirements of section 1(1) of FOISA by withholding the remaining information identified in response to this request. I have concluded that this information is not exempt from disclosure. In order to comply with the requirements of section 1(1) of FOISA, I now require this non-exempt information to be disclosed to the applicant.

200501339 (Correspondence with Glasgow Airport Ltd)

I find that the Executive failed to comply with the requirements of Part 1 of FOISA in its responses to MacRoberts' request for information. By failing to notify MacRoberts that no relevant information was held falling under the scope of this request, the Executive failed to comply with the requirements of section 17 of FOISA.

I do not require any remedial steps to be taken in response to this breach.

200501340 (Correspondence with Edinburgh Airport Ltd)

I find that the Executive failed to comply with the requirements of Part 1 of FOISA in its responses to MacRoberts' request for information. In particular, the Executive failed to comply with section 1(1) of FOISA by withholding relevant information to which no exemption applied.

In order to comply with the requirements of section 1(1) of FOISA, I now require this non-exempt information to be disclosed to the applicant.



200501341 (Correspondence with Scottish Airports Ltd)

I find that the Executive failed to comply with the requirements of Part 1 of FOISA in its responses to MacRoberts' request for information. In particular, the Executive failed to comply with section 1(1) of FOISA by withholding relevant information to which no exemption applied.

In order to comply with the requirements of section 1(1) of FOISA, I now require this non-exempt information to be disclosed to the applicant.

Appeal

Should either the Executive or MacRoberts wish to appeal against this decision, there is a right to 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
17 January 2007



Appendix 1 – summary of decisions in relation to each item under consideration

Case 200501338 – correspondence with BAA		
Item	Description	Commissioner’s decision and steps required
1	Email exchange	Exempt under 30(b)(ii) – withhold Public interest favours maintenance of the exemption – withhold
2	Email	Not exempt – disclose in full
3	Email	Not exempt – disclose in full
4	Email and briefing note	Not exempt – disclose in full
5	Emails	Not exempt – disclose in full
6	Letter and covering email	Not exempt – disclose in full
7	Email and attached correspondence	Not exempt – disclose in full
8	Email	Not exempt – disclose in full
9	Minute and correspondence	Not exempt – disclose in full
10	Emails	Not exempt – disclose in full
11	Email and letter	Not exempt – disclose in full
12	Emails and letter	Not exempt – disclose in full
13	Emails and attached correspondence	Not exempt – disclose in full
14	Letter enclosing newsletter	Not exempt – disclose in full
15	Letter from BAA to Executive	Exempt under 29(1)(a) Public interest favours maintenance of the exemption – withhold Did not consider sections 30(b)(i) and (ii)



Case 200501339 – correspondence with Glasgow Airport Ltd

No relevant item. Those previously identified either pre-dated the time period specified in the request or should have been identified as correspondence with BAA plc (specifically items 2 – 4 listed under case 200501338).

Case 200501340 – correspondence with Edinburgh Airport Ltd

Item	Description	Commissioner's decision and steps required
1	Email	Not exempt – disclose in full
2	Draft letter	Not exempt – disclose in full

Case 200501341 – correspondence with Scottish Airports Ltd

Item	Description	Commissioner's decision and steps required
1	Letter and newsletter	Not exempt – disclose in full
2	Fax and news release	Not exempt – disclose in full



Appendix 2

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.

2 Effect of exemptions

(1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that-

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

29 Formulation of Scottish Administration policy etc.

(1) Information held by the Scottish Administration is exempt information if it relates to-

- (a) the formulation or development of government policy;

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

[...]

- (b) would, or would be likely to, inhibit substantially-
 - (i) the free and frank provision of advice; or
 - (ii) the free and frank exchange of views for the purposes of deliberation;